LUISS

Dipartimento di Giurisprudenza

Cattedra di Tutela Internazionale dei diritti umani

Corporate Social Responsibility and International Human Rights Law: Analysis of Eni's Business Model

Chiar.mo Prof. Pietro Pustorino

RELATORE

Chiar.mo Prof. Roberto Virzo

CORRELATORE

Angelica Insinna
Matr. 155333

CANDIDATO

Anno accademico 2022/2023

To my Papo,
I am because you were.

Table of contents

CHAPTER V

ANALYSIS OF A MULTINATIONAL'S POLICY ON CSR:

Introduction

Corporate Social Responsibility is the expression used to describe the phenomenon for which "*private companies no longer base their actions on the needs of their shareholders alone, but rather have obligations towards the society in which the company operates"*.[1] The essence of this responsibility, which is economic rather than legal in nature, requires that multinational corporations (MNCs), in carrying out their usual business operations, also decide voluntarily to take into consideration the social and environmental context in which they are located, the consequences of their actions and the resources available to them. It is a very broad and complex concept, in continue expansion and development, with contributions from the multinational corporations themselves, but also from States and International Organizations.

The urge to develop such responsibility started to be felt around the 1960s, period in which MNCs became fundamental actors of the international economic scene and, consequently, discussions on their legal status in international law arose. Multinational enterprises' size, number, their location in the major markets and sectors of industry, their complex organization and structure and their limited liabilities are all factors that contributed to the long-standing debate about how such entities should be regulated. The large majority of international scholars[2] hold that MNEs do not possess international legal personality, due to the fact that they have not been granted rights nor obligations under international law yet and that, although companies benefit from a range of international law provisions, including bilateral agreements or foreign direct investment, they do not necessarily enjoy corresponding rights.[3] Due to this lack in attributing express rights, but especially binding obligations to multinational corporations in the international context, it has been and it still difficult holding Multinational Corporations liable under international law[4]. Corporate 'accountability' implies the ability to hold the company responsible for its conduct to a range of corporate stakeholders: shareholders, the communities in which companies operate, consumers, and the public bodies under whose authority they operate.[5]

It is in this "gap governance" situation that Corporate Social Responsibility measures started to be developed, meaning instruments meant to try to regulate MNCs activities and prevent social and environmental negative impacts. International Organizations started very soon to adopt these kinds

[1] E. Morgera, Corporate Accountability in International Environmental Law, Oxford, 2009, p.11 e 12.
[2] K. Nowrot, Reconceptualising International Legal Personality of Influential Non-State Actors: towards a Rebuttable Presumption of Normative Responsibilities, in J. Fleurs, International Legal Personality, Ashgate, 2010, p. 369, 372; E. De Brabandere, Human Rights and Transnational Corporations: The Limits of Direct Corporate Responsibility, Human Rights and International Legal Discourse, 2010.
[3] M. Noortmann, A. Reinisch, C. Ryngaert, Non-State Actors in International Law, Bloomsbury Publishing, 2015.
[4] J. Wouters, A. Chané, Multinational Corporations in International Law, Working Paper No. 129, 2013, p. 10.
[5] J. Chen, Corporate Accountability: Definition, Examples, Importance, International Journal of Economics and Management Sciences, 2022.

of instruments, but as a direct consequence of the "blurred"[6] international legal status that concerns MNCs, the majority of these measures are identified as soft law, lacking any enforceability. As being non-binding, the instruments concerning CSR are all adopted by Member States and MNCs on a voluntary basis and obviously they cannot be obliged to comply with the CSR Standards set by them. Despite this weak legal force, these instruments represent a very important international CSR framework, as they all set relevant principles and guidelines that can guide multinational corporations' activities in preventing and avoiding any negative impact on the environment and on the respect of human rights. It is, in fact, the sector of human rights the most impacted one by MNCs activities and it is for this reason that this work has decided to focus on it in its analysis. Corporate Social Responsibility should, in fact, represent a legal imperative under International Human Rights Law, because, by integrating human rights principles into their operations, corporations can really play a pivotal role in advancing global human rights goals while fostering sustainable development.
The most relevant international instruments concerning CSR will be analyzed throughout this work, allowing the reader to have a comprehensive understanding of all the measures that can be implemented in this very general context, starting from due diligence ones, until the very complex topic of sustainability reporting. In analyzing these instruments, their main goals and achievements will be considered, as well as their weaknesses and necessary improvements. The study will commence with the International Labour Organization's Declarations[7] adopted in the context of business and human rights, which set important duties on its member states concerning working conditions and the respect of fundamental human rights in this context. Moving on, different United Nations' initiatives are considered, starting from its non-binding instruments, such as the UN Global Compact Initiative[8] and the UN Guiding Principles on Business and Human Rights[9]. Then, in order to understand how difficult it still be for the United Nations to adopt a binding treaty on multinational corporations, the work will analyze the attempts that the organization has tried to do so, starting from Resolution 26/09[10] to the Draft Binding Treaty on transnational corporations and other business enterprises with respect to human rights and its revisions[11]. Despite all the efforts that the United Nations have made since 2014, no agreement has been reached for the approval of this Treaty, therefore until now all the measures that the UN have adopted concerning MNCs activities do not create any binding obligation for them.

[6] M. Cominetti, P. Seele, Hard soft law or soft hard law? A content analysis of CSR guidelines typologized along hybrid legal status, Springer, 2016.
[7] Chapter II.1, ILO ILO Declaration of 1998 on Fundamental Principles and Rights at Work and 1977 ILO Tripartite Declaration.
[8] Chapter II.2.2, United Nations, UN Global Compact, 2000.
[9] Chapter II.2.3, United Nations, UN Guiding Principles on Business and Human Rights, 2011.
[10] Chapter II.3, UNGA Resolution 26/09, 2014.
[11] Chapter II.3.

A different approach is, instead, adopted by the European Union, as it not only recognizes the legal status of MNCs, but especially due to the direct effect[12] that EU law has on its member states, giving rise to rights and obligations upon individuals and legal persons. On the basis of these premises, the European Union has developed an important legal framework concerning CSR, imposing to its member states to implement national measures to comply with it. Chapter III first considers the approach that the European Union has developed towards the concept of Corporate Social Responsibility and business and human rights, which is affirmed in several Documents and Communications, including the 2001 Green Paper for the promotion of a European Framework to CSR[13] and in the 2011 Commission's Communication on a modern understanding of CSR[14]. After that, the most relevant directives adopted by the European Parliament and Council will be studied, starting from the Non-financial Reporting directive and its successor the Corporate Sustainability Reporting Directive[15], which identified the standards to be followed by MNCs for sustainable reporting. Then, the Proposal for the Corporate Sustainability Due Diligence Directive[16] will be described, considering its aim and the effects that it will have once it will be approved.

After having considered the international and regional CSR panorama, the Italian one will be studied, first considering the national approach to this concept and the first measures adopted at a provincial, regional and, only since 2003, at a national level. In this context, the obligations imposed by the Legislative Decree 254/2016[17] will be considered, as being the Italian Implementation of the EU Directive on the disclosure of non-financial information, evaluating its achievements and its weaknesses. Then, it will be made a brief consideration of the remedies that the Italian legal system offers to victims of corporate abuses, both the judicial and the few non-judicial ones. Lastly, the Italian approach to CSR will be compared to a different national framework, the French one. As being the most ancient and developed one throughout the European Union, the French approach to CSR represents a valuable comparison to understand the lacks and the necessary improvements that the Italian one needs.

At this point, the reader should be able to understand the strengths and weaknesses of Corporate Social Responsibility, the effects that it could have on MNCs activities and on the respect of human rights. In order to provide concrete examples of the achievements that the adoption of CSR measure

[12] Judgment of 5 February 1963, NV Algemene Transport- en Expeditie Onderneming van Gend en Loos v Netherlands Inland Revenue Administration, C-26/62, ECLI:EU:C:1963:1, which established the principle of direct effect of EU Law.
[13] Chapter III.3, European Commission, EU Green Paper for the promotion of a European Framework to CSR, 2001.
[14] Chapter III.4, European Commission, Commission's Communication on a modern understanding of CSR, 2011.
[15] Chapter III.5, European Union, Non-financial sustainable reporting directive, 2014 and Corporate Sustainability Reporting Directive, 2022.
[16] Chapter III.6, European Union, Proposals for the Corporate Sustainability Due Diligence Directive, 2022.
[17] Chapter IV.3, Legislative Decree 254/2016.

in an MNC's business models can bring to, this work will be concluded with the analysis of some of the instruments voluntarily adopted by Eni, an Italian energy multinational corporation, recognized globally for its efforts in conducting its activities, paying particular attention to the respect of human rights of the communities in which it operates.

CHAPTER I

MULTINATIONAL CORPORATIONS

IN INTERNATIONAL LAW

The subjects of international law have been defined as being entities possessing international rights and obligations and having the capacity to maintain their rights by bringing international claims and to be responsible for their breaches of obligation by being subjected to such claims.[18] In the past, due to the state-centric model[19] that characterized the international legal system, States were considered as the only possible subjects of international law[20]. During the second half of the XX century, important steps were taken to enlarge this list. This became necessary mainly because the convergence of formal authority in the hands of a small central ruling elite has contributed to an inherent instability in the international system. Dangerous breaking points in international relations were created, disagreements on a specific issue could lead to disproportionate consequences for the respective national communities or the international community at large.[21] Therefore, a process of changing from this state-centric model began and its starting point can be found in the advisory opinion that the International Court of Justice (ICJ) gave in 1949, concerning the "*Reparation for Injuries suffered in the service of the United Nations*"[22]. In this advisory opinion, the ICJ characterized for the first time an International Organization, specifically the UN, as a subject of international law, capable of possessing international rights and duties and capacity to maintain its rights by bringing international claims.[23] Despite different scholarly views about their recognition as subject of international law[24], contemporary literature[25] lists other relevant actors in the international

[18] M. Bedjaoui, International Law: Achievements and Prospects, Martinus Nijhoff Publishers, 1991, p. 23; J.R. Crawford, Brownlie's Principles of Public International Law, 2012, p. 115; M. Pentikäinen, Changing international 'subjectivity'and rights and obligations under international law–status of corporations, Utrecht Law Review 8.1, 2012, p. 145-154; J. Klabbers, International Law, Cambridge University Press, 2020, p. 74.

[19] This is the model on the basis of which International Law was conceived. This can be easily noted from different aspects, including the fact that classical sources of international law depend on the interaction of States in the form of treaties and customary law, diplomatic relations are conducted between States, international organizations and international courts, are largely reserved to States. Moreover, central concepts of international law, like sovereignty, territorial integrity, non-intervention, self-defence or permanent sovereignty over natural resources all rely on the exclusive or dominant role of the State.

[20] C. Schreuer, The Warning of the Sovereign State: Towards a New Paradigm for International Law, European Journal of International Law, 1993, p. 447-471.

[21] Ibidem, p. 448.

[22] Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, ICJ Reports 1949.

[23] Ibidem, pag. 174.

[24] H. Lauterpacht, International Law and Human Rights, Archon Books, 1968, pp. 6-9; J.A. Andrews, Controversial subjects of contemporary international law. An examination of the new entities of international law and their treaty-making capacity, International Affairs, 1974, p. 633–634; I. Brownlie, Principles of Public International Law, Oxford University Press, 1999, p. 59-66.

[25] A. Cassese, International Law, Oxford University Press, 2005, p. 124-150. Insurgents and national liberation movements are defined by Cassese as having special links to states since they are entities potentially on their way to becoming states. The former comes into being through their struggle against the state to which they previously belonged. The latter group

framework, including insurgents, national liberation movements, sui generis or state-like entities[26] and individuals[27].

Lastly, the most contested status is the one of the business entities operating across national borders, the Multinational Corporations (MNCs). This first chapter aims at analyzing these entities, their organization and their role in the global economy, in order to understand the difficulties of characterizing them as subjects of international law. In the following paragraphs of this first chapter the focus will be on the influence that MNCs can exercise over the enjoyment and the respect of human rights and their impact on the society through their activities. To conclude this first section, the problem of attributing international responsibility to this business actors will be discussed, together with the solution that the majority of MNCs is adopting on voluntary basis: the Corporate Social Responsibility.

I.1 Definition of Multinational Corporations

Multinational Corporations are the most talked-about business organization in the contemporary economy[28]. Especially the past four decades have witnessed a dramatic rise of globalized business, thanks to the huge developments in technology, that brought to a more efficient productivity and to the decreasing of its prices.[29] Economic relations passed from being operated mostly on a national scale to being operated on a global one, facilitating the international exchange of goods, services, capital, and information[30]. Therefore, a re-organization of industrial production processes was necessary, and this resulted in a production delocalization on an international scale.[31] This phenomenon took place mainly through a form of management and control, characterized by the institution a 'parent' or controlling company (established in the state of origin) vis-à-vis one or more

---

is viewed as consisting of organized groups particularly fighting against colonialism, racist regimes or alien domination. Their legitimization is based on the principle of self-determination.

[26] Ibidem, Cassese labels the Holy See, the sovereign order of Malta and the International Committee of the Red Cross as being sui generis entities. A. Clapham, Human Rights Obligations of Non-State Actors, Oxford University Press, 2006, p. 59. For Clapham, the Holy See and the Order of Malta are de facto regimes, being entities with state-like qualities often counted among the subjects of international law.

[27] Human beings were considered to be only "objects" of international law, not being capable of bearing rights and obligations under it. Currently, scholars still debate about their subjectivity in international law. G. Schwarzenberger, A Manual of International Law, London, 1967, p. 52; J. Klabbers, The individual in international law, Cambridge University Press, 2013, p. 107-123; A. Peters, Beyond Human Rights: the Legal Status of the Individual in International Law, Cambridge University Press, 2016.

[28] K.S. Isaac, A. Ibidunni, O.J. Kehinde, D. Ufua, K.B. Elizabeth, D. Oyo-Ita, C.M. Mathias, The role of multinational corporations in global economic practice: literature review, Journal of Management Information and Decision Sciences, 2020, p. 619-628; P. Lowe, Transnational & Multinational Corporations in the Global Economy: Globalisation and the Impacts of TNCs & MNCs for A Level & IB Geography, Independently Published, 2020.

[29] A. Robert, Technology, progress and economic growth, European Management Journal, 1996, p. 562-575.

[30] T. Baumgartner, T.R. Burns, The Structuring of International Economic Relations, International Studies Quarterly, 1975, p. 126; H.G. Johnson, A Dynamic Theory of International Economic Relations, The Pakistan Development Review, p. 15.

[31] R. Hammami, Y. frein, A.B. Hadj-Alouane, Supply chain design in the delocalization context: Relevant features and new modeling tendencies, International Journal of Production Economics, 2008, p. 641-656.

companies established in foreign states (known as 'host' states): the corporate structure thus described is typical of multinational enterprises[32]. As owners, parent corporations have wide ranging powers to control their subsidiaries.[33] These powers can be exercised by the controlling company through several forms of direction.[34] In order to have a clearer view of the possible structures of a MNE, two of the main forms of control exercised by the parent company over its subsidiaries will be now analyzed.

The first form of control can be defined as the "*Anglo-American Pyramid Group*", and it represents the typical structure used by US and UK held MNCs. It consists of a parent company which owns and controls a network of wholly or majority-owned subsidiaries, which may themselves be intermediate holding companies for sub-groups of closely held subsidiaries. The resulting structure is that of a pyramid with the parent company at its apex.[35] The other main form of management through which the production delocalization happened can be defined as "*network organization*"[36]: it is characterized by business relationships based on contractual agreements that create subordination of one or more companies to another, generating agencies, franchising or licensing relationships.[37] Despite the different possible types of organizations[38], what really characterizes MNCs is the ability to operate across national borders, being a group of companies under the management of a single holding company, which is responsible for the management and coordination of the entire group. The result is a vast set of relationships that crisscross the globe.

Another important aspect to take into consideration in relation to MNCs is that each subsidiary is an autonomous subject of law, being the addressee of the regulation and of the legal system of the State in which it is incorporated in. Each subsidiary has its own claims to limited liability and its own legal personhood,[39] with the advantage of separating the risks of each market. Therefore, we can notice a dichotomy between the economic unity of the group and the legal diversity of each subsidiary.[40]

The general discretion that characterizes these business entities has given rise to several discussions, not only about their international legal personality[41], but even concerning their definition. As a matter

---

[32]A.W. Harzing, Strategy and structure of multinational companies, International human resource management, 2004, p. 33-64.

[33] U. Andersson, M. Forsgren, Subsidiaries embeddeddnes and control in the multinational corporation, International Business Review, 1996, p. 487-508.

[34]M. Sageder, B. Feldbauer-Durstmüller, Management control in multinational companies: a systematic literature review, Review of Managerial Science, 2019.

[35] T. Muchlinski, Multinational Enterprises and the Law, 2007, Oxford University Press, p. 56.

[36] J. Mccahery, S. Picciotto, C. Scott, Corporate Control and Accountability, Oxford, 1993, p. 41.

[37] Ibid.

[38]To have a complete view on the possible forms of control exercised by the controlling company over the subsidiaries: T. Muchlinski, Multinational Enterprises and the Law, 2007, Oxford University Press, Chapter 2.

[39] R. Brewster, Enabling ESG Accountability: focusing on the corporate enterprise, Wisconsin Law Review, 2022, p. 1376.

[40] F. Francioni, Imprese Multinazionali, Protezione Diplomatica e Responsabilità Internazionale, Milano, 1979, p. 15.

[41] Analyzed in paragraph I.1.3.

of fact, there is no term nor definition internationally agreed upon and used univocally to describe these business actors, despite their increasing importance in the international scenario. The following paragraph of this chapter aims at explaining the reason why, especially in the last decades, MNCs have become one of the most influential actors in the international scene, drawing the attention of national governments, but also of international organizations and institutions. As a consequence, hundreds of definitions have been made; the international organizations themselves have drawn up different ones which "have led to a clarification of the concept, without, however, ending up with a precise definition".[42]

In the UN framework, the term "multinational corporations" has been first used to describe "*enterprises which own or control production or service facilities outside the country in which they are based"*[43]. This terminology was later replaced by the term "Transnational Corporations" with the aim of emphasizing the cross-border operation of the respective company and to distinguish it from "multinational corporations" which was instead used to describe societies jointly owned and controlled by entities from several different countries.[44] However, this distinction was later abandoned and in the Paragraph 20 of the 2003 UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights "transnational corporations" has been used to define an "*economic entity operating in more than one country or a cluster of economic entities operating in two or more countries – whatever their legal form, whether in their home country or country of activity, and whether taken individually or* collectively*"*.[45]Other international organizations, including the Organization for Economic Co-operation and Development (OECD)[46] and the International Labour Organization (ILO)[47] usually employ the term "multinational enterprises" in their instruments. In particular, the OECD Guidelines for Multinational Enterprises[48] described multinational enterprises as "*companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways"*[49]. It can be noticed that the OECD Guidelines intentionally rejected to give a precise

[42] A. Bonfanti, Imprese internazionali, diritti umani e ambiente: profili di diritto internazionale pubblico e privato, Milano, 2012, p. 2.
[43] Report of the Group of Eminent Persons to Study the Impact of Multinational Corporations on Development and on International Relations, UN Report, 1974, p. 25.
[44] M.R. Mauro, Diritto Internazionale dell'economia Teoria e Prassi delle Relazioni economiche internazionali, 2019, p. 81.
[45] UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UNHCR, Sub-Commission on the Promotion and Protection of Human Rights, 2003, UN Doc E/CN.4/Sub2/2003/12/Rev.2, p. 7.
[46] Organization for Economic Co-operation and Development, founded in 1961.
[47] International Labour Organization, founded in 1919.
[48] OECD Guidelines for Multinational Enterprises, Recommendations for Responsible business conduct in a global context, 2011.
[49] Ibidem, part I, ch. I, at 4.

definition and, instead, focused on the fact that the connection between the different companies that constitute the multinational enterprise is a characteristic feature of the entity in question[50]. Similiarly, Point 6 of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy[51] specifies that *"to serve its purpose the MNE Declaration does not require a precise legal definition of multinational enterprises"*[52], focusing instead on the main characteristics that these entities have, such as the dimension or the nature of the links between the different subsidiaries.[53] Another interesting definition is the one given by the UN Commission on Transnational Corporations[54] that operated from 1974 to 1992 with the aim of elaborating a Code of Conduct of Transnational Corporations which will be analyzed in the next chapter of this work. Article 1(3) of the Draft Code of Conduct states that MNEs "*operate under a system of decision-making centers, in which the entities are so linked, by ownership or otherwise, that one or more of them may be able to exercise a significant influence over the activities of others and, in particular, to share knowledge, resources and responsibilities with others"*.[55] These definitions were only examples of the level of terminological confusion[56] that characterize MNCs. This indeterminacy might be the result of the arbitrariness that characterizes MNEs' structure and organization, mirroring the fact that TNCs comprise multiple business entities with all different legal forms and diverse forms of integration.[57] As Gatto has observed, MNCs lack a "coherent existence" as a legal entity, but instead are powerful from the political and economic reality point of view[58]. Instead of looking for a definition, it is therefore more helpful focusing on the characteristics that distinguish MNCs from their national counterparts.[59] These entities, due to their delocalization around the globe, have the capacity to flexible move places of production and assets between different countries, losing every tie to a state, except for the formal nexus of incorporation[60] and this is what has to be born in mind when referring to MNCs.

[50] A. Bonfanti, Ibidem, p. 3.
[51] ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, Geneva, 2017 version.
[52] Ibidem, Point 6.
[53] Ibidem.
[54] UN Commission on Transnational Corporations, founded in 1974.
[55] UN Commission on Transnational Corporations, Proposed text of the Draft Code of Conduct on Transnational Corporations, UN Doc. E/1990/94, 1990.
[56] J. Wouters, A. Chané, Multinational Corporations in International Law, Working Paper No. 129, 2013, p. 2.
[57] G. Calliess, Transnational Corporations Revisited, Indiana Journal of Global Legal Studies, 2011, p. 601.
[58] A. Gatto, Multinational Enterprises and Human Rights: Obligations under EU Law and International Law, Elgar, 2011.
[59] J. Wouters, A Chanè, Ibidem, p. 3.
[60] P.T. Muchlinski, Multinational Enterprises and the Law, Oxford University Press, 2007.

I.2 The Role of Multinational Corporations in Modern Economies

Before starting the analysis of the legal issues that the activity of multinational corporations raises in international law, it seems appropriate to briefly examine the phenomenon of MNCs from an economic point of view. By the early 1990s, the UNCTAD World Investment Report of 1993 estimated that there were 37.000 transnational corporations in the world, with over 170.000 foreign affiliates[61]. Whereas, on the basis of more recent UNCTAD studies, more than 320.000 multinational enterprises are operating currently in the world, with more than 1.116.000 foreign subsidiaries.[62] It is estimated that the 80% of the total of MNEs are based in the USA, in Europe and in China, while the remaining 20% are located in Japan[63].

Multinational corporations can be considered as the "global goliaths"[64] of modern times, being responsible for large portions of world production, investment, employment, international trade and innovation. The majority of MNEs operate through what it is called *horizontal* foreign direct investment, meaning that subsidiaries, instead of being established in developing countries characterized by low-cost labour and light costly regulations, are set in different locations and in relatively high-income countries, so that they can be close to their consumers and they all basically perform the same activities[65]. Although the operations of TNCs still largely reflect the *locus* of world economic activity, it is necessary to underline the fact that on the basis of 2017 World Investment Report the share of the stock of outward foreign direct investment from countries classified by United Nations Conference on Trade and Development as developing (including China, South Korea, Taiwan and other countries from Latin America and Africa) has increased by the 22%.[66]

Therefore, it can be said that the MNEs' global balances are changing, especially after the recent strikes that global economy has suffered and still suffering. Just to mention the two most recent and disruptive ones: COVID-19 Pandemic and the war in Ukraine.

The sharp economic contraction and the increased uncertainties due to the pandemic created several dilemmas for TNCs except, as it will be analyzed, for the ones in the technological sector that enjoyed a dramatic growth during and immediately after the lockdown. On average, already at the end of 2020 the top 5000 MNEs had seen downward revisions of their annual earnings estimates of 30% due to COVID-19.[67] Economic growth and demand had dramatically reduced, cash flows were disrupted

[61] UNCTAD, World Investment Report, Geneva, 1993.
[62] UNCTAD, World Investment Report, Geneva, 2016.
[63] Ibidem.
[64] C.F. Foley, J.R. Hines Jr., D. Wessel, Global Goliaths: Multinational Corporations in the 21st Century Economy, Brookings Institution Press, 2021.
[65] D.E. Vacaflores, et al., Does FDI really affect employment in host countries? Subsidiary level evidence, The Journal of Developing Areas, 2017, p. 205.
[66] UNCTAD, World Investment Report, Geneva, 2017.
[67] UNCTAD, Impact of the Covid-19 Pandemic on Global FDI and Global Value Chains: Updated Analysis, Geneva, 2020.

and the displace of workers was impeded by the closing of borders, causing serious inefficiencies in MNCs strategies and structure[68]. Among observers and policy makers, some have called for reshoring or at least for a rethinking of MNEs location choices, claiming that more localized production would lower uncertainties for consumers and businesses[69]. Several measures were introduced by different governments during the pandemic period to encourage firms to diversify suppliers and to repatriate, or at least ''nearshore'', production. For instance, the Japanese government announced subsidies for MNCs with the aim of encouraging diversifying or reshoring supply chains[70]. In January 2021, the U.S. President signed an executive order aimed at forcing the federal government to buy more goods produced domestically[71]. More recently, a study by the European Parliament discussed the pros and cons of reshoring for the EU in the context of Covid-induced supply shortages.[72] However, despite these measures and the uncertain environment, no widespread reshoring seems to be happening.[73]

On the other hand, the pandemic represented the possibility for the development of technological resources for online interactions.[74] This new frontier of working online, without being in the same city or in the same country, represented the possibility for a reshuffle of positions in the world map, especially for highly dislocated firms as MNEs. Consequently, digital TNCs grew at a breakneck speed. Total sales of the top 100 were almost 160% higher in 2021 than in 2016, compared with an essentially flat trend for traditional top 100 MNEs.[75] The advantage of digital MNEs is that they can penetrate foreign markets with little or no investment in physical assets, and this is another factor that will surely contribute to a re-design of MNCs' structure soon.

While the global economy was still recovering from the pandemic, the war in Ukraine broke out. This conflict is not only causing extensive damage to Ukraine, but it is having a transformative impact in the world's economy.[76] The major effects were produced immediately consequent to the infliction of sanctions to Russia. At least 40 countries[77] around the world acted with decisive resolve by

[68] E. Di Stefano, G. Giovannetti, M. Mancini, E. Marvasi, G. Vannelli, Reshoring and plant closures in Covid-19 times: Evidence from Italian MNEs, International Economies 172, 2022.
[69] M.A. Hitt, R.M. Holmes Jr., J. Arregle, The (COVID-19) pandemic and the new world (dis)order, Journal of World Business, 2021, p. 5 ss.
[70] To combat the COVID-19 coronavirus pandemic, the Japanese government extended its existing business employment subsidy, the Employment Adjustment Subsidy, to include emergency cash relief for businesses affected by the COVID-19 coronavirus pandemic.
[71] "Made in America" Executive Order, US President R. Biden, January 2021.
[72] European Parliament, Post Covid-19 value chains: options for reshoring production back to Europe in a globalized economy, Policy Department, Directorate-General for External Policies, March 2021.
[73] E. Di Stefano, G. Giovannetti, M. Mancini, E. Marvasi, G. Vannelli, ibidem.
[74] M.A. Hitt, R.M. Holmes Jr., J. Arregle, ibidem.
[75] UNCTAD, Investment Trends Monitor, Geneva, 2022.
[76] B. Weder, D. Rohner, L. Garicano, Global Economic Consequences of the War in Ukraine: Sanctions, Supply Chains and Sustainability, Centre for Economic Policy Research, 2022.
[77] The most up-to-date list of sanctioning countries is the one made by Peterson Institute for International Economics and some of the countries included in this list are Albania, Australia, Canada, EU 27, Iceland, Japan, Montenegro, New Zealand, Singapore, Switzerland, the UK and the USA.

sanctioning Russia for its actions and Belarus for permitting Russia to use it as a staging ground.[78] Each country has selected its own set of sanction target, including institutions, companies or individuals and its own sanction design.[79] Financial measures against Russia's central bank or other commercial banks, import restrictions and bans, export controls are just examples of the measures adopted.[80] Russia, as a respond, implemented strong capital controls on national and foreign subsidiaries, with the aim of stabilize its currency and to prevent an exodus of capital[81]. This resulted in an exodus of Western MNEs from its territory.[82] According to the Yale Chief Executive Leadership Institute's "List of Companies Leaving and Staying in Russia"[83] over 1000 companies have announced they are voluntarily curtailing operations in Russia and a further 500 has totally suspended operations inside the country.[84] The value at risk is significant. MNEs from developed economies that support the sanctions account for more than two thirds of foreign direct investment stock in the Russian Federation.[85] Looking ahead, there is no path out of economic oblivion for Russia as long as the allied countries remain unified in maintaining and increasing sanctions pressure against Russia.[86] As it can be concluded, the role of multinational corporations is highly debated at an international level. To some scholars, MNEs seek to monopolize markets, exploit foreign labour and organize their structure in order to pay the less taxes possible.[87] While, to others MNEs contribute to the growth of both regional and global economies, being the epitome of modern capitalism.[88] Differing views carry implications not only for understanding today's world economy, but also for government policies as it will be analyzed in the next paragraphs.

I.3 The legal status of Multinational Corporations under International law

The central debate on MNCs in international law focuses on the question of whether they are recognized as subjects of international law or not. The origin of the restriction on corporate actors and subjects of international law arises, probably, from the division between private international law,

[78]K. Mahlstein, C. McDaniel, S. Schropp, M. Tsigas, Estimating the economic effects of sanctions on Russia: An Allied trade embargo, The World Economy, 2022.
[79] Ibidem, p.3345.
[80] M. Khudaykulova, He Yuanqiong, A. Khudaykulov, Economic Consequences and Implications of the Ukraine-Russia War, International Journal of Management Science and Business Administration, 2022, p. 48.
[81] Ibidem.
[82] C.A. Hartwell, T.M. Devinney, The demands of populism on business: Introducing corporate political responsibility, International Business Review, 2022, p. 10.
[83] YALE School of Management, Chief Executive Leadership Institute, Yale CELI List of Companies Leaving and Staying in Russia, last updated March 2023.
[84] Ibidem.
[85] UNCTAD, Global Investment Trends and Prospects, Geneva, 2022.
[86] J.A. Sonnenfeld, S. Tian, F. Sokolowski et. Al., Business Retreats and Sanctions Are Crippling the Russian Economy, Measures of Current Economic Activity and Economic Outlook Point to Devastating Impact on Russia, SSRN, 2022.
[87] G. Morgan, P.H. Kristensen, The contested space of Multinationals: varieties of institutionalism, varieties of capitalism, Sage Publications, 2006.
[88] C.F. Foley, J.R. Hines Jr., D. Wessel, Global Goliaths, Brookings Institution Press, 2021, p. 2.

which deals with the legal implications of private international transactions for national legal systems, and public international law, which deals mainly with the legal implications of interstate interactions.[89] In international law, this distinction emerged as part of a twofold process of the emergence of the state system and of capitalism.[90] Probably, the main reason why business actors have a so debated subjectivity is that for many scholars this distinction is unapplicable to international law.[91] For Malanzcuk[92] transnational law cannot exist, because no legal order exists above the various national legal systems to deal with transborder interactions between individuals as distinct from state. Therefore, if already the existence of private international law is debated, it is only a consequence if transactional corporations are having so hard times having international legal status granted. Notwithstanding the above, it can be argued that MNEs have sufficient presence in international legal activities to gain a measure of international personality.[93] Despite this, the main subjects of public international law remain States, but with the rise of international organizations and international human rights law the small circle of subjects of international law is gradually expanding. Positivists assert that state can *"upgrade"*[94] non-state actors to subjects of international law by endowing them with rights and obligations.[95]

The discussion about MNCs' international legal personality arose around the 1960s[96], period in which these entities became fundamental actors of the international economic scene, concurring to the creation of the new *lex mercatoria*[97] and of the UNIDROIT Principles of International Commercial Contracts[98]. The main problem was to verify how international law could be used to manage the effects, even the negative ones, of MNC's activity. For subjects of international law, as it was mentioned in the Introduction to this Chapter, it is intended *'capable of possessing international rights and duties, and have capacity to maintain their rights by bringing international claims'.*[99] In the Advisory Opinion from which this definition is taken, referring specifically to international organizations, the ICJ underlined the fact that taking different legal systems into consideration, the

[89] C. Ryngaert, Non-State Actor Dynamics in International Law: from Law-Takers to Law Makers, Routledge, 2016, p. 10.
[90] A.C. Cutler, Private Power and Global Authority: Transnational Marchant Law in the Global Political Economy, Cambridge University Press, 2003, p. 45.
[91] JR Paul, The isoltaion of Private international Law, UC Hastings Scholarship Repository, 1988.
[92] P. Malanczuk, M. Akehurst, Akehurt's Modern Introduction to International Law, Psychology Press, 1997.
[93] C. Ryngaert, ibid., p.11.
[94] A. Cassese, International Law in a Divided World, Clarendon, 1986, p.103.
[95] K. Nowrot, Reconceptualizing International Legal Personality of Influential Non-State Actors: towards a Rebuttable Presumption of Normative Responsibilities, Ashgate, 2010, p. 369.
[96] L.C. Green, The Changing Structure of International Law, Center Discussion Paper, 1966, p.114-117; D.F. Vagts, The multinational enterprise: A new challenge for transnational law, Harvard Law Review, 1969.
[97] Lex mercatoria is generally defined as the body of rules of international commerce which have been developed by the customs in the field of commerce and affirmed by the national courts.
[98] UNIDROIT Principles of International Commercial Contracts, enacted in 1994 and amended in 2016, are a set of general rules for international commercial contracts.
[99] Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, ICJ Report 1949, p. 174.

subjects of law are not necessarily identical, due to the nature and to the extension of their rights.[100] The Court continued, stating that the development of International Law "*has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States."*[101] Despite this important contribution of the ICJ, it is still difficult to precisely determine the legal status of several "non-state actors". This term is used to indicate a concept that encompasses all those actors in international relations that are not States. It comprises individuals, as well as a wide range of entities, including international organizations, NGOs, de facto regimes etc.[102] The distinguishing feature between non-State actors and States is the degree of legal capacity that is attributed to them. States generally possess full legal capacity, while in the case of non-State actors it can vary, depending on and limited by the role of the actor in the international legal order.[103] Non-State actors are increasingly gaining relevance in international relations, having a measurable effect on policy outcomes of other actors on the international scene,[104] though this may not be commensurate with attaining them with legal capacity. This issue, obviously, regards also the legal status of MNCs.

MNEs' size, number, their location in the major markets and sectors of industry, their complex organization and structure and their limited liabilities are all factors that contributed to the long-standing debate about how such entities should be regulated.

On the basis of these premises, the large majority of international scholars[105] hold that MNEs do not possess international legal personality, due to the "structure" of the international legal system. One of the supporting arguments used by this group of scholars is that TNCs have not been granted rights nor obligations under international law yet and that, although companies benefit from a range of international law provisions, they do not necessarily enjoy corresponding rights.[106] The main international legal instruments that grant rights to these business entities are bilateral and regional agreements, or foreign direct investments[107], while for what concerns obligations, the main sources

[100] M.R. Mauro, Diritto Internazionale dell'economia Teoria e Prassi delle Relazioni Economiche Internazionali, Edizioni Scientifiche Italiane, 2019, p. 84.
[101] ICJ Report 1949, Ibidem.
[102] M. Wagner, Non-State Actors, Oxford University Press, 2009, p. 1.
[103] Ibidem.
[104] A. Slaughter, International Relations, Principal Theories, Oxford University Press, 2011.
[105] K. Nowrot, Reconceptualising International Legal Personality of Influential Non-State Actors: towards a Rebuttable Presumption of Normative Responsibilities, in J. Fleurs, International Legal Personality, Ashgate, 2010, p. 369, 372; E. De Brabandere, Human Rights and Transnational Corporations: The Limits of Direct Corporate Responsibility, Human Rights and International Legal Discourse, 2010.
[106] M. Noortmann, A. Reinisch, C. Ryngaert, Non-State Actors in International Law, Bloomsbury Publishing, 2015.
[107] A Foreign Direct Investment is a substantial, lasting investment made by a MNC or a government in a foreign concern, through the taking of controlling positions in domestic firms or joint ventures, becoming actively involved in their management.

are found in non-binding instruments, thus all instruments characterized by a weak legal force. MNCs are only business entities created based on National Law, thus being "neither subject of quasi-subject of international law"[108], subjected to the State's jurisdiction and able to participate to transnational relations only through the State. The only discipline under which multinational enterprises acquire rights, both substantive and procedural ones, is investment law. These rights can arise from investment promotion, protection treaties and contracts concluded with states.[109] Moreover, under international investment law, it is recognized that private nationals of a state have the right to bring and be sued before international courts and arbitration bodies of various kinds and types; for example, in investment contracts between states and companies, there is almost always an arbitration clause, which allows any disputes regarding the interpretation or application of the contract to be submitted to an ad hoc international arbitration tribunal.[110] The attribution of rights and obligations to the enterprise could undoubtedly be the first step in recognizing multinational enterprises as having international subjectivity, noting that in the field of international investment law, it is already possible for a private domestic subject of a state to bring and be sued before international jurisdictional and arbitral bodies of various kinds and types. These rights and obligations are only a starting point, and need to be defined in a clearer and coherent manner, to result helpful not only for investment law, but for international law.[111]

On the other hand, a few other international scholars have recognized TNCs as subjects of international law on the basis of different approaches and explanations. For instance, some have adopted a *de facto* approach based on MNEs significant participation at the level of international law, especially in the field of investment law and arbitration.[112] This thesis has been even strengthened by the award on the merits in the dispute between Texaco Overseas Petroleum Company/California Asiatic Oil Company and the Government of the Libyan Arab Republic[113]. The sole Arbitrator concluded that States enjoy all the rights and are entitled to respect all the obligations regulated by International Law, *while "other subjects enjoy only limited capacities which are assigned to specific purposes"*.[114] This ruling, that specifically concerns the expropriation of the US oil company's investment by the Libyan government, considered the application of international law principles to

[108] F. Rigaux, Transnational Corporations, in M. Bedjauoi, International Law: Achievements and Prospects, Martinus Nijhoff Publishers, 1991 p. 129.
[109] D. Levashova, The accountability and corporate social responsibility of multinational corporations for transgressions in host states through international investment law, Utrecht Law Review, 2018.
[110] R. HIGGINS, Problems and Process. International Law and How We Use It, Oxford University Press, 1995, p. 54-55.
[111] K.P. Sauvant, Multinational enterprises and the global investment regime: toward balancing rights and responsibilities, Handbook of International Investment Law and Policy, 2020.
[112] Ibidem.
[113]International Arbitral Tribunal, Texaco Overseas Petroleum Company and California Asiatic Oil Company v. Government of Lybian Arab Republic, sole Arbitrator R. J. Dupuy, Awards on the Merits, Ginevra, 19 Gennaio 1977.
[114] Ibidem, par. 47.

the concession contract concluded between the Libyan government and the company[115]. According to the sole Arbitrator, international law is applicable to the contract[116] and, since it is applicable, the company would be an addressee of international norms and, therefore, acquire a limited form of international legal personality. As a consequence, any breach of such contract should constitute a violation of international law and the contract itself could be subject to the application of the relevant principles of international law.[117] As a result, TNCs could be considered as "*honorary*" subjects of international law, since this contract would grant international legal personality to the company.

Another explanation adopted by positivist scholars is based on the fact that multinational corporations are able to influence national political decisions, thus actively participating to the creation of national and international law[118]. Others go even further, asserting that a rebuttable presumption exists according which MNEs are subject of international law, unless States and international organizations express the contrary in a legal binding form.[119]

Lastly, other scholars have avoided taking a precise side, measuring the subjectivity of MNCs on the basis of their roles, duties and responsibilities in international law, instead of concentrating on their label. Klabbers holds that *"personality is by no means a threshold which must be crossed before an entity can participate in international legal relations; instead, once an entity does participate, it may be usefully described as having a degree of international legal personality".*[120] In fact, instead of concentrating on the dichotomy subject/object, international law should be considered as a "*particular decision making process, within which there are a variety of participants*".[121]

As it has been analyzed, there are no real reasons on the basis of which it is reasonable to continue to fail to grant a precise legal status to MNCs. Perhaps, this debate persists because States have not yet expressed their will of recognizing Multinational Enterprises as subjects of international law, being aware of their huge political and social influence. This school of thought is immediately controversial: without having their legal status recognized, TNCs would continue operating without any limit, representing a serious danger for States. These entities are, in fact, *"not at all interested in enjoying an international legal personality, as it would be more advantageous for them to act under the barrier*

[115] J. Cantegreil, The Audacity of the Texaco/Calasiatic Award: René-Jean Dupuy and the Internationalization of Foreign Investment Law, European Journal of International Law, 2011, p. 441–458.
[116] International Arbitral Tribunal, ibid. para 41.
[117] F. Johns, The Invisibility of the Transnational Corporations: an Analysis of International Law and Legal Theory, in Melbourne University Law Review, 1994, p. 893 ss.
[118] D. Carreau, F. Marrella, Droit international, Pedone, 2012.
[119] K. Nowrot, Ibidem, p. 379 ss.
[120] J. Klabbers, Presumptive Personality: The European Union in International Law, in M. Koskenniemi ed., International Law Aspects of the European Union, The Hague: Kluwer Law International, 1998, p. 231- 253.
[121] R. Higgins, Problems and Process: International Law and How we Use it, Oxford University Press, 1995.

of sovereignty of states"[122]. Therefore, Multinational Corporations should be recognized at least as minor subjects of law, especially in specific sectors of international law, such as international investment law. In this context, MNEs should have *limited* and *relative* legal personality, due to the fact that only certain international norms would apply to them and, consequently, they would be subject only to the relative obligations[123]. Moreover, their legal status would derive directly from States, which would remain the primary subjects of International Law, and *functional,* depending on the rights and obligations expressly attributed to the MNC by the legal instrument that would recognize their legal personality.[124]

In conclusion, despite the different positivist views, many scholars continue to claim the lack of legal subjectivity of Multinational Corporations. Therefore, although each subsidiary is recognized by national law as a single business entity, the Transnational Corporation considered as a whole failed, for now, to have its own legal status formally recognized, both at a national and international level. As a consequence, companies may only be addressees or objects of various norms but cannot be said to have rights and obligations under international law.[125] Most international norms for companies do not even have the latter as their real addressees: they refer to states, i.e. the ways in which they, especially at the national level, must convey the conduct of multinationals corporations. It follows that, MNEs find themselves legally 'uncovered' and thus not completely bound to follow a certain body of uniform international rules[126] (while having to be subject to the rules of domestic law), they try to make the most of their economic possibilities and their scope of action by acting undisturbed in the global market in which they operate. But, if International Law has to adhere to the reality and legal needs of entities actively engaged in international economic relations, sooner or later Multinational Enterprises will necessarily have to be granted international legal personality.

I.3.1 How to impose the respect of fundamental human rights on Multinational Corporations

Notwithstanding the discussion about their international legal subjectivity, it is widely recognized today that MNCs enjoy certain rights under international law, especially in the fields of international human rights law and investment protection. The European Court of Human Rights (ECtHR) is unparalleled at the international level in granting companies protection under human rights law. Art. 34 of the European Convention on Human Rights (ECHR) provides *"any person, non-governmental organization or group of individuals"* with the right to claim a violation of its rights before the Court,

[122] P. Acconci, Imprese multinazionali (diritto internazionale), in Dizionario di diritto Pubblico, Milano, 2006, p.2956 e ss.
[123] M.R. Mauro, Ibidem.
[124] Ibidem.
[125] N.M.C.P. Jaegers, The Legal Status of the Multinational Corporation Under International Law, in Kluwer Law International, 1999.
[126] Ibidem.

comprising corporations within the scope of 'non-governmental organizations'[127]. Companies have readily made use of this judicial option, making claims that invoke mostly Convention rights that do not necessarily presuppose an individual nexus,[128] especially procedural rights, the right to freedom of expression, and the right to peaceful enjoyment of possessions. Among the rights under which the Court granted protection to corporate applicants, it can be found the right guaranteed by Art 6(1) ECHR: companies enjoy a right to a fair and public hearing by an independent and impartial tribunal[129], access to a court[130], equality of arms[131], and reasonable length of the proceedings[132]. Another example can be the alleged violations of the rights of freedom and expression (Art 10(1) ECHR) invoked by media MNCs. In these cases, the ECtHR readily affirmed the applicability to companies in cases where the expression of opinion contained a political element[133], reflecting 'controversial opinions pertaining to modern society in general'.[134]

On the other hand, range of initiatives has attempted to close the perceived 'governance gap' and to rein in the power of MNCs by subjecting them to binding obligations under international law. As it has been previously analyzed, investment law is one example, but according to the prevailing view[135] MNCs still not have direct obligations under international law. Due to this lack in attributing express obligations to TNCs in the international context, it has been and it still difficult holding Multinational Corporations responsible under international law[136].

Corporate 'accountability' implies the ability to hold the company responsible for its conduct to a range of corporate stakeholders: shareholders, the communities in which companies operate, consumers, and the public bodies under whose authority they operate.[137] The concept of accountability is characterized by being a *"quasi-judicial answerability based on standards that are internationally defined and implemented"*[138].

In an era in which Environmental, Social and Governance (ESG)[139] standards and expectations are growing exponentially it is fundamental to create a mechanism to determine MNEs' accountability.

---

[127] Art. 34, European Convention on Human Rights, Counsil of Europe, 1953.
[128] J. Wouters, A. Chané, Multinational Corporations in International Law, Working Paper No. 129, Leuven, 2013, p. 8
[129] Sovtransavto Holding v Ukraine, ECHR 2002, VII 95.
[130] Silvester's Horeca Service v Belgium, App. No. 47650/99, ECHR, 2004.
[131] Dombo Beheer B.V v The Netherlands, ECHR, 1993; Stran Greek Refineries and Stratis Andreadis v Greece, ECHR, 1994.
[132] Uniòn Alimentaria Sanders SA v Spain, ECHR, 1989.
[133] Sunday Times v The United Kingdom, ECHR, 1979.
[134] VGT Verein gegen Tierfabriken v Switzerland, ECHR, 2001, VI 243.
[135] UNCTAD, Investment Policy Framework for Sustainable Development, 2013.
[136] J. Wouters, A. Chané, Multinational Corporations in International Law, Working Paper No. 129, 2013, p. 10.
[137] J. Chen, Corporate Accountability: Definition, Examples, Importance, International Journal of Economics and Management Sciences, 2022.
[138] N. Choucri, Corporate Strategy Towards Sustainability, in W. Lang, Sustainable Development and International Law, London, 1995, p. 193.
[139] Environmental, social, and governance (ESG) investing refers to a set of standards for a company's behavior used by socially conscious investors to screen potential investments.

TNCs conduct their activities ensuring that their ESG goals are transparent, keeping them up to date with legal regulations, and building strong relationships with other organizations and implementing modern monitoring technology[140]. A strong ESG framework reflects how a company is viewed by investors and broader stakeholder groups such as customers, suppliers and the community. With the way the current world is changing, due to climate change, COVID and social awareness, monitoring of and progress in ESG is more essential than ever. Despite these efforts made at the private level, we still can't consider MNCs liable under international law, even for the fact that at this moment, there is no international court of corporate accountability. It is worth noting that corporate accountability was actively discussed in the preparatory process of the Statute of the International Criminal Court[141], and that references to the prosecution of corporate entities were even inserted in the draft Statute[142]. However, these references were left out from the final text.

The lack of international jurisdiction has not prevented from discussions about corporations breaking international law. International human rights obligations can fall upon states, individuals and other non-state actors, basically because when States become parties to international treaties, they assume obligations and duties that are bound not only to respect, but also to ensure that they are respected, implemented and enforced by individuals at national level.[143] Where obligations exist, different jurisdictions may or may not be able to enforce them. In the absence of international enforcement mechanisms open to claims against corporate actors, international law is being used to hold corporations accountable for human rights violations at the national level.[144] Therefore, it has been necessary to find other mechanisms to hold MNCs responsible for their activity at the international one.

TNCs could and do directly perpetrate human rights abuses. For instance, by the employing of children or forced workers, breaching labour rights by mistreating and exploiting their workforce, by using discriminatory recruiting policies, by damaging the environment and thus endangering the life and health of people. These are only few examples of how MNEs can have an impact over the enjoyment of human rights.

Under current international human rights law, States have the primary duty to respect and fulfil human rights and to ensure their protection against abuses by private actors[145]. Thus, States must control

[140] D.C. Broadstock, et al., The role of ESG performance during times of financial crisis: Evidence from COVID-19 in China, Finance research letters, 2021.
[141] J. Wouters, A. Chané, Multinational Corporations in International Law, Working Paper No. 129, 2013, p.22.
[142] Draft Statute for the International Criminal Court, 1998, UN Doc A/Conf.183/2/Add. 1, art 23.
[143] UN Human Rights Council, International Human Rights Law.
[144] A. Clapham, Human Rights Obligations of Non-State Actors, International Review of the Red Cross, 2006, pp. 31-58.
[145] D.G. Arnold, Transnational corporations and the duty to respect basic human rights, Business Ethics Quarterly, 2010, p. 371-399.

private entities and this duty is known as the duty to *horizontally* apply human rights.[146] However, specific problems arise with host States being required to control MNEs because the latter can be much more powerful than the host State[147]. MNCs usually tend to establish their subsidiaries in developing countries, which can be economically weaker and lack the technical expertise to monitor and regulate corporate activities.[148] Given these problems, perhaps greater and stronger regulation should come from their home States, meaning the State of incorporation, which usually is a developed one. Among the most notable national context to hold corporations accountable for the violations of international human rights law is the Alien Tort Claims Act (ATCA, known even as Alien Tort Statute)[149] in the USA. Because of this Act, *"U.S. district courts shall have jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the U.S."*[150] First adopted in 1789, this Act was later rediscovered in the landmark case *Filártiga v Peña-Irala*[151] in 1980. This instrument was created with the aim of creating a domestic forum for violations of international law. It allows aliens to bring suits against other foreign nationals or US citizens for breaches of international law, before US Courts.[152] In the ATCA original text, three were the requirements to establish US jurisdiction: the claimant had to be an alien, allege a tort and offer evidence towards the defendant's guilt in violation of the "law of nations". What was meant for law of nations was not clarified for more 200 years, until the judgement in *Sosa v Alvarez-Machain*[153] was given. In *Sosa v Alvarez-Machain* the US Supreme Court affirmed jurisdiction for violations of those international norms which are *"specific, universal, and obligatory"*.[154] The ATCA quickly became a popular tool used to hold perpetrators of human rights accountable, including also some successful lawsuits against corporate entities[155]. However, legal uncertainty about the relationship between domestic US law and international law arose, bringing to a trend-reversal in the case law orientation[156]. The main question was whether and under what circumstances US Courts may recognize a cause of action under the ATS, for violations of the law of nations occurred within the

[146] M.T. Kamminga, S. Zia-Zafiri, Liability of Multinational Corporations Under International Law, Springer Netherlands, 2021, p. 77.
[147] C. Coumans, Minding the "governance gaps": Re-thinking conceptualizations of host state "weak governance" and re-focussing on home state governance to prevent and remedy harm by multinational mining companies and their subsidiaries, The Extractive Industries and Society, 2019, p. 675-687.
[148] M.T. Kamminga et. Al., Ibid p. 78.
[149] Alien Tort Statute, 28 USC §1350, last update 2022.
[150] Ibidem.
[151] Filártiga v Peña-Irala, United States Court of Appeal for the Second Circuit, 1980, 630 F2d 876.
[152] G. van Calster, European Private International Law, Commercial Litigation in the EU, Hart, 2016, p. 399.
[153] Sosa v Alvarez Machain, Supreme Court of the United States, 2004, 331 F3d 604.
[154] Ibidem.
[155] J.R. Cook, Contemporary Practices of the United States Relating to International Law: International Human Rights: Second Circuit Panel Finds ATS Does not apply to corporations, American Journal of International Law, 2011.
[156] G. van Calster, Ibidem, p. 401.

territory of a State other than the USA. In the *case Kiobel v Royal Dutch Petroleum*[157], the Supreme Court concluded that the "touch and concern principle" to establish US jurisdiction under the ATCA was not strong enough anymore, where all the relevant conduct of a case take place outside the territory of the US. It is necessary to demonstrate that the facts of the case really concern US jurisdiction with sufficient force to displace the presumption against extraterritorial application. So, after Kiobel the scope of the ATS litigation has been severely diminished.

In contrast with common law systems, in which accountability of MNCs has a long-established affirmation, in civil law legal systems it has only recently been admitted.[158] It was thought that MNCs accountability would have been in contrast with the principle *societas delinquere non potest*, on the basis of which corporations could not be the subject of criminal liability because the mens rea is missing, and thus accepting only personal liability. Italy has overcome this limitation with the L.D. 231/2001[159], introduced to comply with obligations deriving from EU Law[160] and International conventions[161] and which established corporate liability for crimes perpetuated in the interest or to the advantage of a legal entity.

The opportunity to consider multinational corporations responsible at an international level began to spread from the mid-1970s onward. The promoters of this type of responsibility have been developing countries, including Indonesia, Nigeria and China[162] which began to propose the creation of standards for business entities' conduct, aimed at finding a balance between economic objectives and other values, such as humanitarian and social ones. Specifically, the aim was to foster cooperation between States and MNEs making effective the positive contribution of the latter in host countries through not only an economic development, but even through a social and ethical one. The efforts done through these decades created a series of conduct *standards* that represent regulatory precepts to TNCs. These *standards* can be found in a large number of international legal instruments, especially in soft law[163] ones. The most relevant ones, including the *OECD Guidelines*, the *Guiding Principles on Business and Human Rights* and the *Global Compact*, will be deeply analyzed in the next Chapters, making a separation between universal and regional legal instruments.

---

[157] Kiobel v Royal Dutch Petroleum, Supreme Court of the United States, 2010, 621 F 3d 111.
[158] P. Pustorino, Tutela internazionale dei diritti umani, Cacucci Editore, 2022, p. 280.
[159] D. Lgs. 231/2001.
[160] Liability of enterprises for offenses, Recommendation No. R (88) 18 adopted by the Committee of Ministers of the Council of Europe on 20 October 1988 and Conventions derived from this Recommendation, including the Convention on the Protection of the Environment through Criminal Law (Strasbourg, November 4, 1998.
[161] UN Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000.
[162] S. Ferdausy, Md. S. Rahman, Impact of Multinational Corporations on Developing Countries, The Chittagong University Journal of Business and Administration, 2009, p. 111-137.
[163]The term soft law is used to denote agreements, principles and declarations that are not legally binding, nonetheless they still have legal relevance. Soft law instruments are predominantly found in the international sphere.

The instruments mentioned above are specifically dedicated to managing MNCs' behavior, in relation to all the possible areas that can be connected to their responsibility; for instance: governance, environment, employment, human rights and others. This framework, however, is undoubtedly legally fragile since these instruments lack binding force. Regardless of the legal value of the sources used, it cannot be denied how the issue of a liability of multinational enterprises is gradually emerging as one of the fundamental matters of international law.

I.4 Corporate Social Responsibility: a possible but non-exhaustive solution

Since the 1930s, the global economy has faced the debate concerning which interests should managers pursue in doing their business. On one hand there is the option for which managers should only think about the maximization of profits, pursuing only shareholders' interests. On the other hand, there's the possibility for them to represent an institution at the service of the society, taking into consideration all the possible stakeholders' interests. Due to the Great Depression, this issue hadn't obtained a clear answer until 1953, year in which Howard Bowen published its book *Social Responsibilities of the Businessman*[164], marking the beginning of a new era for business entities. Bowen asserted the essential role of corporate world in the economy and in society, highlighting how MNCs can help reach the goals of social justice and economic prosperity beyond the benefits to shareholders[165]. He firmly believed that businesses need to think beyond economic management and look carefully to societal impacts and needs. After this important contribution, the role of companies gradually changed and, especially in the last decades, the global society has been called to assume *"certain global obligations: responsibility for the Third World, protection of the global environment, securing world and regional peace"*[166]. The necessity of including other interests, other than strictly economic ones, in the activity of MNCs has arose from the belief that companies' focus on the social, environmental and ethical concerns of human communities is an indispensable condition for sustainable and durable development. This debate has been shaped especially by fundamental changes of the political, social and economic spheres of life. Mainly, two phenomena have propelled MNEs' interest in values other than the economic ones: globalization and growing societal pressures from stakeholders. For what concerns globalization, it can be in general said to represent the processes and consequences from the stretching of human activities across political frontiers. On the one hand, it can stimulate social, environmental and economic growth thank to job creation, industry development etc, but at the same time globalization can make it difficult for governmental institutions to effectively

[164] H. R. Bowen, Social Responsibilities of a Businessman, Iowa City, 1953.
[165] Ibidem.
[166] A. Del Vecchio, Giurisdizione internazionale e globalizzazione. I tribunali internazionali tra globalizzazione e localismi, Milano, 2003, p. 9.

exert regulatory influence due to the fact that MNCs are able to exploit national differences in social and environmental legislation.[167] While the second phenomenon is based on the assumption that companies have been and are subjected to societal pressure of various stakeholder groups, concerning the adoption of instruments to be responsive to new social and environmental demands. Pressure may derive from business partners, consumers, non-governmental organizations (NGOs) or from national governments.

These phenomena have led to calls for companies to self-regulate themselves, adopting for instance social and environmental management systems or reporting standards which may all fall within the concept of Corporate Social Responsibility (CSR)[168]. This expression can be intended as the phenomenon for which "*private companies should no longer base their actions on the needs of their shareholders alone, but rather have obligations towards the society in which the company operates"*.[169] The essence of this responsibility, which is economic rather than legal in nature, requires that TNCs, in carrying out their usual business operations, also decide voluntarily to take into consideration the social and environmental context in which they are located, the consequences of their actions and the resources available to them[170]. In embracing the concept of CSR, it is assumed that becoming an *"ethical company"*, *i.e.* taking an interest in aspects that are not traditionally part of the company's business[171], is a condition for the company itself to be able to continue operating internationally in the long term. For a company it means going beyond the normal legal obligations under domestic law, consciously investing in human capital, in health and social progress, and in respect for the environment, developing programs and actions that lead to a better quality of life[172]. The benefits perceived are increasingly obvious to many corporate leaders: a better alignment of corporate goals with those of the society, and indeed of the companies' own managers; maintaining the company's reputation; securing its continued license to operate; and reducing risk and its associated costs[173]. It is for this reason that already in the 1970s the majority of large companies had CSR activities and CSR officers, including the UK company Body Shop and the US MNC Ben and

[167] E. Rahbek, Corporate Social Responsibility, SAGE Publications, 2015, p. 6.
[168] D. Bolton, and S. Benn, Key concepts in corporate social responsibility, SAGE Publications, 2010.
[169] E. Morgera, Corporate Accountability in International Environmental Law, Oxford, 2009, p.11 e 12.
[170] M. Di Mauro, Organizzazioni e differenze, Pratiche strumenti e percorsi formativi, Milano, 2010, p.193.
[171] D. Kubal, M. Baker, K. Coleman, Doing the right thing: How today's leading companies are becoming more ethical, Performance Improvement, 2006.
[172] A.D. Smith, Making the case for the competitive advantage of corporate social responsibility, Business Strategy Series, 2007, p. 186-195.
[173] Ibidem.

Jerry's.[174] While in the mid-1980s three out of four USA's first 500 MNCs had adopted a code of ethics.[175]

CSR is not an optional 'add-on' to business core activities, instead it is a business model on the basis of which businesses are managed, towards all the possible stakeholders that a MNC can have. Starting from shareholders, but even towards consumers, National and International Institutions and employees. In this context, MNEs assume this responsibility through the adoption of generic instruments or, as it is more often the case, by setting up ad hoc instruments that are best suited to the characteristics of the company itself.[176] These instruments include annual reports, for instance the "Refresh the World, Make a difference"[177] annual review adopted by Coca Cola in which every year are reported the developments and the achievements made by the company in different CSR areas, including Human Rights and Sustainable Agriculture. Moreover, MNEs always more recur to effective mission statements, which are action-oriented statements trough which a company declares the purpose of the organization, its main values and objectives[178]. For example, Tesla's statement is "to accelerate the world's transition to sustainable energy"[179]. Lastly, other ad hoc instruments adopted by MNEs to improve their CSR are policy papers, which are documents in which a company analyses the goals that wants to achieve in a certain period of time and how to do so. For example, Nike's CSR policy is focused on 3 main areas which are diversity and inclusion, community investment and environmental sustainability and all the projects that the Company is doing to achieve its objectives are listed in the Sustainability Policies paper[180], together with the relative budget. In creating such instruments, TNCs are thus called upon to find the meeting point between the company's own economic interests and the interests of those on whom the company's activity has an impact. Therefore, CSR requires that multinational companies, when planning their production plan and in general their economic strategy, also take into consideration the will to contribute to the maintenance and, if possible, to the improvement of the general collective wellbeing, meaning the condition of workers, the protection of the environment of the territory in which they are located and respect for human rights. For example, the 2022 CSR Report of the Walt Disney Company[181] listed some of the actions taken by the company to improve the well-being of its employees, like programs dedicated to the safeguard of mental health, and their education, including free employee learning platforms.

[174] A. Latapí, L. Jóhannsdóttir, B. Davídsdóttir, A literature review of the history and evolution of corporate social responsibility, International Journal of Corporate Social Responsibility, 2019, p.6.
[175] E. Rahbek, ibid, p. 4.
[176] B.Burchi, Gli effetti della responsabilità sociale sull'economicità d'impresa (business case): un'analisi quantitativa applicata all'industria chimica internazionale, Morrisville, 2013, p.73.
[177] Refresh the World, Make a Difference, Annual Reviews, the Coca Cola Company.
[178] J.V., Mullane, The mission statement is a strategic tool: when used properly, Management Decision, 2002.
[179] Tesla's Mission Statement 2022.
[180] Nike, Sustainability Policies, 2018.
[181] Walt Disney Company, CSR Report, 2022.

Another interesting example can be found in the 2021 "Health for Humanity Report"[182] by Johnson and Johnson, in which its commitment to human rights it's described and how the company has integrated their protection through its activities. Just to mention one, Johnson and Johnson works in collaboration with human rights organizations to gather insights and build knowledge of grievance mechanisms and access-to-remedy best practices.

Over the years, the concept of CSR has been met with a great deal of skepticism. For a long time, CSR has been seen as something that you do not expect profit-oriented managers to be interested in, let alone do anything about it. It has also been argued that CSR could undermine the capitalist system, democracy and free society. In a famous article, Milton Friedman considers companies' CSR attempts as nothing but socialism, stating that "*The businessmen believe that they are defending free enterprise when they declaim that business is not concerned "merely" with profit but also with promoting desirable "social" ends; that business has a "social conscience" and takes seriously its responsibilities for providing employment, eliminating discrimination, avoiding pollution and whatever else may be the catchwords of the contemporary crop of reformers. In fact they are preaching pure and unadulterated socialism. Businessmen who talk this way are unwitting puppets of the intellectual forces that have been undermining the basis of a free society these past decades."*[183]

This type of criticism can be found even in more recent time, for example Bergkamp makes parallels between CSR and communism[184].

There are also critics who are of the opinion that CSR is not enough to fill in the governance gap and fail to usefully address the global, social and environmental problems. For Visser[185], the current incremental CSR approach is not a sufficient answer to today's sustainability crises and needs to be totally re-shaped. Notwithstanding the doctrinal debate, it is clear that CSR initiatives represent an important contribution, not only with the aim of establishing MNC's accountability at the international level, but especially to ensure that companies conduct their activities in the more transparent and sustainable way[186].

Despite the absence of a comprehensive international law of corporate governance and responsibility, a significant landscape of CSR Projects is evolving at universal, regional and national levels, embracing the concept of International Corporate Social Responsibility (ICSR).[187] Indeed, the call

[182] Johnson and Johnson, 2021 Health for Humanity Report, p. 78.
[183] M. Friedman, A Friedman doctrine – The Social Responsibility of Business is to increase its Profits, The New York Times Magazine, 1970
[184] L. Bergkamp, Corporate Governance and Social Responsibility: A new Sustainability Paradigm?, European Energy and Environmental Law Review, 2002.
[185] W. Visser, The Rise and Fall of CSR, Shapeshifting from CSR 1.0 to CSR 2.0, CSR International Paper Series No. 2, 2010.
[186] A.D. Smith, Ibidem.
[187] B. Horrigan, Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business, Edward Elgar Publishing, 2010, p.4.

for ICSR can be viewed as no more than the extension to the international arena of standards of regulation that are more developed at a national and private level. The main international legal instruments seek to give to CSR an international meaning, setting standards or determining principles, voluntary guidelines and codes of conduct, monitoring and reporting procedures, and socially responsible reporting indexes, which all represent an important reference for MNCs. Between 1975 and 1980, three different initiatives come to light that fit within the framework of the promotion of social value in business by the international community: the UN draft Code of Conduct United Nations on Multinational Enterprises[188], the OECD Guidelines on Multinational Enterprises of 1976[189], and the ILO Tripartite Declaration on Multinational Enterprises and Social Policy of 1974.[190]
As it has been previously mentioned, most of these legal instruments have a non-binding legal force. The international framework concerning CSR is, indeed, formed especially by Soft Law instruments, due to the fact that, being adopted by MNCs on a voluntary basis, bring several advantages[191]. If adopted willingly and purposefully, they have the potential to create substantial significance in the CSR agenda[192]. Moreover, they are flexible, and therefore easily adaptable, and thus necessary tools in improving corporate behavior[193]. For all these reasons, their weak legal force has not impeded to these instruments to be recognized the fundamental legal value and significance in the CSR sphere that they currently have. But, at the same time, the voluntary aspect of CSR instruments represents its weakest point. The lack of international agreement related to different aspects of CSR, including its definition, its legal scope etc. has caused the failure of the international community in adopting binding legal instruments[194]. Despite this, the activity of CSR promotion by international organizations and institutions has not stopped. The central role of multinational corporations in the pursuit of the goals set by international policy and by the United Nations in the areas of protection environment and development is, in fact, recognized in a vast number of statements promoted by the institution itself.
As it was previously mentioned, the most important initiatives will be deeply analyzed in the next chapters of this work. Before doing that, it seems appropriate to go through different definitions that

[188] United Nations, UN Commission on Transnational Corporations, Proposed text of the draft code of conduct on transnational corporations, UN Doc. E/1990/94, 1990.
[189] Organization for economic cooperation and development, OECD Guidelines on Multinational Corporations, Recommendations for responsible business conduct in a global context, 1976, updated in 2022.
[190] International Labour Organization, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, 1977.
[191] A. Adeyeye, Universal Standards in CSR: are we prepared?, Corporate Governance, 2011, p. 107-119.
[192] Ibidem, p. 110.
[193] Ibidem.
[194] A. Sahin, How to Incorporate Corporate Social Responsibility into DNA of the Companies?, European Journal of Marketing and Economics, 2022.

have been assigned to Corporate Social Responsibility, in order to have a wider knowledge of this concept.

I.4.1 General Definitions of Corporate Social Responsibility under International Law

Since Corporate Social Responsibility is a very recently established concept, there is not a single and univocally accepted definition of it, as it has been underlined by Suder "*from the theoretical perspective, the major difficulty resides in the fact that there is no clear consensus on the definition of corporate social performance nor on the role that business organizations should play in exerting positive social change".*[195] The main problem of finding a precise definition to CSR arose from the lack of an agreeable definition of 'concern for the social' and on how the performance of companies can be judged according to the measures taken. It is important to acknowledge that the subject has a wide scope and is complex in nature. Moreover, it is revolutionary in its mission, as it challenges some of the core foundations of the capitalist system on which much of the world economy has been based during the last two hundred years.[196] This is perhaps one of the root causes for the perceived and lasting confusion as to what corporate sustainability is and what it entails. CSR has acquired different meanings over time and combined some features or characteristics making it to represent sets of obligations, responsibilities, stakeholder rights, and all forms of philanthropic activities[197]. Originally, there was no set of norms that specifically stated how this should be implemented and which aspects should be protected: companies, therefore, had to adapt to the common feeling of the community. While in recent years the debate over CSR has become a major concern, not only for MNCs, but also for International Institutions and Organizations that decided to give their own interpretation[198]. The aim of this paragraph is to bring clarity to the meaning of this concept and convergence for its definitions for two main reasons: theoretical guidance is fundamental for aligning global efforts and the lack of clarity has been identified in literature as a cause for ineffective and arbitrary practices.[199]

Currently, one of the most complete definitions is probably the one given by the 2001 *Green Paper*[200], enacted by the European Commission with the aim of Promoting a European framework for Corporate Social Responsibility. Green Papers are documents published by the European

[195] G.G.S. Suder, International Business under Adversity. A Role in corporate responsibility, conflict prevention and peace, Cheltenham, 2008, p.105.
[196] M. Pazienza, M. da Jong, D. Schoenmaker, Clarifying the Concept of Corporate Sustainability and Providing Convergence for Its Definition, Sustainability, 2022, p. 1.
[197] Ibidem.
[198] K. Sahlin-Andersson, Corporate social responsibility: a trend and a movement, but of what and for what?, Corporate Governance: The international journal of business in society, 2006, p. 595-608.
[199] M. Pazienza et. Al., Ibidem, p. 2.
[200] EU Commission, Green Paper Promoting a European framework for Corporate Social Responsibility, Brussels, 2001.

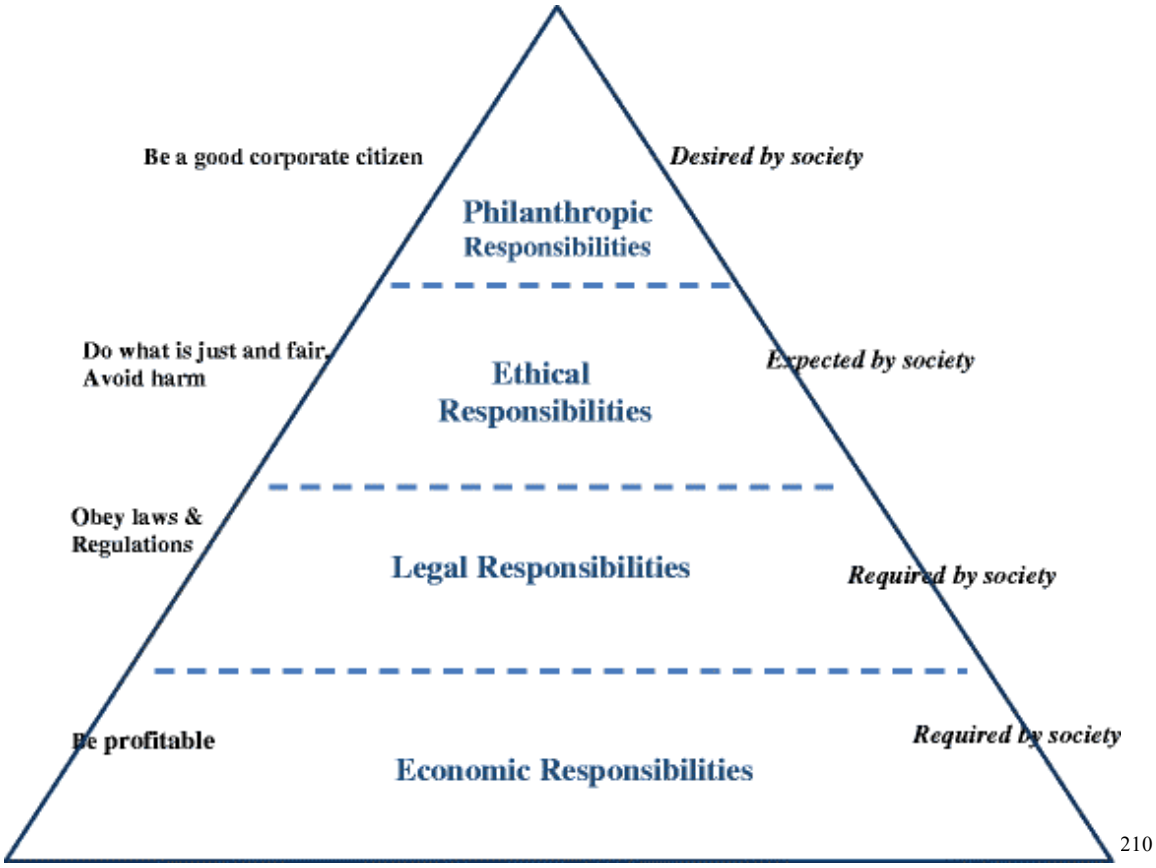
Commission to stimulate discussions and consultations on certain topics, and this Green Paper in particular makes an in-depth analysis of the concept of CSR, launching a wide debate on how the European Union could promote its integration at both, European and international level. In this context, Corporate Social Responsibility is defined as *"a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis*"[201], qualifying it as a strategic investment as part of a MNC's business strategy, which also allows it to achieve social objectives in addition to its own raison d'être and thus its own profit. The innovative approach followed by this definition is based on a "multi-stakeholder"[202] perspective, on the basis of which MNCs have duties not only to shareholders, but even to other subjects, including consumers, national and international institutions etc.

Another definition that focuses on a different perspective is the one given by the UN Special Representative of the Secretary General on Business and Human Rights, John Ruggie, at Point 11 of the UN Guiding Principles on Business and Human Rights[203] which states that *"business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved"*[204]. Moreover, at point 12, it is underlined the fact that the social responsibility in object has to be kept separated from the *"legal liability and enforcement"* which continues to be part of national jurisdiction. This definition is mainly focused on the impact that business entities have on human rights and on the processes that they should adopt in order to monitor and prevent the possible abuses. Rather than a duty to respect human rights, this definition wants to underline the responsibility that weights on MNCs in avoid infringing the rights of others and address adverse impact that may occur.[205]

Attempts in giving CSR a definition has been part of the business dialogue between scholars for many decades. As it has been previously analyzed, the origins of this debate can be traced back to the 1930s. Berle asserted that responsibility could be best understood as "Corporate powers as powers in trust"[206]for shareholders. Dodd[207] replied arguing that corporate managers were statesmen to use their powers for better society. The debate was taken forward through the 1950s with Bowen's classic work, as we have previously analyzed. In the next decades, a range of further developments both in business and in the society expanded the concept of CSR and its obligations, leading to a vagueness

[201] Ibidem.
[202] L. Sacconi, Responsabilità sociale come governance allargata d'impresa: un'interpretazione basata sulla teoria del contratto sociale e della reputazione, in Etica, Diritto ed Economia, 2004, suppl., p. 7.
[203] UN Human Rights Council, UN Guiding Principles on Business and Human Rights, New York and Geneva, 2011.
[204] Ibidem.
[205] J. Ruggie, The Corporate Responsibility to Respect Human Rights, Harvard Law School Forum on Corporate Governance, 2010.
[206] A.J. Berle, Corporate Powers as Powers in Trust, Harvard Law Review, 1931.
[207] E.M. Dodd, For Whom are Corporate Managers Trustees? Harv. Law Rev. 1932.

around the term. For example, in 1973 Votaw wrote: *"The term (CSR) is a brilliant one; it means something, but not always the same thing, to everybody."*[208]. As it can be concluded, the concept of CSR has been characterized by discretion from the very beginning and in the following decades it has not really been precisely determined. This vagueness should also represent an advantage: MNCs can interpret the concept as they want and adopt the instruments that best suit their view. Moreover, scholars can develop their own interpretation of CSR. Carroll, for example, elaborated its own idea of responsibility basing it of Friedman's doctrine (see *supra*). He provided a useful framework *"conforming to their basic rules of the society, both those embodied in law and those embodied in ethical custom of a society"*[209], categorising and prioritising values and obligations that can be easily seen in the famous "Carroll Pyramid".



210

Carroll has taken a pragmatic approach to the problem, dividing CSR into four tiers of responsibilities, ordering them according to priority for socially responsible behaviours or activities from bottom to top. Basically, Carroll asserts that the foundation of social responsibility is the company's solid

[208] D. Votaw, Genius Becomes Rare: A comment on the Doctrine of Social Responsibility Pt. I, SAGE Journals, 1973.
[209] A.B. Carroll, The Pyramid of Social Corporate Responsibility, Business Horizons, 1991.
[210] Carroll Pyramid of CSR.

economic performance. Then, a firm must follow the rules set out by the law and only after these two steps, it can successfully comply ethical and philanthropic obligations.

Obviously, there are also much more recent studies on the CSR concept. The definition given by the group of scholars Meseguer-Sánchez, V., et al in 2021 is probably one of the most interesting ones: *CSR "not only represents an aspiration of a good image or profit optimization but also a transparent style of resource management that guarantees results (economic, political, social, environmental, among others) expected, following the economic principle of mutual benefit, the legal principle of respect for the rights of others (individual and collective), and the ethical principle of preservation of non-renewable natural resources, the heritage of future generations"*[211].

Despite the lack of a precise definition, it has been underlined how CSR implementation has become one of the main focuses for MNCs. According to Maon et al.[212], MNEs should follow these nine steps to design and implement CSR:

1. Raising CSR awareness;
2. Assessing organizational purpose in a societal context;
3. Establishing a CSR definition and vision;
4. Assessing current status of CSR;
5. Developing a CSR strategy;
6. Implementing the CSR strategy;
7. Communicating about CSR strategy;
8. Evaluating CSR strategy; and
9. Institutionalizing CSR policy.

As it can be easily noticed, the step number three invites MNCs to adopt, before enacting any policy instrument, a personal definition and vision of CSR. In fact, several CSR definitions have been given by MNCs in enacting their own instruments to regulate it. For instance, ENI's vision and business model not only focus on environmental development with the main aim of reaching carbon neutrality, but also over human needs with the objective of contributing to the achievement of several Sustainable Development Goals (SDGs) set out in the UN 2030 Agenda. Whereas other MNCs have adopted other CSR visions, perhaps focusing only on one possible aspect of this concept. For example Coca-Cola put a huge focus on sustainability. The main areas are climate, packaging and agriculture and their CSR vision can be expressed with their motto *"a world without waste".* Another example can be Ford Motor Company's mission, that is to *"build a better world, where everyone is free to*

[211] V. Meseguer-Sánchez, F.J. Gálvez-Sánchez, G. López-Martínez, V. Molina-Moreno, Corporate Social Responsibility and Sustainability. A Bibliometric Analysis of Their Interrelations, Sustainability 2021, p. 13.

[212] F. Maon, A. Lindgreen, V. Swaen, Designing and Implementing Corporate Social Responsibility: an integrative Framework grounded in theory and practice, Journal of Business Etchics, 2009, p. 12 ss.

move and pursue their dreams" and interestingly, not only the MNC focuses on the environment, but also on social issues like pay equity: they are conducting a diversity, equity and inclusion audit while introducing a global salaried pay ratio to level the playing field for all employees.

These are just few examples that can be made concerning CSR initiatives already adopted by MNCs. They are constantly working on developing and adopting new initiatives to adapt their activity to new social issues and needs. At the same time, International Organizations and Institutions are making efforts in order to develop an international, and always more relevant, law on corporate governance and corporate social responsibility.

CHAPTER II

CORPORATE SOCIAL RESPONSIBILITY IN INTERNATIONAL LAW

This section aims at assessing how the CSR notion has been embraced by international law through the adoption of several instruments that develop different aspects of this very complex concept. The growth of CSR public international instruments is a recent phenomenon. Prior to the mid 1990's, only the OECD[213], the ILO[214], and certain principal or subsidiary organs[215] of the United Nations undertook the only serious work on the subject, through the examination of the impact of MNEs on the environment and human rights. As it has been analyzed in the previous chapter[216], corporate social responsibility has gained increasing importance and legitimacy in the last decades not only for national governments, but also for international organizations and institutions,[217] due to the perceived lack of accountability[218] of MNCs, especially in the area of human rights. A real "CSR Movement"[219] has spread through Non-Governmental Organizations, which were asking always more insistently to international law makers to adopt relevant instruments to regulate MNCs' activities. As a consequence, international organizations have worked and are still working to adopt the most effective instruments to regulate CSR.

In this chapter the most relevant ones will be analyzed, focusing particularly on two aspects. First, all the instruments will be studied with a particular analysis on a specific area: the protection of fundamental human rights. Besides being the common thread between all the selected instruments, as it was mentioned before and in the previous chapter, this is the sector in which MNCs activities are causing the most severe impacts[220]. For this reason, a comparison between the different measures will be made, considering how each of them tries to manage the complex issue of human rights violations by MNCs. Doing so, the other focus will be on the effectivity of each instrument, considering all their strengths and weaknesses which usually derive from the nature of the measure

[213] Organization for Economic Co-Operation and Development, that in 1976 adopted the OECD Guidelines on responsible business conduct, analyzed in Chapter III.1.
[214] International Labour Organization, that since 1977 renews and draws up important declarations concerning the protection of human rights in the workplace. The most relevant one for this work will be analyzed at Chapter II.1 and II.1.1.
[215] Including the United Nations Commission on Transnational Corporation, created in 1973 for the drawing up of the Draft UN Code of Conduct for Transnational Corporations, analyzed at Chapter II.2.1.
[216] Chapter I.4.
[217] L. Segerlund, Making Corporate Social Responsibility a Global Concern: Norm Construction in Globalizing World, Ashgate Publishing, 2010, p. 2.
[218] Analyzed in Chapter I.3.
[219] L. Segerlund, Ibidem, p. 32.
[220] Ibidem.

itself. In this regard, it is necessary to make a premise concerning the distinction between soft and hard law instruments. The term soft law is used to denote agreements, principles and declarations that are not legally binding, and for this reason they are predominantly found in the international sphere[221]. For instance, UN General Assembly resolutions are an example of soft law. Hard law, instead, refers generally to legal obligations that are binding on the parties involved and which can be legally enforced before a court[222]. Due to the legal status of MNCs in international law and the consequent lack of accountability, the majority of international instruments that concern their activities are non-binding, thus being soft law instruments. Obviously, there have been attempts by international organizations to adopt legally binding measures and the most important ones will be discussed in this chapter, also in order to understand the reason of their failure and the limits that the lack of MNCs' recognition as actors in international law can create.

The analysis will start with the ILO Declaration on Fundamental Principles and Rights at Work[223], also evaluating the relevance of the amendments made in 2022. Moving on with the chapter, different UN's soft law instruments will be discussed, including the Draft UN Code of Conduct of Transnational Corporations[224], the UN Global Compact and the UN Guiding Principles on Business and Human Rights[225]. Then, the focus will move on the several attempts made by the United Nations in adopting an internationally binding regulation, starting from the Resolution 26/09[226] of the Human Rights Council on activities of transnational corporations and other business enterprises and concluding with the very recent Third Revised Treaty on Business and Human Rights[227] of 2021. The UN related analysis will then be concluded with an interesting view of how corporate social responsibility can represent an important contribution for the implementation of several Sustainable Development Goals (SDGs), including SDG number five (Gender Equality), SDG number 10 (Reduced Inequalities) and many others. Finally, an overview of international tribunals' activity will be provided, taking into consideration their limited jurisdictions and the related issue concerning legal persons' liability in international law.

---

[221] Definition of the European Center for Constitutional and Human Rights, available at https://www.ecchr.eu/en/glossary/hard-law-soft-law/#:~:text=Soft%20law%20instruments%20are%20predominantly,legally%20enforced%20before%20a%20court.

[222] Ibidem.

[223] International Labour Organization, ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, Geneva, 1998.

[224] UN Commission on Transnational Corporations, Draft Code of Conduct for Transnational Corporations, New York, 1987, E/RES/1987/57.

[225]UN Human Rights Council, UN Guiding Principles on Business and Human Rights, New York and Geneva, 2011, Res. 17/4

[226]UN Human Rights Council, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, New York, 2014, A/HRC/RES/26/9

[227] UN, Legally Binding Instrument to regulate in International Human Rights Law, the activities of transnational corporations and other business enterprises, 2021.

After this analysis, the reader will have a very broad understanding of the current international law situation concerning CSR, especially about the goal that these instruments allowed to achieve, but also their weaknesses and areas of improvements.

II.1 The 1998 ILO Declaration on Fundamental Principles and Rights at Work

The International Labour Organization is a UN specialized agency, founded with the aim of ensuring peace through social justice and to do so, it has arranged international labour standards by means of 185 Conventions and 194 Recommendations enacted until now[228]. In the 1998 General Conference convening at Geneva, after a negotiation in close collaboration with all ILO tripartite constituents, so governments, employer organizations and workers organizations, the ILO adopted the Declaration on Fundamental Principles and Rights at Work and Its Follow-Up[229], which represent not only a significant instrument for the organization itself, but also an innovative instrument for international human rights law.[230] This Declaration emerges from a long discussion concerning the compromised government control over conditions of work for workers in many countries, as a consequence of the globalizing economy and changings in the economic structure.[231]

For the aim of this work, this Declaration is a fundamental starting point for the analysis of the international framework that regulates MNCs' activities and their duty to ensure the respect of human rights. As stated in the Preface, the aim of this Declaration is, in fact, to "*stimulate national efforts to ensure that social progress goes hand in hand with economic progress*"[232]. For Multinational employers, the overriding importance of the Declaration is its pre-emptive effect on emerging "social clauses", because already at the time of the drawing up of the Declaration, it was clear that the inclusion of these clauses[233] in free trade agreements had very little chance of success in promoting the respect of labour standards.[234] For this reason, ILO opted for a non-binding declaration, which in the United Nations system constitutes a *"formal and solemn instrument suitable for rare occasions when principles of lasting importance are being enunciated".*[235] This choice reflects the relevance

[228] B. Özdemir, C. Özel, International Labour Standards and the ILO Declaration of Fundamental Principles and Rights, Manas Üniversitesi Sosyal Bilimler Dergisi, 2005, p.127-135.
[229] International Labour Organization, Declaration on Fundamental Principles and Rights at Work and Its Follow-Up, Geneva, 1998.
[230] L. Swepston, International Labour Conference: ILO Declaration on Fundamental Principles and Rights at Work and Annex, Cambridge University Press, 1998, p. 1233-1240.
[231] Ibidem, p. 1.
[232] Preface by Michel Hansenne, ILO Declaration on Fundamental Principles and Rights at Work, Geneva, 1998.
[233] The concept of "social clause" refers to core labour standards, or minimum standards of social protection, which would be introduced in the multilateral trade system as a prerequisite for participation to the agreement, with the aim of guaranteeing the possibility of social progress.
[234] E. de Wet, Governance through Promotion and Persuasion: the 1998 ILO Declaration on Fundamental Principles and Rights at Work, German Law Journal, 2019, p. 1436.
[235] International Labour Conference, Report VII, Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism,

and the moral authority that ILO wanted to attribute to this instrument, enhancing its promotional impact at international level.[236]

The Declaration doesn't establish new legal obligations for Member States, because the obligation to respect, promote and realize these fundamental principles arises from the very fact of membership in the ILO and not from the ratification of the Declaration itself.[237] Therefore, even if the vehicle is a non-binding instrument, Member States cannot distance them from the substance contained therein. On the contrary, governments are encouraged to adopt and enforce existing labour standards, in consistency with the Declaration, especially because, as it will be analyzed in the present paragraph, is the instrument itself that provides for technical cooperation and assistance to member governments, employers' and workers' organizations in promoting its implementation.[238]

The approach followed by ILO was selected after attentive evaluations: on the one hand, there was a quest for more flexibility in international labour standards, whilst on the other hand there were concerns that their lowering would result in social dumping practices.[239] Despite these concerns, ILO decided to follow a more flexible approach, in order to ensure universal acceptance which would certainly increase their implementation.[240]

With the Declaration on Fundamental Principles and Rights at Work, ILO identified four areas of special importance in protecting human rights at work worldwide: the effective abolition of child labour, the elimination of all forms of forced or compulsory labour, freedom of association and the effective recognition of the right to collective bargaining and the elimination of discrimination in respect of employment and occupation.[241] These specific four categories had been selected because constituted process-oriented standards, which could create the necessary legal framework for the realisation of any other substantive right.[242] Fundamental principles are, indeed, set out, specifically in the fields of employment, training, working conditions and industrial relations.[243] These principles and rights have been then further developed in seven ILO's Conventions, specifically dedicated to

---

Geneva, 1998.

[236] E. de Wet, Ibidem. p. 1437.

[237] Ibidem.

[238] C. Coxson, The 1998 ILO Declaration on Fundamental Principles and Rights at Work: Promoting Labour Law Reforms Through the ILO as an alternative to imposing coercive trade sanctions, Penn State International Law Review, 1999, p. 471.

[239] Ibidem.

[240] International Labour Conference, Report VII, Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism, Geneva, 1998.

[241] A. Lafarre, B. Rombouts, Towards Mandatory Human Rights Due Diligence: assessing its impact on Fundamental Labour Standards in Global Value Chains, European Journal of Risk Regulation, 2022, p. 569.

[242] International Labour Conference, Report, Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism, Geneva, 1998, p. 430-431.

[243] I. Bantekas, Corporate Social Responsibility in International Law, Boston University International Law Journal, 2004, p. 320.

each category. Differently from how it happens with the Declaration, Conventions impose duties and obligations only over the Member States that have expressly ratified them[244]. This, as it has been previously underlined, does not mean that States that have not ratified these seven Conventions are excepted from respecting principles and rights set out in the 1998 Declaration. On the contrary, these States that are ILO's members, but have lacked to ratify the seven Conventions, still have on the basis of their membership an obligation to pursue the realization of the principles in ways appropriate to their own situation, and to report regularly on how they do so.[245] This obligation is imposed by the Annex[246] to the Declaration on Fundamental Principles and Rights at Work. This Annex has been superseded in 2010 with a totally revised text, in which the follow-up mechanism adopted by the ILO is described.

The follow-up has been set out for the full achievement of the goals determined in the declaration and it involves two main measures that ensure the respect of the principles: the Annual Review and the Global Report. The first one, is the report that States that have not ratified one or more of the fundamental ILO Conventions have to submit each year to the Organization. Governments must describe how they are ensuring the promotion of each of the four Principles and Rights contained in the Declaration and the review is then submitted and discussed by the ILO Governing Body each March.[247] This measure is a fundamental tool through which ILO can obtain a global picture of the situation, including all that Member States that have lacked to ratify specific Conventions. Moreover, ILO has the possibility to establish a real dialogue[248], not only with the governments of these States, but especially with employers' and workers' organizations that can submit notes or reports themselves. This measure represents an occasion for the ILO to note where progress could, and should, be made and offer tailor-made assistance and solutions.[249]

The second initiative involved in the Follow-up mechanism is the Global Report. Its purpose is the provision of a dynamic global picture of the state of affairs with respect to the promotion of each category of fundamental principles and rights at work, during the previous four-year period.[250] Each State has to submit to ILO's Conference a report covering one of the four categories of principles and each topic is discussed three times in a cycle of four years.[251] The objective of this second measure is

[244] L. Swepston, Ibidem, p. 1234.
[245] Ibidem.
[246] Annex to the Declaration on Fundamental Principles and Human Rights, Geneva, 1998, revised in 2010.
[247] International Organization of Employers, Declaration on Fundamental Principles and Rights at Work: a Guide for employers, Geneva, 1999.
[248] F. Maupain, Revitalization Not Retreat: The Real Potential of the 1998 ILO Declaration for the Universal Protection of Workers' Rights, The European Journal of International Law, 2005, p. 455.
[249] International Organization for Employers, Ibidem.
[250] International Labour Conference, Review of the follow-up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work, Geneva, 2010.
[251] Ibidem.

very similar to the first one: understand better the diverse realities and needs of Member States with respect to each of the strategic objectives, respond more effectively to them and adjust ILO's priorities and programmes of action accordingly.[252]

In 2022, at its 110th Session, the International Labour Conference amended the ILO Declaration of Fundamental Principles and Rights at Work, adopting a resolution on the inclusion of a safe and healthy working environment in the ILO's core standards framework.[253] As a consequence, not only a new fundamental principle and right at work was added, but also other two ILO's Conventions dedicated to occupational safety and health.[254] The deep roots of the 2022 resolution trace back to the preamble to the ILO Constitution, adopted in 1919, which expresses concern for protecting workers against sickness, disease, and injury arising out of their employment.[255] The issue of recognition of occupational safety and health was already a matter of priority for the ILO and the COVID-19 Pandemic only gave a compelling demonstration of its vital importance.[256] For this reason, consultations on procedure and substance started and led to the consensus reached by government, employer, and worker delegates to the Conference in June 2022.

For some scholars[257], the Principles and Rights set out by the Declaration have attained an elevated status in international law as "fundamental international norms". It is unquestionable that it attracted enormous attention and has transformed the international discourse on labour rights.[258] Before the enacting of the Declaration, discussions about establishing a "hierarchy" of standards among the various rights recognized within ILO Conventions and Recommendations had been approached delicately and with very few relevant outcomes.[259] While, the Declaration establishes for the first time a set of core standards, that are, at least in practice, more important than the rest and warrant the attention of governments, corporations and organizations.[260] Moreover, these core standards represent a fundamental groundwork for the implementation of other labour standards by a diverse range of

[252] Ibidem, p. 4.
[253] ILO Report of the 347th Governing Body Session, Proposals to adapt the current reporting arrangements under article 22 of the ILO Constitution for Members having ratified fundamental Conventions Nos 155 and 187 and proposed report form under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022, Geneva, 2023.
[254] Ibidem.
[255] A. Trebilcock, Introductory note to 2022 Amendments to the ILO Declaration on Fundamental Principles and Rights at Work, Cambridge University Press, 2023.
[256] Ibidem, p. 1.
[257] J. Wouters, B. de Meester, The Role of International Law in Protecting Public Goods, Regional and Global Chalenges, Leuven Interdisciplinary Research Group on International Agreements and Development, Working Paper No. 1, 2003, p. 21.
[258] P. Alston, "Core Labour Standards" and the Transformation of the International Labour Rights Regime, European Journal of International Law, 2004, p. 459.
[259] Ibidem, p. 460.
[260] Ibidem.

actors, other than governments: multinational corporations and consumers are only two examples of the other subjects that can intervene in defining, promoting and even enforcing them.
In addition, these fundamental labour standards have been the starting point not only for the drafting of other Conventions and Recommendations, but also for the implementation of older ones, as it has happened with the several amendments done to the 1977 Tripartite Declaration.

II.1.1 The 1977 ILO Tripartite Declaration and its amendments

In 1977, the International Labour Organization's Governing Body adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy[261], also known as the MNE Declaration. It is the only ILO instrument that provides direct guidance to enterprises on social policy and inclusive, responsible and sustainable workplace practices[262]. This Declaration was adopted more than 40 years ago, being elaborated by governments, employers and workers from all around the world and it has been subjected to several amendments, in 2000, in 2006, in 2017 and in 2022. Its principles are addressed to MNEs, governments, and employers' and workers' organizations and cover areas such as employment, training, conditions of work and life, and industrial relations as well as general policies.[263] As stated in its Preamble, *"the aim of this Declaration is to encourage the positive contribution which multinational enterprises can make to economic and social progress and the realization of decent work for all; and to minimize and resolve the difficulties to which their various operations may give rise".*[264] The Principles stated in the Tripartite Declaration must represent a guide for "governments, employers' and workers' organizations of home and host countries and to the multinational enterprises themselves"[265] for adopting initiatives and social policies on a voluntary basis.
The MNE Declaration is divided in five sections. The first one is dedicated to General Policies that the actors concerned by the Declaration must follow, including the respect of international labour standards set out by ILO Conventions and Declarations. In addition, this first section sets out an invitation to MNCs to conduct their activities in harmony "with the development priorities and social aims and structures in the countries in which they operate''[266].
The other four are dedicated to specific subject matters: Employment, Training, Conditions of Work and Life and Industrial Relations. In the second section, MNCs are requested to promote employment

[261] ILO, Tripartite Declaration of Principles concerning multinational enterprises and social policy, Geneva, 1977 and amended several times.
[262] ILO Publications, Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration), 2023.
[263] Ibidem.
[264] MNE Declaration, ibid., Preamble, paragraph 2.
[265] Ibidem, paragraphs 4 and 5.
[266] General Policies, Ibidem, paragraph 10.

especially in developing countries and to ensure equality of opportunity and treatment, eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin.[267] The Training section is, instead, dedicated to invite governments to collaborate with MNEs to develop national policies dedicated to training and guidance.[268] The following one focuses especially on workers' situations: wages, benefits and conditions of work offered by the MNEs should be not less favourable than those offered by comparable employers in the host countries. Moreover, adequate safety and health standards should be provided by TNCs and governments have the duty to ensure their respect.[269] And, lastly, the section on Industrial Relations underlines how MNEs should ensure to its employees the possibility to join workers' organizations, facilitating them the access and the enjoyment of consultation, collective bargaining and examination of grievances.[270]

Furthermore, the Declaration provides for a follow-up mechanism, which has the aim of verifying the conformity of MNEs' conduct with the international standards set out in the Declaration itself. In this case, the measure adopted is a Regional Report based on inputs received from a questionnaire sent to governments, employers' and workers' organizations of ILO Member States of the specific region concerned. [271]

In conclusion, the Tripartite Declaration underlines the necessity for cooperation between governments, workers' and employers' organizations and MNCs. It sets off principles, including non-discrimination and life conditions of the worker, that attribute a fundamental role to MNEs, not only for ensuring their respect during their activities, but also for the development and growth of host countries, both from an economic and social point of view.[272] Despite the non-binding character of the Declaration and despite the absence of efficient monitoring systems other than the regional report, it is undeniable that it has had and continues having a relevant impact on TNCs' conduct. The implementation of these principles at a national level demonstrates a general *consensus* on the necessity of imposing duties over MNCs.[273] Therefore, even though the Declaration didn't provide for monitoring systems, national initiatives adopted by Governments, workers' and employers' organizations have ensured the application and the respect of the principles set out by the Tripartite Declaration.

[267] International Labour Organization, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, Employment, Paragraph 26.
[268] Ibidem, paragraphs 37-40.
[269] Ibidem, paragraphs 41-46.
[270] Ibidem, paragraphs 47-68.
[271] H. Gunter, Tripartite declaration of principles concerning multinational enterprises and social policy (history, contents, follow-up and relationship with relevant instruments of other organisations), International Labour Organization, 1981.
[272] Ibidem.
[273] S. R. Ratner, Corporations and Human Rights: A Theory of Legal Responsibility, the Yale Law Journal, 2001, p. 487.

II.2 UN Soft Law Instruments

The United Nations concern on MNCs' activities started in the 1970s, due to the breakout of several scandals that involved multinationals, especially US ones, in episodes of corruption and exploitation conducted in host countries.[274] Developing countries, as it has been previously mentioned in the first chapter of this work, began to ask for international intervention to protect their national integrity against MNCs' activities. Consequently, the UN started thinking about how to intervene and limit dangerous MNEs' conduct: in 1972 the UN ECOSOC[275] adopted Resolution 1721(LIII)[276], inviting the Secretary General to collaborate with Member States with the aim of nominating a Group of Eminent Persons "to study the impact of multinational corporations on development and on international relations".[277] Its creation followed the enacting of the Multinational Corporations in world development Report[278]. This document set the background for the work of the Group, making an in-depth analysis of the structure, the global delocalization and all the possible pros and cons concerning MNCs' activity. Moreover, several ideas were proposed in the Report, including the creation of an international registry for TNCs, an international forum for the resolution of disputes arising from multinationals' behaviour and an international code of conduct.[279] This Report represents the very first effort made by the United Nations to regulate MNEs' activity at an international level.
In the following decades, several initiatives were adopted with the same aim, thus try to regulate MNCs activities and prevent social and environmental negative impacts. As it was mentioned in the introduction to this chapter, these instruments have a characteristic in common: they are all soft-law ones[280]. This lack of enforceability can be considered a direct consequence of the "blurred"[281] international legal status that concerns MNCs and the concept of Corporate Social Responsibility. As being non-binding, UN instruments concerning CSR are all adopted by Member States and MNCs on a voluntary basis and obviously the United Nations cannot oblige any TNC to comply with its CSR Standards[282]. Despite this weak legal force, these instruments represent a very important international CSR framework. Member States, instead of negotiating binding international treaties, prefer to adopt

[274] For example, two relevant cases have been reported in T. Safagi-Nejad, The UN and Transnational Corporations. From Code of Conduct to Global compact, Bloomington, 2008, p. 41-48. The first one concerns the US International Telegraph and Telephone Corporation, found guilty of corruption towards several representatives of the Chilean Government and for having financed the coup d'état against President Allende in 1973. Others concern for example the Chase Manhattan Bank, involved in unlawful transnational transactions.
[275] United Nations Economic and Social Council, founded in New York in 1945.
[276] United Nations, Economic and Social Council, The impact of multinational corporations on the development process and on international relations, July 1972, UN.Doc. 1721(LIII) in E/5209.
[277] Ibidem.
[278] UN Department of Economic and Social Affairs, Multinational Corporations in world development, New York, 1973.
[279] Ibidem.
[280] D. Shelton, Commitment and Compliance. The Role of Non-Binding Norms in the International Legal System, 2010.
[281] M. Cominetti, P. Seele, Hard soft law or doft hard law? A content analysis of CSR guidelines typologized along hybrid legal status, Springer, 2016.
[282] Ibidem, p. 1.

soft law especially because the legal procedure through which these instruments are adopted permit the involvement of subjects other than States, including MNCs, NGOs and international organizations.[283] In addition, the global economy is in a continuous changing and this lack of stability has almost always represented an obstacle for the adoption of any binding agreement concerning this subject matter.[284] Adopting soft law instruments has, thus, represented a solution for the UN to overcome this lack of agreement, leaving to States and TNCs the decision on adopting or not the duties and the correct behaviours, suggested in its initiatives, and also how to implement them. Moreover, all the standards set out by these soft law instruments represent an important legal starting point for future drafting of international treaties and of international "hard" law. The hardening of soft law is possible only when there's the consensus of States, and it is gradually creating through the adoption of these instruments[285]. As it will be analyzed, obligation towards States and TNCs are set out by these initiatives, which have the result of giving guidance or, at least, influence the work of the national legislator. The UN Intergovernmental Working Group[286] appointed for the drafting of a UN Code of Conduct for TNCs, stated that the Code itself, but also all the other initiatives adopted by the UN *"whether in legally binding on non-legally binding form,[...] becomes thereby a 'source' of law for national authorities as well as for the transnational corporations themselves, since both can rely and utilize the Code to fill gaps in the relevant laws and practices"*.[287] The most relevant UN CSR initiatives will be now analysed, starting right from the attempt that has been made to enact an international Code of Conduct for MNCs.

II.2.1 The 1987 Draft United Nations Code of Conduct of Transnational Corporations

The Report[288] enacted because of the work of the Group of Eminent Persons underlined the need for the formulation of a code of conduct for TNCs as an intermediate step to a fuller international arrangement on the same subject matter[289]. Viewed as such, this Code, by setting an agenda for international discussion and by delineating general principles on the proper role of the TNC, would have worked to enlarge international consensus on the TNCs and in turn it would have permitted more specific accords and an eventual comprehensive agreement. Therefore, at the end of 1974, the ECOSOC Resolution 1913[290] established the United Nations Commission on Transnational

[283] D. Shelton, ibidem, p. 6.
[284] Ibidem.
[285] G. Abi-Saab, Cours Général de Droit International Public, Recueil des Cours, 1987, p. 207.
[286] Intergovernmental Working Group, appointed by the UN Commission on Transnational Corporations.
[287] United Nations, Modalities-Paper del Working Group on the UN Code of Conduct on Transnational Corporations, UN Doc. E/C10/AC.2/9, December 1978.
[288] UN Report of the Group of Eminent People on TNCs, 1974.
[289] S. Coonrod, The United Nations Code of Conduct for Transnational Corporations, Harvard International Law Journal, 1977, p. 296.
[290] ECOSOC Resolution, 1913 (LVII), New York, 1974.

Corporations.[291] This organ was created with a very specific aim: negotiating an international code of conduct for transnational corporations. One of the central issues in the Commission's deliberations was whether the code should be formulated as constituting legally binding obligations, the violation of which would represent a breach of international law[292], or not. Developing host countries had supported this idea of making the code legally binding, while obstacles were set out by home countries, which insisted for the creation of a voluntary code[293]. As a result, it was decided to opt for a non-binding instrument in nature, but it still would have represented an instrument of "moral persuasion"[294] addressed not only to enterprises but also to States, aimed at solving a wide range of political, economic and development problems, including the identification of control standards on foreign investments[295]. For this purpose, a special Intergovernmental Working Group[296] was set up, which began its meetings in January 1977.

The first version of the Draft UN Code of Conduct[297] was presented in 1988 and the following ones were published in 1990[298] and 1992[299]. The same year, negotiations for the Code ended definitively. The different views between developing and home countries analyzed above inevitably influenced the content of the Draft, especially in the section dedicated to States' obligations in dealing with TNCs' activity. The last version of the Draft of the Code of Conduct divides in four parts.

The first one concerns the activities of the MNCs, setting out general rules, declaring that MNCs *"shall respect human rights and fundamental freedom in the countries in which they operate"*[300], and other economic, financial, and social rules, such as the acceptance of the ILO Tripartite Declaration[301]. The second section is about obligations that States have concerning MNCs' treatment and it asserts rights of host states but also some protections accorded to corporations, including the right to a fair and equitable treatment.[302] The third part urges intergovernmental cooperation, inviting governments to share information and do periodic consultations, while the last part calls upon States

---

[291] UN Commission on Transnational Corporations, New York, 1974.
[292] UN Commission on Transnational Corporations, Report on Second Session, March 1976, UN Doc. E/572(E/C.10/16).
[293] S. Coonrod, ibid., p. 297.
[294] Meaning a consistent set of recommendations which are gradually evolved and which are not compulsory in character but act to the support of the public opinion.
[295] Ibidem.
[296] UN Commission on Transnational Corporations, Intergovernmental Group. In appointing its members, the Commission suggested to the Secretary-General to choose from persons with a broad background in practical experience, who would act in their "private consultative capacities". So, representatives from businesses, trade unions, public interest groups and universities were selected.
[297] UN Doc. E/1988/39, February 1988.
[298] UN Doc. E/1990/94, June 1990.
[299] UN Doc. E/C.10/1992/9, February 1992.
[300] Ibidem, paragraph 14.
[301] In this part, also rules on the disclosure of information and obligations toward consumers were set, for which TNCs shall perform their activities with due regards to relevant international standards, so they do not cause injury to the health or endanger the safety of consumers or bring about variations in the quality of products in each market which would have detrimental effects on consumers.
[302]S.D. Murphy, Ibidem.

to comply with the Code, reporting to the UN on its implementation.[303] The UN Commission on transnational corporations, in turn, has to receive such reports and periodically assess such implementation.

The negotiation for the Draft Code of Conduct could have represented a forum for discussions on questions undiscussed or unagreed on the international level.[304] Unfortunately, the result expected was not achieved. During the Work of the Intergovernmental Group, it was clear that an agreement was impossible to be reached, because the interests in place were too different between Developing and Home Countries[305]. Moreover, the draft code's focus on not just the conduct of MNCs but also on the rights of host states led to sharp disagreement over the legal standard for expropriation of MNCs property by a host state, as well as over issues such as the definition of "MNC", the jurisdiction of states, and the legal status of the code[306].

Implementation of the Code was probably the most controversial issue, especially the strength of the implementation mechanism[307]. There was consensus on actions at the national level, the role of the Commission as the main international body within the United Nations system for all matters related to the Code and in providing assistance relating to the implementation of the Code[308]. However, other provisions remained open, such as the nature of the mechanism. From the perspective of developed countries, a strong implementation mechanism would have been positive for the treatment aspect of the instrument and, vice versa, it was undesirable for developing countries. In the end, agreement could not be reached. For the developed countries, even a weak implementation mechanism would have been problematic, as it could have created a 'slippery slope'[309] and, eventually, could have led to the Commission on Transnational Corporations acquiring quasi-judicial powers and becoming a tribunal in which 'their' firms would be put in the dock, even if the instrument itself would be a voluntary one.

However, the 1992 Draft was never finalized and, especially, never adopted by the UN General Assembly. This failure is the result of different causes: the disagreements analyzed above and the very complex topic that perhaps is too broad to be dealt in one instrument are just two examples[310]. Despite the lack of its adoption, the Draft Code still represent a relevant starting point for the UN work related to CSR. Firstly because, through the discussions for its drawing up global positions and

[303] Ibidem.
[304] S. Coonrod, ibidem, p. 303.
[305] S.D. Murphy, ibidem, p. 404.
[306] C. Wallace, The Multinational Enterprise and Legal Control, Martinus Nijhoff Publishers, 2002, p. 1081.
[307] Ibidem, p. 48.
[308] Ibidem.
[309] Ibidem.
[310] Marino Baldi, argued that aiming for a comprehensive investment instrument makes it very difficult to reach agreement, especially if it seeks to cover both protection and liberalization; Are Trade-law Inspired Investment Rules Desirable?, Columbia FDI Perspectives, 2013, p. 105.

opinions polarized.[311] And, secondly, because the Parts in which the Draft Code was divided into are the specific subject-matter on which the UN had to and did focus on in the following years. In the end, the draft code provided a template of sorts for documents that followed, achieving a UN imprimatur, even if it has not been adopted. By 1994, the United Nations had significantly downgraded the UN intergovernmental commission and had terminated the UN center on transnational corporations[312].

II.2.2 The UN Global Compact of 2000

The strong disagreements arisen in the negotiation for the Draft Code of Conduct caused a sharp slowdown to the UN activity concerning MNCs. It was not, in fact, before 1999 that a new initiative was announced: the UN Global Compact (UNGC)[313]. With more than 17.000 business and non-business participants from more than 160 countries[314], both developed and developing ones, the UN Global Compact nowadays represents the largest corporate social responsibility initiative in the world[315]. Its negotiations started with a speech that UN Secretary General in duty at that time, Kofi Annan, took at the World Economic Forum in Davos. He challenged the business leaders of the world to help fill the governance gaps that concerns MNCs' activities and invited them to become part of the solution[316]. Convinced that UN's and businesses' goals can be mutually supportive, he proposed to *"initiate* (working together on) *a Global Compact of shared values and principles, which will give a human face to the global market"*.[317] Immediately after this speech, Annan received letters from CEOs, ambassadors, NGOs and labour organizations from all around the world to translate these words into action[318] and only few months later the initiative was launched, becoming operational with only a handful of companies and non-business stakeholders, but attracting quickly more and more participants, creating its own dynamic and gaining the importance that it has today.[319]

In order to deeply understand the Global Compact's success, it is worth take a closer look to its distinguishing features, taking into consideration its two main and complementary goals: internalize

[311] S. Coonrod, ibidem, p. 405.
[312] The commission was integrated into the structure of the UN Conference on Trade and Development and renamed the Commission on International Investment and Transnational Corporations.
[313] United Nations Global Compact, 2000.
[314] UN Global Compact website, https://unglobalcompact.org/participation.
[315] A Rasche, G. Kell, The United Nations Global Compact: Achievements, Trends and Challenges, Cambridge University Press, 2010, p. 3.
[316] UN Secretary General Kofi Annan's speech at the World Economic Forum, Davos, January 1999.
[317] Ibidem.
[318] A Rasche, G. Kell, Ibidem, p. 3.
[319] Ibidem.

its principles as part of business strategies and facilitating co-operation and collective problem-solving between different stakeholders[320].

Firstly, it is a self-regulatory initiative that differs from other multi-stakeholder schemes for being based on 10 universally accepted principles, to which its participant are asked to align their operations and their value chain activities.[321] The UNGC, thus, asks TNCs and all the other stakeholders that decide to participate to it, to embrace, support and enact a set of core values in the areas of human rights, labour standards, the environment and anti-corruption. For instance, Principle 1 and 2 state that businesses should support and respect the protection of internationally proclaimed human rights, making sure to not be complicit and not gain any profit by any human rights abuse[322]. Then, Principles 3, 4, 5 and 6 recalls to the Principles set out by the 1998 ILO Declaration, inviting businesses to uphold the freedom of association and recognizing the right to collective bargaining; moreover, businesses should eliminate all forms of forced, compulsory or child labour and any form of discrimination in respect of the employment.[323] While, Principles 7, 8 and 9 proclaim that companies should support a precautionary approach to environmental challenges, undertaking initiatives to promote greater environmental responsibility and encouraging the development and diffusion of environmentally friendly technologies[324]. Lastly, Principle 10 enacts that companies should collaborate and work against any form of corruption.[325] Once a company's CEO decides to participate to the UNGC, the MNC must integrate these principles through the development of corporate social responsibility practices into the company's business model.[326] For example, in order to implement a human rights strategy, a company must start with a human rights impact assessment, identifying the company's risks and opportunities, and after having assigned a degree of materiality to each one, the company can develop an implementation plan[327].

Obviously, different companies will have different human rights strategies. An Internet company is likely to prioritize privacy or freedom of expression, while an Energy Company may prioritize protection against human trafficking and slavery[328]. But, even if strategies would vary from company to company, there are some key elements that can be found in almost all MNCs' processes of CSR implementation: the appointing of a senior manager for the executive oversight for human rights and

[320] G. Kell, The Global Compact: Origins, Operations, Progress, Challenges, Journal of Corporate Citizens, 2003, p. 36.
[321] C. Voegtlin, N.M. Pless, Global Governance: CSR and the Role of the UN Global Compact, Springer Science, 2014, p. 180.
[322] United Nations Global Compact, The ten Principles of the UN Global Compact, https://unglobalcompact.org/what-is-gc/mission/principles, New York, 2000.
[323] Ibidem.
[324] Ibidem.
[325] Ibidem.
[326] A. Rasche, G. Kell, ibidem, p. 5.
[327] Ibidem, p. 39.
[328] Like ENI does in its annual Statements, that will be deeply analyzed in the last chapter of this work.

an operational manager with day-to-day responsibility for human rights[329]. Moreover, the launching of learning campaigns and interactive communication for raising awareness for human rights-related subject matters is another widespread measure.

Disclosure of information on the implementation progress is another fundamental feature of the Global Compact. Every participant has to annually submit the Communication on Progress[330] (COP), reporting all the implementation efforts made by the TNC, otherwise it will be listed as inactive, forbidding it from using the trademarks and affiliations that the UNGC provides for[331]. The COP shall report not only corporate policies and connected projects, but it has to show clear evidence of their impact, based on measurable and transparent indicators.[332] In order to avoid the delisting of participants for lack of reporting or for lack of specificity, disclosure frameworks like the GRI G3 model were published on the Global Compact Website, but only a minority of companies is using them[333]. The measure adopted by the UNGC is innovative compared to the other initiatives already adopted in international law, because allows for a monitoring over MNCs CSR's implementation and, at the same time, requests to companies to be transparent, sharing both good and bad news.[334] Firms cannot, in fact, easily bluff through the COP report, especially because publishing misleading information about the firm may give rise to its liability in litigation[335].

Another central focus of the Global Compact is its learning objective. The initiative, indeed, provides for several possibilities through which all the participants to the UNGC, so States, MNCs, NGOs and all other stakeholders, can learn and discuss about topics related to the implementation of the Ten Principles and to CSR in general, including local forums, conferences or meetings for sharing common frameworks or best practices[336].

One of its biggest strengths is for sure the fact that the Global Compact is truly global, comparing to the other public international instruments, having more than half of its participants being developing or emerging economies.[337] Moreover, it not only involves large companies, but also small and medium sized enterprises. Considering that SMEs are often part of global supply chains, they play a pivotal role in the CSR practices' implementation in the local context.[338] Therefore, the UNGC allows

[329] Ibidem.
[330] United Nations Global Compact, Communication on Progress.
[331] J.J. Janney, G. Dess, V. Forlani, Glass Houses? Market Reactions to Firms Joining the UN Global Compact, Journal of Business Ethics, 2009, p. 409.
[332] A. Rasche, G. Kell, ibidem, p. 9.
[333] Ibidem.
[334] J.J. Janney, G. Dess, V. Forlani, Ibidem, p. 411.
[335] Ibidem, p. 414.
[336] S. Waddock, Learning from Experience: The United Nations Global Compact Learning Forum 2002, The Journal of Corporate Citizenship , 2003, p.55.
[337] Global Compact Website, List of Participants, https://unglobalcompact.org/participation.
[338] A. Rasche, G. Kell, p. 5.

for a complete representation of the situation concerning CSR policies adopted all around the world. Probably, this is the cause for which this initiative has received, since the beginning of its operativity, significant government support.[339] The General Assembly, as well as G8 Countries, for example had immediately recognized and supported it. The UNGA has adopted several Resolutions to support and endorse the Compact model of partnership. Resolution 56/76[340], for instance, encourages *"the private sector to accept and implement the principle of good corporate citizenship"*[341] and also underlines *"the fact that cooperation between the United Nations and all relevant partners, in particular the private sector, shall serve the purposes and principles embodied in the Charter of the United Nations*[342]*."* However, the clearest endorsement of the Global Compact and its techniques is provided by the General Assembly Resolution 60/125[343]. The Resolution not only *"encourages responsible business practices, such as those promoted by the Global Compact"*[344], but also *"encourages the Global Compact Office to promote the sharing of best practices and positive action through learning, dialogue and partnerships*[345]", therefore legitimizing the working of the Global Compact and the U.N.'s engagement with non-state "private" actors. Moreover, the Resolution also encouraged more and more corporations to join the initiative[346].

Despite its undoubtful success, the UNGC hasn't failed to cause discussions and receive critics, for several reasons, including its lack of specificity and the absence of an independent verification mechanism. Firstly, the minimalistic code of corporate conduct provided by the ten "one-liners[347]" Principles has been highly criticized for being too vague and easy to circumvent, not providing adequate and concrete guidance to corporations about the conduct expected from them[348]. In this way, insincere corporations have the possibility to easily comply with the Principles without concretely acting for their implementation or promotion.[349] Undoubtedly, in order to remedy the deficit of generality and vagueness of principles, the Compact Office is constantly offering various tools, publications, and guidance notes on its website[350]. For example, the Compact Office has tried to

[339] Ibidem.
[340] G.A. Resolution 56/76, U.N. Doc. A/RES/56/76 (January 2002).
[341] Ibidem, paragraph 6.
[342] Ibidem, paragraph 8.
[343] G.A. Resolution 60/215, U.N. Doc. A/RES/60/215 (March 2006).
[344] G.A. Resolution 60/215, Ibidem, Preamble.
[345] Ibidem.
[346] S. Deva, Global Compact: a critique of the UN's "Public-Private" Partnership for Promoting Corporate Citizenship, Syracuse Journal of International Law, 2007, p. 119.
[347] D. Weissbrodt, Businesss and Human Rights, University of Cincinnati Law Review, 2005, p. 66, indicating that the Global Compact "contains ten short sentences.".
[348] K. M. Leisinger, On corporate Responsibility for Human Rights, Leisinger, 2006, p. 460.
[349]L. A. Tavis, Novartis and the U.N. Global Compact Initiative, Vanderbilt Journal on Transnational Law, p. 735, 2003.
[350] United Nations Global Compact, Global Compact Tools and Publications, http://www.unglobalcompact.org/NewsAndEvents/recent_publications.html.

infuse some certainty to the Principles by elaborating a Booklet[351] which explains some key terms used therein. Moreover, the Booklet provides a test to do a self-evaluation of complicity.

Other critics arise from the lack of verification and independent monitoring. It is openly admitted that "*the Global Compact is not a code of conduct; monitoring and verification of corporate practices do not fall within the mandate or the institutional capability of the United Nations.*"[352] For this reason, the COP Report is an important monitoring measure, but not really efficient in terms of consequences. If we consider that the only follow-up to an eventual failure in providing the COP Report is the acquisition of the "inactive" status on the list of participants, the duty to submit it can only be considered a "moral compass[353]".

In conclusion, in spite of being a voluntary initiative, the UN Global Compact has had a huge impact on global CSR policies. This is not only demonstrated by the fact that always more and more MNCs and other stakeholders want to participate to the initiative. Several scholars shed light on the positive impacts of UNGC adoption on firm reputation[354], customer satisfaction[355] and creation of new partnerships[356]. Therefore, the compliance with the Ten Principles set out by the Global Compact would also represent a significant source of profit for TNCs, especially considering the cost of their implementation which is very low, compared to other ethical standards[357].

By launching the Global Compact, the United Nations successfully entered the corporate social responsibility territory. It should now be clear that the UNGC is neither a standard to measure corporations' compliance against predefined indicators nor a seal of approval for participating businesses[358]. For this reason, it should be considered as it is, so a principle-based instrument which must be complementary to national and private initiatives, and not a substitute for them.

---

[351] Ministry of Foreign Affairs of Denmark and U.N.D.P., Implementing the UN Global Compact: a Booklet for Inspiration, 2005, available at http://www.unglobalcompact.org/docs/news_events/8. l/dk_book_e.pdf.

[352] Press Release, United Nations, Kofi Annan Enlist Corporations, Civil Society to Tackle Globalization Challenges, Note No. 91, 2000.

[353] G. Kell, The Global Compact: Origins, Operations, Progress, Challenges, Journal of Corporate Citizenship, 2003, p. 47.

[354] J.A. Arevalo, D. Aravind, Strategic outcomes in voluntary CSR: Reporting economic and reputational benefits in principle-based initiatives, Journal of Business Ethics, p. 201-217, 2017.

[355] A.G. Erro, J.A.C. Sanchez, Joining the UN Global Compact in Spain: an institutional approach, Revista de Contabilidad, p. 8311, 2012.

[356] M. Shoji, Global accountability of transnational corporations: the UN Global Compact as a global norm, Journal of East Asia of International Law, p. 29-45, 2015.

[357] C. Voegtlin, N.M. Pless, Global Governance: CSR and the Role of the UN Global Compact, Journal of Businees Ethichs, 2014, p. 179-191.

[358] A Rasche, G. Kell, The United Nations Global Compact: Achievements, Trends and Challenges, Cambridge University Press, 2010, p. 4.

What has to be hoped for the future is that all the stakeholders that are participating to the UNGC will agree to the establishment of an independent mechanism of monitoring and verification[359]. Only at that point, this initiative will gain the legal enforceability that it deserves.

II.2.3 2011 UN Guiding Principles on Business and Human Rights

On April 20th 2005, the United Nations Commission on Human Rights[360] adopted Resolution 2005/69[361], requesting the Secretary General to appoint a Special Representative (SRSG) on the issue of human rights and transnational corporations and other business enterprises for a period of two years, later prolonged with a third year.

The Secretary General appointed the Professor John Ruggie and its original mandate expected him to work in collaboration with States, TNCs and other stakeholders to identify and clarify standards of corporate responsibility and accountability with regard to human rights.[362] In his first three years of mandate, the Special Representative made consultations and organized discussion forums with States' TNCs', international organizations' and legal experts' representatives, that resulted in the SRSG proposal for the adoption of the "*Protect, Respect, Remedy*" Framework[363]. In this Report, the Special Representative underlined the 3 main aspects on which it was necessary to focus in order to develop an international framework on business and human rights: the State duty to protect; the corporate responsibility to respect; effective access to remedies[364].

With the aim of implementing this Framework, Ruggie's mandate was prolonged until 2012 and this extension allowed him to draft[365] the UN Guiding Principles on Business and Human Rights[366] which have been officially adopted by the Human Rights Council on 16 June 2011. This principle-based instrument represents an attempt *"to provide concrete and practical recommendations for (...) the implementation of the Framework"*[367].

---

[359] S. Deva, Global Compact: a critique of the UN's "Public-Private" Partnership for Promoting Corporate Citizenship, Syracuse Journal of International Law, 2007.
[360] United Nations, Commission on Human Rights, New York.
[361] UN Commission on Human Rights, Human Rights and transnational corporations and other business enterprises, Resolution 2005/69, UN Doc. E/CN.4/RES/2005/69.
[362] UN Commission on Human Rights, ibidem.
[363] Human Rights Council, Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the SRSG on the issue of human rights and transnational corporations and other business enterprises, 2008.
[364] Ibidem.
[365] Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, March 2011, A/HRC/17/31.
[366] United Nations Commission on Human Rights, UN Guiding Principles on Business and Human Rights, New York and Geneva, June 2011, UN Doc. HR/PUB/11/04.
[367] Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, ibidem, paragraph 9.

Evolving in the context of voluntary CSR infrastructure over many years, the UNGPs on Business and Human Rights represent a form of what has been called "collaborative governance"[368] for being a polycentric network of mostly voluntary governance initiatives.[369] The thirty-one GPs had been conceived taking into consideration all the instruments adopted before and attempted to deal explicitly with the highly problematic and contested issue for companies: how to deal with human rights abuses. All these principles can be easily summarized, dividing them based on the three pillars on which the Framework was based.

Under Pillar I, concerning the duty of the State to protect its citizens against human rights abuse by third parties, the GPs emphasize the importance of the role of States in terms of especially adopting effective policies, legislation and regulations to prevent, investigate, punish and redress human rights abuses.[370] This duty provides also an opportunity for States to set out their expectations to all business enterprises domiciled within their jurisdiction to respect human rights in their operations.[371] Other important operational indicators of the State's duty to protect human rights include the need for policy coherence (both horizontal and vertical)[372] and the need for extra vigilance in the regulation of business in conflict-affected areas[373] or when there is a State-business nexus.[374] The GPs are, in fact, favourable to State's intervention in preventing abuses perpetrated in host countries by MNCs incorporated in their territory, listing also a series of possible approaches. From the imposition of reporting duties over parent companies, to the necessary adhesion to international instruments like the UN Global Compact or the OCSE Guidelines, and finally also to the establishment of a criminal law regime that allows the perpetrator of such violations to be prosecuted on the basis of his nationality and not on the basis of the *locus commissi delicti*[375]. In this way, the perpetrator would be prosecuted by the State in which the parent company is incorporated, usually being a developed country and, thus, having a more efficient judicial system. Obviously, it is necessary to bear in mind that the UNGPs set conduct standards and not performance obligations. Therefore, these are only suggestions that States may choose to adopt and decide on how to implement them, not imposing any sanction to States that do not comply with them. The State could be considered liable under international law only when fails to adopt the necessary measures to prevent or investigate, perpetrate

[368] A. Rasche, Collaborative Governance 2.0, Corporate Governance, 2010, p. 500–511.
[369] L. Albareda, S.Waddock, Networked CSR Governance: A Whole Network Approach to MetaGovernance, Business & Society, 2018, p. 636-675.
[370] United Nations Guiding Principles on Business and Human Rights, Principle 1.
[371] Ibidem, Principle 2.
[372] Ibidem, Principle 8.
[373] Ibidem, Principle 7.
[374] Ibidem, Principle 4.
[375] J. G. Ruggie, Protect, Respect, and Remedy: The UN Framework for Business and Human Rights, in M.A. Baderin, M. Ssenyonjo, International Human Rights Law. Six Decades after the UDHR and Beyond, cit., 2010, p. 523.

and compensate violations of human rights happening on its territory, or when to perpetrate such abuses is being a State owned MNC[376].

Under Pillar II, entailing the corporate responsibility to respect human rights, the GPs not only emphasise the need to avoid infringing the human rights of others[377] but also require business enterprises to be conscious of their own activities and how they are preventing possible abuses. The 'knowing and showing' principle is operationalized through the conduct of human rights due diligence[378] by business enterprises and the communication of outcomes of such due diligence policies.[379] In order to develop these due diligence processes, TNCs must consider the context in which they operate and the human rights over which they could really have an impact through their activity[380]. Then, taking into consideration international human rights law and relevant international instruments in the labour context, they should develop risk management systems aimed at determining any possible negative impact over the respect of these human rights[381]. Lastly, based on what the risk management system has detected, the MNCs should develop suitable business policies, which should ensure all the four components that, for Ruggie, due diligence comprises. First, a statement of policy articulating the company's commitment to respect human rights and, second, periodic assessments of actual and potential human rights impact of company's activities and relationships. Then, he considered necessary to integrate these commitments and assessments into internal control and oversight systems. Lastly, it shall be ensured the tracking of any activity and the consequent reporting performance[382]. Moreover, the UNGPs try for the first time to define the "limits" of the corporate responsibility to respect human rights. The MNC could be liable for both direct and indirect impacts on the respect of human rights, that is to say, impacts that are linked to the enterprise's operations, products, services or through their business relationships '*even if they have not directly contributed to those impacts*'[383]. Thus, the UNGPs state for the first time that, for human rights abuses, a MNC can be considered liable either for their own activities, or omissions, or as a result of their business relationships with other parties, including business partners, entities in its value chain and any other non-State or State entity linked to its business operations, products or

[376]D. Augenstein, State Responsibilities to regulate and adjudicate corporate activities under the European Convention on Human Rights, Submission to the Special Representative of the United Nations Secretary General (SRSG) on the issue of Human Rights and Transnational Corporations and Other Business Enterprises, 2011.
[377] Ibidem, Principle 11.
[378] Ibidem, Principles 15-20.
[379] Ibidem, Principle 21.
[380] J. Bonnitcha, R. McCorquodale, The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights, the European Journal of International Law, 2017.
[381] Ibidem.
[382] United Nations Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Business and Human Rights: Further steps toward the operationalization of the "protect, respect and remedy" framework, A/HRC/14/27, 2010.
[383] Ibidem, Principle 13.

services.[384] In addition, Principle 19 determines also the steps that a MNC should take to cease or prevent its contribution, especially if it's an indirect one: starting from considering ending the relationship, taking into account credible assessments of potential adverse human rights impacts in doing so, to the appointing of an independent expert for deciding how to respond.[385]

Lastly, under Pillar III, which is access to remedies[386], the UNGPs emphasize the need for an integrated application of different redress mechanisms by States, including formal judicial, administrative and non-judicial processes[387] alongside corporate grievance mechanisms.[388] In addition, the GPs set out important criteria by which to determine the effectiveness of non-judicial grievance mechanisms: legitimacy, accessibility, predictability, transparency and human rights compatibility.[389] The main points of these third Section of the UNGPs are the effectiveness of the remedies proposed and, especially, access to them. For what concerns the remedies, they may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition[390]. While, for what concerns access to remedies, the UNGP 25 underlines that for ensuring it for business-related human rights abuses it is required that States facilitate public awareness and understanding of these mechanisms, providing for how they can be accessed and how to request for any support for doing so.[391] States should ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy. Therefore, States must ensure the economic and political independence of Courts and the elimination of any possible legal barriers that can prevent legitimate cases that involve business-related human rights abuse from being addressed. And, finally, for operational-level grievance mechanisms, the GPs recommend engagement and dialogue with stakeholder groups[392].

After this analysis, it can be noticed that the UN Guiding Principles don't establish new standards but rather elaborate '*the implications of existing standards and practices that are integrated within a single, logically coherent and comprehensive template and identifying where the current regime falls short and how it should be improved'.*[393] What is really innovative, is the fact that this instrument

[384] Ibidem, Commentary to Principle 13.
[385] Ibidem, Commentary to Principle 19.
[386] Meaning both judicial and non-judicial state-based grievance mechanisms, with also the possibility to recur to non-state based grievance mechanisms in the case of a failure of the first ones.
[387] Ibidem, Principles 25-27.
[388] Ibidem, Principles 28-30.
[389] Ibidem, Principle 31.
[390] Ibidem, Commentary to Principle 25.
[391] Ibid.
[392] Ibidem, Principle 31(h).
[393] Report of the Special Representative of the Secretary-General on the issue of human rights and trans-

provides for duties and measures that do not concern only businesses, but all the possible stakeholders involved, proposing a collaborative and integrative approach to the reconciliation of competing stakeholder claims.[394] Moreover, the UNGPs can be considered different from all the other CSR instruments enacted at the international level because they attempt to capture and take advantage of the uniquely special character of human rights as their point of reference for corporate social policy[395] as they represent values shared by all cultures, hence being universal.[396] This claim has also been demonstrated by a study[397] undertaken by the SRSG itself in 2007 of the Fortune 500 companies. It was concluded that business enterprises recognize the significance of human rights in their daily activities both as a matter of legal compliance and as part of good practice and, therefore, it was fundamental to establish a series of standards on which MNCs could base their activities, contributing to the respect of human rights and avoiding any possible abuse.

In addition, in order to ensure the effective implementation of these standards, Resolution 17/4[398] adopted in 2011 by the Human Rights Council, added two follow-up measures. The first one is the annual organization of a multi-stakeholder UN Forum on business and human rights, to discuss different possible policies and approaches adopted by them. The second one is the creation of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises[399] (UNWGHRB), consisting of five independent experts[400]. These two measures have contributed to the huge impact that the UNGPs[401] have had since their adoption. An unprecedent level of alignment took place, involving both existing standards and global, regional, and national frameworks, covering all geographic regions and business sectors.[402] Among the first standards to be updated on the basis of the Guiding Principles were the OECD Guidelines for Multinational Enterprises[403], which is an instrument that comprises a series of recommendations addressed by

national corporations and other business enterprises, Ruggie, paragraph 14.

[394] M.K. Addo, The Reality of the United Nations Guiding Principles on Business and Human Rights, Human Rights Law Review, 2014, p. 135.

[395] Ibidem.

[396] Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23.

[397] Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporation and other business enterprises, Human Rights Policies and Management Practices: Results from questionnaire surveys of Governments and Fortune Global 500 firms, February 2007, A/HRC/4/35/Add.3.

[398] UN Human Rights Council, Resolution 17/4, 2011.

[399] UN Working Group on the issue of human rights and transnational corporations and other business enterprises, created by Resolution 17/4 adopted by the UN Human Rights Council in 2011.

[400] The group was mandated by the Human Rights Council to promote the effective and comprehensive implementation of the UN Guiding Principles, through best practice identification, capacity building, country visits, developing recommendations on access to remedy and engaging in dialogue and cooperation with relevant actors.

[401] European Parliament, Policy Department, Implementation of the UN Guiding Principles on Business and Human Rights, 2017, p. 14.

[402] Ibidem.

[403] Organisation for Economic Co-operation and development, OECD Guidelines, first adopted in 2000 and updated in 2011.

governments to MNCs and that will be analyzed in the following chapter[404]. Moreover, other standards were aligned with the UNGPs, including the Human Rights chapter of the International Standards Organization's (ISO) 26000 social responsibility standards[405], the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation[406], and also the UN Global Compact. In this final case, what has been updated is the content of the Human Rights Principles that were clarified to be read in line with the UNGPs.[407]

The initiative also saw an uptake at the regional level with the EU, the Council of Europe[408] and the Organization of American States[409] (OAS), all undertaking concrete measures to support the UNGPs' implementation.

Just to mention one of the most relevant one, on 16 April 2014 the Council of Europe issued a Declaration[410] on the UNGPs, stressing that their effective implementation by both states and business enterprises is essential to ensure respect for human rights in the business context. On the basis of this Declaration, the Committee of Ministers of the Council of Europe adopted, in 2016, a Recommendation[411] which provided for more specific guidance to assist Member States in the implementation of the UNGPs, asking them to develop National Action plans on Business and Human Rights. As a consequence, several States adopted National Action Plans in which they summarize all the efforts done to comply with the UNGPs, including Denmark, the UK and Italy.

In conclusion, this initiative is undoubtedly innovative in dealing with CSR from a multi-stakeholder point of view and, especially, in providing for practical approaches and solutions for the prevention of human rights abuses perpetrated in a business context. It hasn't failed, obviously, to obtain critics concerning for example the methodology[412] adopted for the development of these standards or for the vagueness[413] of the expressions used in certain Principles. Moreover, it should be underlined again that, although widely respected as an improvement on global governance, UNGPs are merely aspirational, and should not be read as creating new international legal obligations[414]. But, despite

[404] Chapter III.1.
[405] ISO, 26000 Social Responsibility Standards, 2010.
[406] IFC, Performance Standards on Environmental and Social Sustainability, 2006.
[407] UN Global Compact and OHCHR, 2011.
[408] Council of Europe, Strasbourg, 1949.
[409] Organization of American States, founded in Bogota in 1948.
[410] Council of Europe, Declaration on the UN Guiding Principles on Business and Human Rights, Strasbourg, 2014.
[411] Committee of Ministers of the Council of Europe, Recommendation CM/Rec, 2016.
[412] M. Fasciglione, Luci ed ombre del rapporto di fine mandato del Rappresentante speciale delle Nazioni unite su diritti umani e imprese, in Diritti umani e diritto internazionale, 2009, p. 172.
[413] A. Bonfanti, Imprese multinazionali, diritti umani e ambiente, Profili di diritto internazionale pubblico e privato, p. 176.
[414] N.R. Tuttle, Human Rights Council Resolutions 26/9 and 26/22: Towards Corporate Accountability?, American Society of International Law, 2015.

possible opposite thoughts, the impact of the UNGPs is unequivocable, both at international, regional and national level, as underlined above.

II.3 UN attempts to elaborate an internationally binding corporate regulation: Resolution 26/09

After having analyzed these international instruments, it seems clear that, at the moment, there is no legally binding corporate regulation concerning CSR. This failure is largely due to lack of support from the Western world.[415]Despite the position firmly maintained by developed countries, efforts have been made in the last decades with the aim of adopting a legally stronger corporate regulation. The starting point of this process can be surely identified with the adoption of Resolution 26/09[416] by the Human Rights Council. With this Resolution, the Council decides to create an *"open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights* (OEIGWG)*"*[417].

The intergovernmental group's work should be aimed at elaborating an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises[418]. Although its approval, Resolution 26/09 faced important oppositions already at the moment of its adoption. It was introduced by Ecuador being backed by Bolivia, South Africa and Cuba, and approved by a marginal 20 votes in favour, 14 against and 13 abstentions[419]. It is easy to conclude who were the States that voted against: the EU Countries, the USA and Japan[420]. The US and EU, despite repeatedly stating that they would have not participated in the intergovernmental open-ended working group established by the resolution, made attempts to come to a compromise, making the Human Rights Council adopt Resolution 26/22[421] just one day later the adoption of Resolution 26/09. This Resolution does not support a binding legal instrument governing business-related abuses, instead opting to continue the mandate of the UN Working Group on Business and Human Rights for another three years[422]. It further reaffirms the normative content of the UN Guiding Principles on Business and Human Rights (UNGPs), focusing on strengthening domestic measures through implementation of the UNGPs and improving access to remedies for

[415] Ibidem.
[416] United Nations Human Rights Council, Resolution 26/09, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, UN Doc. A/HRC/RES/26/9, 14 July 2014.
[417] Ibidem, Operative clause 1.
[418] Ibidem.
[419] Treaty Alliance Press Release, Resolution on binding human rights standards passes in Human Rights Council, 2014.
[420] Resolution 26/09, ibidem.
[421] United Nations Human Rights Council, Resolution 26/22, Human rights and transnational corporations and other business enterprises, 15 July 2014.
[422] Ibidem.

victims of business-related abuses. With this attempt, developed countries were not willing to provide for nothing new other than instruments already enacted and already existing working groups, refusing to think about a concrete path towards the drafting of a binding instrument to prevent human rights abuses by TNCs[423].

Although strong oppositions, the OEIGWG started its work. Resolution 26/09 established that the discussions for the drawing up of the internationally legally binding instrument should have taken place from 2015 and always with the assistance of the UN High Commissioner for Human Rights.[424] During the first session, several delegations[425] noted that the Guiding Principles on Business and Human Rights did not get to the core of the discussion on maximum protection of human rights and access to remedies. Thus, they considered that a complementary international instrument was needed in order to strengthen national capabilities to ensure human rights protection in the domestic sphere, always considering the principles of universality, indivisibility, participation, accountability and transparency[426]. During this first session, critics have not failed to arise: some EU countries that decided to attend this meeting remarked that the priority was the implementation of the Guiding Principles rather than the development of a new international instrument[427]. Despite the critics, it was necessary to start circumscribing the instrument's coverage area, clarifying the concept of TNCs and other business enterprises in international law. All the panelists agreed that even if there are several approaches that can be adopted to establish if an actor is a MNC or not[428], it is enough easy to distinguish a national company from a TNC and, thus, opting for the application of the internationally legally binding instrument instead of national law.

For what concerns the content of the instrument, several panelists, delegations and NGOs[429] noted that all human rights should be included in the binding instrument, since transnational activities had an impact on a wide range of stakeholders, including the communities in which they operate[430]. They argued for the need to use an adequate methodology to identify corporate responsibility, such as a test to identify its liability when it violates a right or directly benefits from the abuse of the right, and

[423] N.R. Tuttle, ibidem.
[424] The High Commissioner for Human Rights is the principal human rights official of the United Nations. He is accountable to the Secretary-General and is responsible for all the activities of OHCHR, as well as for its administration.
[425] Including the delegations speaking on behalf of the Group of African States, and others representing developing countries and NGOs.
[426] United Nations General Assembly, Report on the first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, with the mandate of elaborating an international legally binding instrument, UN Doc. A/HRC/31/50, February 2016, paragraph 23.
[427] Ibidem, paragraph 23.
[428] Including jurisprudence, delegation to national legislation or an intermediate referral system.
[429] Including African and South American developing countries.
[430] Ibidem, paragraph 63.

to identify the nature of the right and what it entails. From this point of view, the emphasis relies on the victim's rights, not on the agent of the conduct[431].

Discussions on the scope of the instrument continued in the second session of the OEIGWG, that took place in 2016. In this occasion, panelists recalled several international initiatives adopted concerning CSR, including the ILO Tripartite Declaration and the UN Global Compact, with the aim of making examples of international instruments addressing obligations and responsibilities of private actors.[432] It was observed that there appeared to be a consensus on the fact that the treaty should cover all human rights internationally accepted, including the right to development, as well as principles of universality, indivisibility, interdependence, equality and non-discrimination.[433] Moreover, during this second session, the issue of extraterritorial jurisdiction became central, both from a regulatory and an adjudicatory point of view. In relation to the first one, some panelists evoked existing obligations on States to regulate the operations of their national MNCs abroad. While, regarding adjudication, speakers assigned a key role to the extension of national courts' jurisdiction to deal with claims or offences committed abroad by national companies' subsidiaries or contractors[434]. Lastly, it was underlined how fundamental should be strengthening cooperation between States with regard to prevention, remedy and accountability and access to justice at the national and international levels.

However, much remained to be done, including ensuring broad and inclusive participation in the process of implementation of the instrument itself. In the following months leading up to the third session, steps were taken to facilitate a focus on the most important issues and on identifying areas of common interest and positions[435], also thank to the draft drawn up by the Chair Rapporteur, analyzed in the next paragraph.

II.3.1 The Elements for the Draft of a legally binding instrument on transnational corporations and other business enterprises with respect to human rights

According to operative clause 3 of Resolution 26/09 *"the Chairperson-Rapporteur of the open-ended intergovernmental working group should prepare elements for the draft legally binding instrument for substantive negotiations at the commencement of the third session of the working group on the subject, taking into consideration the discussions held at its first two sessions.[436]"* In this regard, right before the third session of the open-ended intergovernmental working group, the Chair-Rapporteur

[431] Ibidem.
[432] United Nations General Assembly, Report on the second session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, March 2017, paragraph 65.
[433] Ibidem, paragraph 102.
[434] Ibidem.
[435] Ibidem, p. 370.
[436] Resolution 26/09, ibidem, operative clause 3.

finished drawing up the Elements for the Draft Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with respect to Human Rights.[437] The aim of this proposal is to reflect the inputs provided by States and other relevant stakeholders in the framework of the referred sessions, that, as it has been discussed, had been dedicated to conducting constructive deliberations on the content, scope, nature and form of the future international instrument, as well as during the intersessional period[438]. It is important, in fact, to acknowledge the constructive participation of different actors in more than 200 bilateral and multilateral intersessional meetings in Geneva and in many different countries in the world since the adoption of Resolution 26/9 on July 14, 2014[439].

The Elements Paper, as it can be deduced by the document itself, should be considered as a basis for substantive negotiations to elaborate the instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises during the third session of the OEIGWG[440]. The document provides for both substantive aspects, as well as procedural mechanisms concerning the application and implementation of the binding instrument. It has represented an important starting point for the third session of the Working Group, including a large number of possibilities without any specific orientation, in an effort to favour dialogue among States and other stakeholders[441].

The Elements document addressed an important number of substantive aspects, among them issues such as the scope of application, general obligations for States, business enterprises and even international organizations, preventive measures and finally, aspects revolving around the issue of legal liability and judicial and non-judicial remedies[442].

Taking into consideration the discussions held during the first two sessions, the document declares the scope that the legally binding instrument should have, thus covering all human rights violations or abuses resulting from the activities of TNCs and OBEs that have a transnational character, regardless of the mode of creation, control, ownership, size or structure.[443] This broad approach is especially adequate, since many corporate-related human rights abuses normally start as a result of violations to economic, social, and cultural rights, including the right to a healthy environment or to labour standards, which then, due to the interrelated and interdependent character of human rights,

[437] Chair-Rapporteur of the OEIGWG established by HRC, Elements for the Draft Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with respect to Human Rights, 29/09/2017.
[438] Ibidem, Introduction paragraph.
[439] Ibidem.
[440] H.C. Rivera, Some remarks on the third sessions of the Business and Human Rights Treaty Process and the 'Zero Draft', Brazilian Journal of International Law, 2018.
[441] Ibidem, p. 27.
[442] Ibidem.
[443] Ibidem, paragraph 2.

can also impact on other civil and political rights[444]. On the other hand, this generality could also represent a problem for the potential treaty, especially considering that, until the enacting of the Elements, it was conceived as a stand-alone treaty, simply making reference to other human rights. This could then allow States to pick and choose, to some extent, the rights that could be applicable under this new conventional regime[445], on the basis of which treaties or conventions has each State ratified. Since several human rights are considered to be of a customary nature, this scenario should not represent a problem and as such do not require explicit conventional commitments from States[446]; however, this is not the case for all human rights, especially for the ones of an economic or social nature, and even some civil or political rights. As a consequence, an asymmetrical horizon for the application of the new conventional obligations deriving from a business and human rights treaty could arose.

The Chair-Rapporteur, then, included in the document the concept of prevention, which has been long identified as an important pillar of the relationship between business and human rights. This concept, referred in some legal and non-legal frameworks as human rights due diligence, comprises different policies, processes and measures that TNCs and OBEs need to undertake as a minimum prudence, according to their capacities, to meet their responsibility to respect human rights[447]. In this regard, the real added value of this section would be precisely to give a legally binding nature to the adoption of such measures or minimum standards by TNCs and OBEs.

Consequently, another fundamental objective in the process of the elaboration of an international legally binding instrument is considered: put an end to TNCs and OBEs impunity. Section 5 of the Elements, in fact, invites States to adopt or strengthen existing legislative or other measures, to establish and apply TNCs' legal liability (criminal, civil, administrative, individual or collective) under their territory or jurisdiction. Moreover, also the State's liability is entitled, for actions and omissions of the TNC if the latter acts under the instruction or control or direction of the State and violates or abuses human rights in the process.[448] In order to ensure repression, the Elements provide for State's obligations to ensure access to justice and effective remedies, including the adoption of adequate mechanisms to reduce regulatory, procedural and financial obstacles preventing the victims from having access to effective remedy[449] and for guaranteeing the avoidance of unnecessary delay.

---

[444] H.C. Rivera, Some remarks on the third sessions of the Business and Human Rights Treaty Process and the 'Zero Draft', Brazilian Journal of International Law, 2018, p. 27.
[445] M. Forteau, Les renvois inter-conventionnels, Annuaire francais de droit international, 2003, p. 104.
[446] H.C Rivera, ibidem.
[447] Chair-Rapporteur of the OEIGWG established by HRC, Elements for the Draft Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with respect to Human Rights, 29/09/2017, paragraph 4.
[448] Ibidem, paragraph 5.
[449] Ibidem, paragraph 6.

For what concerns jurisdiction, the document clarifies that TNCs and OBEs "under the jurisdiction" of the State Party should be understood as any TNC and OBE which has its centre of activity, is registered or domiciled, or is headquartered or has substantial activities in the State concerned, or whose parent or controlling company presents such a connection to the State concerned.[450] Particularly, it has been noted that the legally binding instrument has an enormous potential to avoid TNCs and other OBEs from taking advantage of limitations established by territorial jurisdiction in order to escape from potential prosecution in the host States where they operate. Moreover, the inclusion of this broader concept of jurisdiction would also allow victims to have access to justice and obtain remediation through either the forum where the harm was caused, or the forum where the parent company is incorporated or where it has a substantial presence, giving them multiple possibilities.[451]

Lastly, the basis for the mechanisms for promotion, implementation and monitoring are set, both at national and international levels. For what concerns the latter, State Parties shall decide what international judicial and non-judicial mechanisms should be established for the promotion, implementation and monitoring of the instrument. Considering judicial mechanisms, State Parties could consider the establishment of an International Court on Transnational Corporations and Human Rights or strengthening already existing mechanisms, such as the special chambers on Transnational Corporations and Human Rights in existing Courts. While, for what concerns non-judicial mechanisms, it is suggested to create a committee on the issue of Business and Human Rights, with the duties of examining State's progress in realizing obligations undertaken in the instrument and assess and investigate TNCs' operations.[452]

The third session of the OEIGWG took place only one month after the submission of the Elements and it had as its main objective to begin discussions on a draft instrument on business and human rights, on the basis of the document prepared by the Chairperson-Rapporteur. During this session, the most discussed point of the Elements were the types of obligations set by it. As it has been previously analyzed, the two main models presented by the Chairperson-Rapporteur are direct international obligations for corporations, and indirect obligations for corporations via the State[453]. European Union, Brazil, Singapore and several others States openly questioned the feasibility and convenience of imposing direct international obligations on corporations, while some others, such as South Africa,

[450] Chair-Rapporteur of the OEIGWG established by HRC, Elements for the Draft Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with respect to Human Rights, 29/09/2017, paragraph 7.
[451] Ibidem.
[452] Ibidem, paragraph 9.
[453] H.C. Rivera, Some remarks on the third sessions of the Business and Human Rights Treaty Process and the 'Zero Draft', Brazilian Journal of International Law, 2018, p. 36.

insisted on the necessity to ensure that the treaty addresses them directly[454]. On the other hand, in relation to indirect obligations through the lens of preventive measures and of the establishment or 'hardening'[455] of corporate human rights due diligence through national legislation, a larger consensus seemed to appear: both developed and developing countries participating in the session, such as Mexico, Brazil, France, South Africa and the European Union, underscored the importance of adopting national legislation requiring corporations to undertake human rights due diligence throughout their activities and operations, in order to identify, prevent, mitigate or redress human rights abuses caused by them or with which they are involved.[456]

In conclusion, the Elements and the third session allowed for a more in-depth discussion between States, which paved the way for the adoption of the Zero Draft.

II.3.2 The Zero Draft and its two first revisions

After years of negotiations and on the basis of the Elements, the OEIGWG released the Zero Draft of the Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises[457] in July 2018. The framework of the Zero Draft is very similar to the one of the Elements: it is composed by 15 Articles, divided into three Sections. The first Section is basically dedicated to the Preamble and to the Purpose of the Convention, which is to strengthen the respect, promotion and respect of human rights in the context of business activities of transnational character, to ensure effective access to justice and advance international cooperation[458]. Then, the Second Section is the real core of the Instrument, dealing with all the issues discussed throughout the three OEIGWG sessions. Article 3 immediately provides for the most argued point: the scope of the Convention. Despite the critics received already at the time of the Elements, analyzed above, the content of this Article remains very vague, posing a threefold problem: there is no clear definition of which corporations are to be addressed, the extent of extraterritorial obligations is questionable, and there is no specific indication of which human rights are specially protected[459]. During the third OEIGWG session, a discussion arose between different

[454] Human Rights Council, Report on the third session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, A/HRC/37/67, 24 January 2018, par. 63 ss.
[455] H.C. Rivera, Ibidem.
[456] Human Rights Council, Report on the third session, paragraph 74 ss.
[457] United Nations Human Rights Council, Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (Zero Draft), proposed on July 16 2018.
[458] Ibidem, Articles 1 and 2.
[459] J. Bialek, Evaluating the Zero Draft on a UN Treaty on Business and Human Rights: What Does it Regulate and how Likely is its Adoption by States, Goettingen Journal of International Law, 2019, p. 513.

States on the inclusion or exclusion of national corporations from the scope[460]. As a result, the draft currently applies to "all business activities with a transnational character"[461] thus providing for an alternative solution that focuses on the activity itself and not the characteristics of an enterprise. The document also assumes that a definition of the companies concerned is not necessary[462], as the only decisive factor is the transnational activity, avoiding in this way taking a defined position concerning the type of corporations to which the Convention should apply. Even though this formulation is undoubtedly vague, it was noted by several delegations and organizations during the 4th session of the OEIGWG[463] that the structure or nature of a corporation is irrelevant to victims, and so they should be entitled to access to remedy regardless of the corporation committing the abuse.[464] It is true that the Zero Draft has been conceived on the basis of a victim-centred approach, but a precise definition which includes all corporations would be desirable in order to avoid any inconvenience deriving from the current vagueness[465].

A direct consequence of this vagueness is the extraterritorial scope of application the prospective Treaty. Article 9(1) imposes obligations on *States "(...) within such State Parties' territory or otherwise under their jurisdiction or control"*.[466] It is argued that the term control is used to specify what, for the scope of the Treaty, the term jurisdiction entails.[467] It is typical for human rights treaties to connote the term jurisdiction with a factual power that States exercise over territory or individuals.[468] With the explicit mention of the word "*control*" the Zero Draft clarifies that it is indeed this factual link between the State and the respective corporation that is decisive to determine jurisdiction.

At this point, the questions on how jurisdiction is to be interpreted and applied arise. The explicit mentioning of the term control with territory or otherwise jurisdiction suggests that the draft incorporates and confirms current practice, *i.e.*, that the term control must be interpreted restrictively[469]. This is also supported by the concerns expressed by States at the 3rd session of the

[460] Report on the Third Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business enterprises With Respect to Human Rights, UN Doc A/HRC/37/67, 24 January 2018, paragraph 52.
[461] Zero Draft, ibidem, Article 3(1).
[462] United Nations Human Rights Council, Elements for the Draft Legal Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, 2017, paragraph 4.
[463] Which took place in 2019, after the release of the Zero Draft.
[464] Report on the Fourth Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises With Respect to Human Rights, UN Doc A/HRC/40/48, 2 January 2019, para. 14.
[465] J. Bialek, ibidem, p. 515.
[466] Zero Draft, ibidem, article 9(1).
[467] J. Bialek, ibidem.
[468] M. Milanović, From Compromise to Principle: Clarifying the Concept of State Jurisdiction in Human Rights Treaties, Human Rights Law Review, 2008, p. 411.
[469] For further discussions, see Nicolás Carrillo-Santarelli, Some Observations and Opinions on the "Zero" Version of the Draft Treaty on Business and Human Rights (Part I), Opinio Juris, 2018.

OEIGWG[470] about the possibility of inappropriate and far-reaching extraterritorial application, as well as by the fundamental principle of State sovereignty under international law, on the basis of which States are prevented from exercising their extraterritorial jurisdiction when another State has the territorial one[471]. It is argued that, while this clause is to be read rather restrictively, the Zero Draft foresees mutual legal assistance and international cooperation, through which the protection gap would still be closed effectively. The last issue that arises from the scope of the Convention and which was already discussed during the third session of the OEIGWG is the *"all international human rights"*[472] clause. The Zero Draft is, in fact, set out to generally apply to all internationally accepted human rights, thus resulting so unclear that the ratione materiae cannot be unequivocally established. As stated in Art. 31(1) of the Vienna Convention on the Law of Treaties[473], a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose. Whenever the wording is unclear, one may turn to the object and purpose of a treaty in order to interpret a term[474], so with regards to the Zero Draft, labour and equality rights could be considered as the most affected ones and thus the rights that the Convention intends to protect.[475] Nevertheless, due to the vagueness of the scope, this conclusion is not mandatory especially considering the fact that the Zero Draft does not even refer to other International Instruments nor is any reference made to any restrictions imposed by customary international law or *ius cogens*, especially ensuring the right not to be subject to torture, cruel, inhumane, or degrading treatment, which could have surely helped circumscribing its application[476]. The lack of reference to any other international instruments represents a severe issue, making it harder to precisely interpret the document and, consequently, apply it. Moreover, States that have lacked to ratify International Human Rights Treaties or Conventions could easily circumvent the application of this binding document, due to Article 34 of the VCLT, for which obligations or rights for a third State cannot be created without its consent[477]. The express reference to other instruments would have made their respect compulsory for all the signatories, avoiding this problem.

For what concerns the obligations imposed by the Zero Draft, it leaves the primary responsibility for preventing and penalizing human rights infringements and for the protection of the victims on

[470] Report on the Third Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, para. 78.
[471] J. Bialek, ibidem, p. 517.
[472] Zero Draft, ibidem, Article 3(2).
[473] United Nations, Vienna Convention on the Law of Treaties, 1969.
[474] O. Dörr & K. Schmalenbach, Vienna Convention on the Law of Treaties, 2012, p. 546.
[475] J. Bialek, ibidem, p. 517.
[476] Ibidem.
[477] Vienna Conventionon the Law of Treaties, Ibidem, Article 34.

States[478]. This provision recalls what is stated in Article 2§1 of the UNGA 1998 Resolution 53/144[479], which attributes prime responsibility to States for what concerns the duty to protect, promote and implement all human rights and fundamental freedoms, adopting all necessary steps to create all conditions necessary in the social, economic, political and other fields[480]. To this end, all the measures to be adopted by States suggested in the Elements (analyzed above), are recalled in the Zero Draft, including the obligation to ensure through national legislation that corporations observe human rights due diligence obligations. The State's duty to protect is supposed to apply wherever the State has factual power over an enterprise: on State territory, and in exceptional cases also extraterritorially for corporations that are under the State's effective control[481]. Therefore, the establishment of effective remedial mechanisms is essential to respect State's primary responsibility. Article 8 not only establishes that there must be remedial mechanisms to compensate and indemnify victims, but it also regulates procedural costs and the treatment of victims[482]. It follows from the systematic connection and interpretation[483] to Article 5(1), as well as Article 10 and 11, that both the home and host States are obliged to provide appropriate remedies and to cooperate with other States to guarantee their implementation[484]. After having established the State's primary responsibility, the Zero Drafts employs the already internationally recognized approach of human rights due diligence, to bind TNCs[485]. Article 9(2) contains a concrete list of the content of the due diligence obligations, focusing not only on the common publicly and periodically reporting obligations, but imposing human rights impact assessments and measures to prevent human rights violations along their entire supply chain[486]. While obligations of due diligence normally represent obligations of conduct, the innovative character of the Zero Draft can be found in the setting of the requirements and threshold remarkably high, in that the obligations de facto represent obligations of result[487]. This is not only atypical in international law, but it couldn't neither be found in any national legislation.[488]

The last articles of the Zero Draft are dedicated to establishing the legal liability of corporations and to the international cooperation between States. Article 10 provides for both civil and criminal

[478] Zero Draft, ibidem, Articles 9(1) and 10.
[479] UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Resolution 53/144, 1998.
[480] Ibidem.
[481] J. Bialek, ibidem.
[482] Zero Draft, ibidem, Article 8.
[483] Vienna Convention on the Law of Treaties, Ibidem, Article 31§1.
[484] Zero Draft, ibidem, Articles 5, 10 and 11.
[485] UN Guiding Principles, Principle 15, recalled in R. McCorquodale, L. Smit, Human Rights, Responsibilities and Due Diligence, Key Issues for a Treaty, Deva & Bilchitz, 2017, p. 216.
[486] Zero Draft, ibidem, Article 9(2).
[487] J. G. Ruggie, D. Cassel. Comments on the Zero Draft, Business and Human Rights Resource Centre, 2018.
[488] J. Bialek, ibidem, p. 522.

liability for companies as a consequence of the breaching of due diligence obligations[489],. Unfortunately, the imprecise definition of transnational corporations is particularly problematic in establishing especially criminal liability, as the criminal law principle of certainty also applies in international law.[490] If the Treaty does not specifically define which transnational activities are covered nor which corporations are addressed, the Treaty does not appropriately reflect the principle of certainty.[491] Therefore, a more precise definition would be helpful also to solve this other issue.

In conclusion, the overall structure of the Zero Draft is convincing at first glance, focusing on the victims, and providing detailed remedial mechanisms as well as legal assistance and international cooperation. Nonetheless, the regulation in its present form is too vague to effectively address and eliminate human rights infringements by private actors. Moreover, the Zero Draft presents several lacks, for instance the role of States in economic action and their legal responsibility is completely ignored[492].

In addition, especially on the basis of the discussions held at the third session of the OEIGWG[493], it is obvious that local companies do not fall within the scope of application, even though they may affect human rights in the same manner. The criterion of locality does not exclude these companies from also carrying out (some) transnational activities and the current vague wording of the Convention's scope opens the door to abuse and circumvention, that would be easily avoided with the inclusion of national companies in the Treaty's scope of application[494]. Moreover, the Zero Draft approach to the protection of "*all international human rights*" can be effective, as it ensures a comprehensive protection to victims[495], yet the current wording, without any kind of restriction and emphasis on labour and equality rights that are especially affected, harbours a certain risk of abuse and could perpetuate legal uncertainty.

With the aim of solving these issues, the OEIGWG revised the Zero Draft multiple times. The first revised treaty[496] was released in July 2019, and it makes crucial choices that may constitute a turning point in the process of creating a legally binding instrument on business and human rights.[497] One of

[489] Zero Draft, ibidem, Article 10. The basis for this provision can be found in the Elements, specifically in Section 5, as it was analyzed in Chapter II.3.1.
[490] J. Bialek, ibidem, p. 523.
[491] Report on the Third Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, supra note 54, para. 56.
[492] J. Bialek, ibidem, p. 526.
[493] Report on the Third Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, para. 27
[494] J. Bialek, ibidem.
[495]UN Human Rights Council, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, UN Doc A/HRC/8/5, 7 April 2008, paragraph 2008.
[496] UN Human Rights Council, OEIGWG Chairmanship Revised Draft, 2019.
[497] C. Lopez, Legal Liability for business and human rights abuses under the revised draft of a treaty on business and human rights, Business and Human Rights Resource Centre, 2019.

the main significant changes were made in the definition of the scope of the proposed treaty, which has been expanded to encompass all business enterprises, even though it still focus on transnational activities[498]. In this way, the doubts arose after the release of the Zero Draft concerning its applicability to national companies are clarified, even if Article 3 underlines that the Treaty applies to all business activities, "except as stated otherwise"[499]. In this way, chosen clauses can be applicable only to specific types of companies.

Other important changings concern the legal liability of business enterprises and extraterritorial jurisdiction. Related to the first point, Article 6 reflects the progresses made both in international and in national law, concerning the criminal, civil and administrative liability of legal persons. As a matter of fact, before the enacting of this Draft several States including Argentina lacked national legislations for legal persons' criminal liability[500], while now and especially after the second revision of the treaty that will be soon discussed, State Parties shall provide national measures to ensure these types of liability[501]. Moreover, the same article provides for a list of criminal offences for which the liability of legal persons should arise. The inclusion of this list represents an important step forward, because it is the first time that the OEIGWG tries to determine which are some of the relevant human rights violations that would call for the application of the treaty. Last novelties of this first revision concern the addition of two new articles, concerning the implementation[502] of the Treaty and the settlements of the disputes arising from it[503].

One year later, the Second Revised Treaty[504] was released, making new fundamental changes in the scope, in the due diligence and prevention, in the liability and in the jurisdiction subject-matters. Firstly, Article 3 enlarges the scope of the binding treaty even more, confirming that domestic business activity is covered by the Draft Treaty and referring to *"business relationship"* instead of *"contractual relationship"*, a term formerly used in the Revised Draft which was perceived as a limitation to the multiple ways in which companies relate to one-another[505]. As a result, the scope is finally defined with more precision, despite being even broader than the one indicated in the Zero Draft, including also national companies and especially being applicable to all the possible business relationship that a company can handle. Then, the Second Revised Draft emphasises the obligations

[498] UN Human Rights Council, OEIGWG Chairmanship Revised Draft, 2019, Article 3.
[499] Ibidem, Article 3(1).
[500] C. Coslin, M. Renard, Analysis: Major changes introduced by the Second Revised Draft, Busines and Human Rights Resource Centre, 2020.
[501] UN Human Rights Council, OEIGWG Chairmanship Revised Draft, 2019, Article 6(7).
[502] Ibidem, Article 15.
[503] Ibidem, Article 16.
[504] United Nations Human Rights Council, OEIGWG Chairmanship Secon Revised Treaty, 2020.
[505] C. Coslin, M. Renard, Ongoing discussions at UN level on a draft international treaty binding businesses on Human Rights related due diligence and obligations: Major changes introduced by the Second Revised Draft, Business and Human Rights Resource Centre, 2020.

of business enterprises to prevent human rights abuses throughout their operations, requiring companies to undertake human rights due diligence to prevent, identify and assess any actual or potential human rights abuses that may arise for their own *"business activities or from their business relationships"*[506]. Therefore, the formulation of the new Article 6 determines new duties for business entities, with the consequence of enlarging their possible liability if violating them. Changings are, in fact, also been brought to the Legal Liability provision. New Article 8 clarifies the system of purported legal liability for legal entities and individuals carrying out business activities that might lead to human rights abuses[507]. Both home and host States shall ensure that their domestic law provides for criminal or a functionally equivalent liability where legal entities or individuals carrying out business activities have caused or contributed to human rights abuses. This is a major change, because in this way both home and host States are obliged to take all necessary measures to ensure legal persons' liability, not leaving any State excluded.

Lastly, the Second Revised Draft brings also changes regarding the allocation of jurisdiction when it comes to human rights abuses in the context of business activities. Business enterprises, on the basis of the new Article 9, can be sued not only where the abuse occurred or where the legal person is domiciled, but also where *"an act or omission contributing to the human rights abuses occurred"* providing a logical connection between the forum and the abuse. Most importantly, courts cannot use the doctrine of forum non conveniens to decline jurisdiction to rule over a claim brought on the grounds of Articles 9(1)[508], 9(4)[509] and 9(5)[510].

Especially the Second Revised Treaty offers hope[511] for the enacting of the UN binding treaty on business and human rights. It represents a clear improvement over the previous versions of the Draft, addressing more precisely several topics that had created issues during the previous sessions of the OEIGWG[512]. Despite these steps forward, the path for the adoption of an international legally binding treaty still long: the debate between States has not reached a global agreement yet, but for sure the realisation of this Second Revised Draft allowed for serious and good faith negotiations in the following sessions of the Working Group.[513]

---

[506] United Nations Human Rights Council, OEIGWG Chairmanship Second Revised Treaty, 2020, Article 6 (1).
[507] Ibidem, Article 8.
[508] Claims arising from acts or omissions that results or may result in human rights abuses.
[509] Claims against legal or natural persons not domiciled in the territory of the forum State, if the claim is closely connected with a claim against a legal or natural person domiciled in the territory of the forum State.
[510] Claims against legal or natural persons not domiciled in the territory of the forum State if no other effective forum guaranteeing a fair trial is available and there is a sufficiently close connection to the State Party concerned.
[511] Cfr, A. Sprenger, Senior Expert Environmental Justice at IUCN Netherlands.
[512] A. Sprenger, Commentary: Second Revised Draft offers hope for a UN binding treaty on business and human rights, Business and Human Rights Resource Centre, 2020.
[513] Ibidem.

II.3.3 The Third revised Draft Treaty of 2022 on Business and Human Rights

The most recent version of the Draft Treaty has been released in August 2021[514]. With the Third Revised Treaty few fundamental changings were made with respect to the previous version, but it is worth to analyse them before making some considerations. Firstly, the definition of "business activities" has been broaden more, encompassing any activity "undertaken by a natural or legal person, including State-owned enterprises, financial institutions and investment funds, transnational corporations, other business enterprises, joint ventures, and any other business relationship (...)".[515] As a consequence, the scope of the Treaty is becoming very broad, but at the same time it is more clearly defined than it was in the Zero Draft. Alongside this wide scope, the Third Revised Draft maintains an element of flexibility that was already present in the previous version, stating that *"States Parties may establish in their law a non-discriminatory basis to differentiate how business enterprises discharge these obligations commensurate with their size, sector, operational context or the severity of impacts on human rights"*.[516] While human rights due diligence is by its nature a flexible and adaptable principle, it is interesting to note that the UNGPs clearly state that the 'severity' of human rights risks must be the primary factor shaping the due diligence responsibilities of a business, while Article 3(2) of the Draft seems to put it on equal footing with other factors (size, sector, operational context), making everything that concerns the company relevant[517].

Also the definition of "human rights" had an important development: even though the Treaty still lack a list of relevant human rights for its purpose, Article 3(3) makes reference to international law instruments in which human rights and fundamental freedoms are recognized, including the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, all core international human rights treaties and fundamental ILO Conventions to which a State is a Party, and customary international law[518]. The aim of this addition was to appease sovereignty concerns of States who had not ratified certain international instruments concerning human rights[519]. As it has been previous analyzed, the ILO Declaration on Fundamental Principles and Rights at Work binds all ILO members and does not depend on ratification. For this reason, the express reference made by the Third Revised Treaty represents a very important development from the Second version, due to the fact that ILO counts 187 Member States, which are thus all bind to respect the rights and principles set out by the 1998 ILO Declaration[520]. Moreover, another novelty concerning the

[514] United Nations Human Rights Council, Third Revised Treaty, August 2021.
[515] Ibidem, Article 1(3).
[516] Ibidem, Article 3(2).
[517] C. Macchi, Business, Human Rights and the Environment: the evolving agenda, Springer, 2022.
[518] United Nations, Human Rights Council, Third Revised Treaty, 2021, Article 3(3).
[519] D. Cassel, Progress in the Newest UN Draft Treaty on Business and Human Rights, Business and Human Rights Resource Centre, 2020.
[520] C. Macchi, ibidem, p. 144.

definition of "human rights" is the inclusion of the right to a safe, clean, healthy and sustainable environment[521], which also reflects an increasing, albeit not uncontested, recognition of this right at the international level.[522]

Also the provision dedicated to the due diligence was modified by the Third Revised Treaty, establishing the duty of States Parties to *"regulate effectively the activities of all business enterprises within their territory, jurisdiction, or otherwise under their control"*, in particular requiring business enterprises *"to undertake human rights due diligence, proportionate to their size, risk of human rights abuse or the nature and context of their business activities and relationships"*.[523] The States' duty to regulate established by this Article is wider in this Draft than in the previous ones, which confined it to business enterprises domiciled within their territory or jurisdiction.[524] The fundamental elements of the due diligence process, listed in Article 6(3), closely reflect the UNGPs' definition, and are better detailed than in the previous draft. Moreover, express reference to "adequate penalties" is made for failure to comply with the stated human rights due diligence requirements[525]. Therefore, this version of the Draft gives even more relevance to due diligence requirements, being more specific than its previous versions and imposing more obligations over the States.

Another very strongly discussed point, which is closely connected to human rights due diligence, is the legal persons' liability. As part of the requirement that states parties *"ensure that their domestic law provides for a comprehensive and adequate system of legal liability"*,[526] the new draft establishes that domestic law shall provide for the liability of businesses both for abuses that may arise from their own business activities[527], and from other several behaviours that a company can conduct, including *"their failure to prevent another legal or natural person with whom they have had a business relationship(...)"* or *"(...) in their business relationships, but failed to take adequate measures to prevent the abuse"*.[528] Therefore, liability strictly depends on the due diligence measures adopted by the company: a Court can decide to evaluate them as a possible defence, but obviously due diligence do not automatically exempt the legal person from its liability.[529] Moreover, this approach is in line

[521] United Nations, Human Rights Council, Third Revised Treaty, 2021, Article 1(2).
[522] Also the HRC recently enacted a recent landmark resolution recognizing a universal human right to a safe, clean, healthy and sustainable environment: Human Rights Council, The human right to a safe, clean, healthy and sustainable environment. UN Doc. A/HRC/48/L.23/Rev.1, 2021
[523] United Nations Human Rights Council, Third Revised Treaty, 2021, Article 6(1) and 6(3).
[524] United Nations Human Rights Council, Second Revised Treaty, 2020, Article 6.
[525] United Nations Human Rights Council, Third Revised Treaty, 2021, Article 6(7).
[526] Ibidem, Article 8(1).
[527] Ibidem.
[528] Ibidem, Article 8(6).
[529] Ibidem, Article 8(7).

with the one adopted by the European Parliament in its proposal for an EU Directive on mandatory due diligence[530], that will be discussed in the next chapter of this work.

For what concerns access to remedy, this Draft mandates States Parties to provide their courts with the necessary competence to enable victims to access effective remedy and justice, with particular emphasis on overcoming the barriers that vulnerable and marginalized groups might face[531]. In addition, the draft requires (while the Second Revised Draft only allowed) States to "enact or amend laws allowing judges to reverse the burden of proof in appropriate cases to fulfil the victims' right to access to remedy"[532], with due regard to rule of law requirements (like the presumption of innocence principle). Therefore, this last version of the Draft provides even more protection to the victim from the judicial point of view, even if contrary to the requests of some civil society actors, this provision is not coupled with a duty to establish rebuttable presumptions, such as, for instance, the presumption of "effective control by the parent company when it has direct or indirect ownership or controlling interest over the entities part of a group".[533] This presumption could allow the victim to directly sue the parent company, which is economically stronger than its subsidiaries and would thus ensure a better compensation.

Undoubtedly, the Third Revised Treaty constitutes a relevant progress in the adoption of a binding Treaty, especially compared to the Zero version. As it can be deduced from the analysis above, the current direction of the negotiations with regards to the various drafts of the treaty is to incorporate elements of the UNGPs, to have more coherence between these two fundamental instruments concerning business and human rights. Furthermore, referring to the definition of due diligence provided in the UNGPs, there will be greater clarity and coherence between due diligence and when and how legal regimes should hold corporations liable for wrongful conduct, including grounds for reparations and sanctions.[534]

Despite the many improvements, this Draft still have some issues that continue to make stakeholder discuss. For instance, reparation is still the missing part of the draft's remedy puzzle. The current bifurcation between prevention ex ante and reparations/sanctions ex post doesn't allow for now for taking preventative action ex post, including injunctions/decrees for specific performance, guarantees of non-repetition, and amendments of policies, practices, and/or governance.[535] For this reason States,

[530] D. Augenstein, C. Macchi, The Role of Human Rights and Environmental Due Diligence Legislation in Protecting Women Migrant Workers in Global Food Supply Chains, Oxfam Germany, 2021.
[531] United Nations Human Rights Council, Third Revised Treaty, 2021, Article 7(1).
[532] Ibidem, Article 7(5).
[533] M. Zorob, Victims' Rights under the Second Revised Draft Treaty on Business & Human Rights, Business and Human Rights Resource Centre, 2020.
[534] B. Grama, A. Duval, A. van Baar, L. Roorda, Third Revised Draft Treaty on Business and Human Rights: Comments and Recommendations, Asser Institute, 2021, p. 5.
[535] Ibidem, p. 6.

NGOs, International Organizations and the Chairperson-Rapporteur continued to make proposals for amendments during the seventh and the eighth sessions of the OEIGWG. After the last session, the Chairperson-Rapporteur published on the OEIGWG website a version of the Third Revised Treaty with the changings proposed by States and stakeholders, but for now this still only an unofficial paper[536]. Unfortunately, the last session of the EOIGWG that took place in October 2022 didn't result in the adoption of the binding Treaty. Disagreements still too strong, especially concerning the legal persons' liability subject matter. Moreover, the absence of the EU and UK delegations to the session represented a great slowdown in negotiations[537]. In order to achieve real progress, a time and work schedule with an increased frequency of thematically focused meetings between the annual sessions would be necessary[538]. The countries should also set themselves a common goal with regard to the time horizon. After more than 8 years of negotiations, criticism related to the Treaty still exist. For instance, there's the fear that the treaty would be of little practical significance given its overly general character, and it could be used by states to obscure their incapacity to uphold human rights by pointing the finger at transnational companies[539]. Actually, many of the countries that have actively promoted the treaty have very poor human rights and labour rights records, which raises serious questions about their commitment to the cause of human rights. The EU has also expressed concerns that a new treaty will not be of much help to victims of human rights violations caused by the incapacity or unwillingness of certain states to uphold their existing human rights obligations[540]. Despite criticism, it is hoped that sooner or later hard law related to business and human rights will be adopted, finally ending the impunity that now is often ensured to TNCs.

II.4 UNGA 2030 Agenda and the SDGs: leveraging CSR to achieve a more sustainable development

The UN Sustainable Development Goals (SDGs), also known as the Global Goals, were adopted by the United Nations in the 2030 Agenda for Sustainable Development[541] framework in 2015 as a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity[542]. This blueprint for peace and prosperity is constituted by 17 Goals which

[536] United Nations Human Rights Council, Suggested Chair proposals for select articles of the legally binding instrument with the concrete textual proposals submitted by States during the eighth session, October 2022.
[537] CIDSE, Business and human rights treaty: Clean up the mess, Business and Human Rights Resource Centre, 2022.
[538] K. Seitz, No more sideshow: Report on the eighth session of the UN open-ended intergovernmental working group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights, Global Policy Forum, 2022.
[539] European Parliament, Towards a binding international treaty on business and human rights, 2018.
[540] Ibidem.
[541] United Nations General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, Resolution 70/1 of 2015.
[542] SDGs Definition of the United Nations Development Program.

recognize that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth, all while tackling climate change and working to preserve our oceans and forests.[543] While previous UN declarations on sustainable development focused only on governments' implementation, the SDGs are innovative in directly designating a fundamental role to businesses for their achievement. Several SDGs, in fact, relate directly to human rights of a socio-economic nature related to human well-being and the provision of public goods[544], including education, health services and water. In view of SDG 17's call on business to step up partnerships for sustainable development and assist governments in addressing SDGs 1-16 that technically address states[545], there is much overlap between the SDGs and the objectives of Corporate Social Responsibility.

Table 1.[546]

As it can be noted by the Table above, several SDGs have direct human rights relevance.[547] For example, SDG 2 ('zero hunger') relates to the human right to food (UDHR[548], art. 25), while SDG 5 ('gender equality') to the human right to non-discrimination in general (UDHR, art. 2) and in regard to equal pay for work (UDHR, art 23) or SDG 8 ('decent work and economic growth') to human right to work with just and favorable conditions of work and remuneration (UDHR, art 23). Moreover, effective, accountable and inclusive institutions at all levels (noted by SDG 16) are precondition for

[543] United Nations Department of Economic Growth and Social Affairs, Sustainable Development.
[544] J. Buhmann, J. Jonsson, M. Fisker, Do no harm and do more good too: connecting the SDGs with business and human rights and political CSR theory, Emerald Publishing Limited, 2019, p. 390.
[545] K. Buhmann, Future perspectives: doing good but avoiding SDG-washing: creating relevant societal value without causing harm, Copenhagen Business School Research, 2018.
[546] Table 1, United Nations Sustainable Development Goals 2015.
[547] E. Giuliani, G.D. Santangelo, F. Wettstein, Human rights and international business research: reflections on emerging market multinationals, Management and Organization Review, 2016, p. 631-637
[548] United Nations General Assembly, Universal Declaration of Human Rights, 1948.

effective and non-discriminatory access to and provision of many human rights[549]. The interconnectedness of human rights and the SDGs accentuates the usefulness of applying corporate social responsibility and due diligence processes in achieving them. Corporate contributions would significantly help, considering that MNCs have resources, manpower, and technology necessary to SDGs pursuing[550]. In order to fulfil their social responsibilities, it is necessary that corporations become more transparent about their activities[551] and align them to a continuously changing world. The SDGs' perspective is, in fact, far broader and more forward-looking than individual corporations' one and since it contains an internationally considered and accepted set of objectives, it starts where mutual interests meet.[552] Hence, the Sustainable Development Goals' framework is a really reputable, comprehensive and practical one for the development of CSR and vice versa. At the current state of law, CSR and SDGs are being implemented separately in the business world, but it should be aimed at integrating and promoting these Goals in corporations' business models[553]. Especially considering the fact that some SDGs and their indicators address CSR explicitly, there is no point in not directly including the Global Goals in CSR measures. For instance, SDG 12 addresses responsible consumption and production, thus being directly connected to companies' activities[554]. Moreover, indicator 12.6 strives to encourage companies to adopt sustainable practices and to integrate sustainability information into their reporting cycle[555] or indicator 12.6.1 uses the number of companies publishing sustainability reports as a performance measure[556]. This very few examples are already the demonstration of how the SDGs provide an acceptable and integrated framework for corporations to scale up their sustainable business performance.[557] The SDGs have shifted CSR from being reactive and company-focused to a framework that can help firms influence sustainable development positively[558]. Consequently, they rather complement reporting guidelines in order to ensure the necessary transparency to achieve these goals, such as the widely used Global Reporting Initiative (GRI)[559]. The GRI is even more relevant in the SDGs framework, because it published a

[549] J. Buhmann, J. Jonsson, M. Fisker, ibidem.
[550] N.F. Shayan, N. Mohabbati-Kalejahi, S. Alavi, M.A. Zahed, Sustainable Development Goals (SDGs) as a Framework for Corporate Social Responsibility (CSR), Sustainability, 2022, p. 10.
[551] S. Silva, Corporate contributions to the Sustainable Development Goals: An empirical analysis informed by legitimacy theory, Journal of Cleaner Production, 2021, p. 292.
[552] N..F. Shayan, N. Mohabbati-Kalejahi, S. Alavi, M.A. Zahed, ibidem.
[553] Ibidem.
[554] United Nations General Assembly, Resolution 70/1, Goal 12.
[555] Ibidem, Goal 12, Indicator 6.
[556] Ibidem, Goal 12, Indicator 6.1.
[557] A. ElAlfy, K.M. Darwish, O. Weber, Corporations and sustainable development goals communication on social media: Corporate social responsibility or just another buzzword?, Sustainable Development, 2020, p. 3.
[558] A. ElAlfy, O. Weber, Corporate sustainability reporting - The case of the banking industry, Centre for International Governance Innovation, 2019, p. 32.
[559] Global Reporting Initiative Standards, 1997.

guideline about how to integrate them into companies' reports[560]. Therefore, while the GRI represents the guideline about how to structure CSR reporting, the SDGs shall address the content of CSR activities and reporting.[561] In this way, not only reports would be coherent and easily confrontable between each other, but it would also be easy to assess the active and specific improvements brought by a company to the achievement of one or more SDG. In conclusion, companies represent fundamental actors in the fulfilment of the 2030 Agenda; thus, they shall include SDGs' implementation when adopting their CSR measures as to actively contribute to the achievement of a more sustainable development.

II.5 International tribunals' approaches to legal persons' liability

Multinational Corporations' legal liability for serious human rights violations is strictly connected to international criminal law. While several national systems have already included[562], together with the criminal liability of the company's senior personnel, the accountability of the company itself as being a legal person, it still debated what should be their role before international tribunals. Under certain circumstances, a corporation can be indirectly held criminally liable for the illegal acts of its directors, employees or other individuals acting on its behalf[563]. Efforts to hold corporations accountable under criminal law for illegal acts that result in human rights harm have gained traction since the United Nations Guiding Principles on Business and Human Rights. The UNGPs, as it has been analysed, require States to regulate rights respecting business behaviour not only in civil and administrative law, but also through *"criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs."*[564] Moreover, illegal acts may be criminalised in international humanitarian law, anti-trafficking legislation, environmental laws, consumer safety legislation or workplace safety laws, among others.

Despite these several possibilities, there are many barriers to corporate criminal liability, including evidentiary burdens, being the standards of proof much higher than in civil law, and jurisdictional limitations, due to the fact that some jurisdictions still only allow for the criminal liability of individuals, not corporations, and or do not allow prosecutions for extraterritorial harm[565]. As a result, criminal law prosecutions for corporate human rights abuses remain few and far between, especially at the international level. Following recent calls for international tribunals to investigate corporate

[560] Global Reporting Initiative, Integrating the SDGs into Corporate Reporting: A Practical Guide, Global Reporting Initiative and UN Global Compact, 2018.
[561] A. ElAlfy, K.M. Darwish, O. Weber, ibidem, p. 3.
[562] Including Italy, France, The Netherlands, or for common law the US and the UK.
[563] Corporate Legal Accountability, Business and Human Rights Resource Centre.
[564] United Nations Guiding Principles on Business and Human Rights, 2011, Commentary to Principle 2.
[565]Corporate Legal Accountability, ibidem.

involvement in environmental and human rights violations, the ICC's Office of the Prosecutor published a Policy Paper, outlining its intention to prioritize these cases[566]. The International Criminal Court (ICC), at the current state of international law, has no jurisdiction to prosecute companies. Nonetheless, it can investigate individual company's executives and take them accountable for the company's violations[567]. This approach was firstly adopted by the International Military Tribunals of Nuremberg[568] and Tokyo[569]. Also these tribunals' jurisdiction was limited to natural persons, but on the basis of Article 9 of the Charter the Courts had the possibility to declare *"that the group or organization of which an individual was a member was a criminal organization"*[570]. And, as a consequence, Article 10 provides that *"in cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individual to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned".*[571] Therefore, all the members of the criminal group, after that the Tribunal declared it as such, would have been considered prosecutable before National Courts. This is what happened in the famous case I.G. Farben, in which the Nuremberg Tribunal declared that the company was of a criminal nature as it was involved in the commission of war crimes such as deportations, exploitation of forced labour, torture, murder, looting and plundering of the territories occupied by the Nazi forces, and in the production and supply of lethal gases used for purposes of extermination[572]. The International Military Tribunals' precedents[573] have led some authors to state that these cases have indicated the parameters for the inclusion of economic actors in the commission of international crimes either directly or supporting state actors in violating international law.[574] Despite this hope, when the 1990s ad hoc International Criminal Tribunals were instituted, their jurisdiction still limited to natural persons[575]. Following the starting of the conflicts in Ruanda and ex-Yugoslavia, and later in Lebanon and Sierra Leone, the United Nations established International Tribunals with the aim of restrain serious violations of human rights in these territories. But unfortunately, once again, the

[566] ICC Office of the Prosecutor, Policy Paper on Case Selection and Prioritisation, 2016.
[567] Article 25(1) of the Rome Statute restricts the personal jurisdiction of the ICC to natural persons. However, it does not prevent investigation and prosecution of industrialists for their role in directly or accessorily participating, as per Article 25(3), in crimes under ICC jurisdiction.
[568] Agreement for the Prosecution and Punishment of Major War Criminal of the European Axis and Charter of the International Military Tribunal, adopted in London in 1945.
[569] Charter of the International Military Tribunal for the Far East, adopted in Tokyo in 1946.
[570] Charter of the International Military Tribunal, 1945, Article 9.
[571] Ibidem, Article 10.
[572] INTERNATIONAL MILITARY TRIBUNAL, Case No. 57, I.G. Farben Trial, 14 August 1947- 29 July 1948, in Law Reports of the Trials of War Criminals, vol. X, p. 1 ss.
[573] Other relevant Nuremberg cases are Flick (Case 48 in the Law Reports), case Krupp (case 58 in the Law Reports).
[574] W.Kaleck, M. Saage-Maaß, Corporate Accountability for Human Rights Violations Amounting to International Crimes. The Status Quo and its Challenges, Journal of International Criminal Justice, 2010, p. 702.
[575] Report of the Secretary General on the adoption of the Statute of the ICTY, 1994, S/1993/25704.

chance of enlarging international tribunals' jurisdiction was lost, despite the fundamental role that companies have had in these conflicts, in particular in the Rwandan Genocide. One important attempt of including legal persons in an international tribunal jurisdiction was made in the negotiations of the Rome Statute[576]. Article 23 of the Statute provided that *"without prejudice to any individual criminal responsibility of natural persons under this Statute, the Court may also have jurisdiction over a juridical person for a crime under this Statute"*[577]. According to this proposal, if an individual had been tried and found guilty and if that individual also occupied a relevant position in the chain of control of a company, there would have been the legal basis for holding the entity liable as well.[578] This proposal was never approved due to the oppositions made by several delegations: they thought the inclusion of legal persons' accountability to be premature, considering that their jurisdictions lacked legislation on criminal liability of legal persons, thereby having a barrier to prosecute them domestically as per the complementarity principle[579]. For this reason, Article 25 was then adopted with the formulation analyzed above, providing only for natural persons' jurisdiction. Today, the international community might be more prepared to address this proposal, considering the fact that several national systems can now provide for criminal liability of corporations under domestic law, so it is time to reconsider corporate accountability, at least at the ICC.[580]

A key example of overcoming the accountability gap for crimes committed by corporations can be found in the decision of the Appeals Chamber in the 2014 case of Prosecutor v. Al Khayat[581] (the *Al-Jadeed* case) before the Special Tribunal for Lebanon (STL). This decision marks the first time a criminal tribunal with an international character held a corporation criminally liable for the crime of contempt of court[582]. For this reason, this case is promising when it comes to setting a precedent that broadens the scope of the meaning of 'person' in the context of corporate liability[583]. Specifically, in this case both a company and an individual were charged with contempt and obstruction of justice before the STL. In what has now been recognized as a symbolic decision, the Appeals Chamber confirmed that corporations can indeed be held liable for contempt charges under the STL, reversing

[576] Statute of the International Criminal Court, signed in Rome in 1998.
[577] Ibidem, Article 23(5).
[578] Ibidem.
[579] D. Scheffer, C. Kaeb, The Five Levels of CSR Compliance: The Resiliency of Corporate Liability under the Alien Tort Statute and the Case for a Counterattack Strategy in Compliance Theory, Berkeley Journal of International Law, 2011, p. 334.
[580] J.P. Calderon Meza, ICC Personal Jurisdiction on Corporations for Criminal Liability and/or Civil Liability for Reparations, Harvard International Law Journal, 2021.
[581] Al Jadeed S.A.L. and Ms Khayat, Special Tribunal for Lebanon, N. STL-14-05, 2014.
[582] C. Stahn, Liberals vs Romantics: Challenges of an Emerging Corporate International Criminal Law, Journal of International Law, 2018, p. 98.
[583] J.E. Bordeleau-Cass, The 'Accountability Gap': Holding Corporations Liable for International Crimes, Global Justice Journal, 2019.

the Contempt Judge's decision[584] for which the STL did not have jurisdiction over legal persons. Before adopting this decision, the Appeals Chamber conducted a thorough review of relevant law, taking into consideration especially international trends in corporate liability.[585] The Al Jadeed case decision is significant, because it sets an important precedent for international criminal law which goes beyond the narrow mandate of the STL.[586]

Recently, in December 2019 a group of six NGOs[587] filed an article 15 communication[588] to the ICC Prosecutor concerning the liability of European Companies for aiding and abetting the commission of war crimes by the Saudi-UAE coalition in Yemen. The 350 pages communication aimed at exposing how the international arms trade can fuel armed conflict and the commission of international crimes, especially when arms companies deal with parties known to commit serious violations of international humanitarian law with the transferred arms[589]. Given the nature of Article 15 communications, it remains to be seen whether the ICC's Office of the Prosecutor (OTP) will proceed with a preliminary examination. According to the 2020 Report on Preliminary Examination Activities[590], the OTP would have provided a response to the NGOs the following year, but for now any statement hasn't been released on the situation. Considering that the nationality of companies mentioned in the communication include some of the court's strongest European supporters[591] there are certainly political interests at play. But this could be an opportunity to finally overcome the limits concerning legal persons' liability in the ICC jurisdiction.

In conclusion, without the ability to prosecute corporations as collective entities, there is an evident accountability gap within the legal framework of international criminal law. By prosecuting only corporate officers and employees as individuals, the law fails to account for the collective dynamics, culture, and structure of a corporation that often enables it to commit crimes that officers and employees would otherwise be incapable of committing individually[592]. Furthermore, it is often difficult to pinpoint the specific contributions of each individual within the larger enterprises. Although domestic courts have taken steps to hold legal persons accountable for their contributions

[584] On 24 July 2014, the Contempt Judge found that the Tribunal lacked jurisdiction over legal. An Appeals Panel overturned this decision by a two-to-one majority on 2 October 2014, finding that the case could proceed against Al Jadeed.

[585] Al Jadeed S.A.L. Ms Khayat, Special Tribunal for Lebanon, N. STL-14-05, 2014, paragraphs 68-71.

[586] J.E. Bordeleau-Cass, ibidem.

[587] European Centre for Constitutional and Human Rights, Mwatana for Human Rights, Amnesty International, the Campaign Against Arms Trade, Centre Delas and Rete Disarmo.

[588] On the basis of Art 15 of the Statute of the ICC, a communication to the International Criminal Court provides prosecutors at the court with information on alleged or potential crimes.

[589] V. Riello, L. Furtwengler, Corporate Criminal Liability for International Crimes: France and Sweden Are Poised To Take Historic Steps Forward, Just Security, 2021.

[590] ICC Office of the Prosecutor, Report on Preliminary Examination Activities 2020, 2020.

[591] Including Germany, Spain, Italy and France, and also UK.

[592] J. DelGrande, Corporate Accountability: Prosecuting Corporations for the Commission of International Crimes of Atrocity, Journal of International Law and Politics, 2021.

in the commission of crimes, without further legal reform, international criminal tribunals remain constrained from prosecuting corporations[593]. In the absence of an international legal authority for corporate criminal liability, national governments lack the impetus to enact legislation that imposes criminal liability upon their corporate entities for acts they have committed outside of their borders[594]. As multinational corporations grow more powerful, States Parties to the ICC shall take the opportunity to enact change at the international level to empower both international criminal tribunals and national governments to hold corporations criminally liable for their complicity in crimes of atrocity.

[593] Ibidem.
[594] Ibidem.

CHAPTER III
REGIONAL APPROACH TO CORPORATE SOCIAL RESPONSIBILITY

According to Campbell, CSR may have different meanings in different places, to different people and at different times.[595] As a result, the interpretation of the CSR concept and its practice differs according to the context and the values systems in which the corporation operates[596]. This raises an interesting question of how CSR is conceptualized and implemented differently across countries and regions. This chapter aims at analyzing the most relevant CSR initiatives adopted in two different regional contexts: the one set out by the Organization for Economic Cooperation and Development (OECD) and the one of the European Union (EU). Specifically, the instrument of the OECD Guidelines[597] for Multinational Enterprises will be examined, starting from their original 1976 version and considering which amendments have been made in 2011. The analysis will then proceed with several instruments adopted at the European level, starting with the Green Paper[598], presented by the European Commission in 2001 with the aim of promoting a European framework for CSR. The examination will continue considering the most relevant aspects of the renewed EU strategy[599] adopted in 2011, which tried to put together all the modern understandings concerning the concept of CSR, from its definition to how to reach a better alignment between European and global approaches. Subsequently, the focus will be brought on the Action Plan on Human Rights and Democracy[600], adopted by the European Union for the period between 2015 and 2019, which aimed at reinforcing the implementation of the EU's human rights policy in all activities, including the one of MNCs. This analysis will be concluded with the most recent directive proposed by the EU Commission, entered into force in January 2023: the Corporate Sustainability Reporting Directive[601]. The Directive amended the existing reporting requirements set by its predecessor, *i.e.* the Non-Financial Reporting Directive[602], extending its scope to more companies and introducing more detailed reporting requirements.

---

[595] J.L. Campbell, Why would corporate behave in socially responsible ways? An institutional theory of corporate social responsibility, Academy of Management Review, 2007, p. 946–967.
[596] D. Jamali, A stakeholder approach to corporate social responsibility: a fresh perspective into theory and practice, Journal of Business Ethics, 2008, p. 213–231.
[597] Organization for Economic Cooperation and Development, OECD Guidelines for Multinational Enterprises, 1976.
[598] European Commission, Green Paper, Promoting a European Framework for Corporate Social Responsibility, Brussels, 2001.
[599] European Commission, A renewed EU strategy 2011-14 for Corporate Social Responsibility, Brussels, 2011.
[600] Publications Office of the European Union, Action Plan on Human Rights and Democracy, Luxembourg, 2015.
[601] European Parliament and Council, Corporate Sustainability Reporting Directive, Directive (EU) 2022/2464, 14 December 2022.
[602] European Parliament and Council, Non- financial reporting Directive, Directive 2013/34/EU, 2013.

The chapter will then continue with an in-depth investigation of the modern concept of corporate sustainability due diligence from a European point of view. Firstly, the 2016 Resolution on Corporate Liability for serious human rights abuses in third countries[603] will be analyzed, with which the European Parliament wanted to set a series of guidelines concerning the duty of corporations to respect human rights and the duty of States to ensure access to effective remedies to the victims. Lastly, the results of the Study[604] conducted by the European Commission in 2020 on due diligence throughout the supply chain will be discussed, considering also how it contributed to the formulation of the recent Proposal for a Corporate Sustainability Due Diligence Directive[605]. This chapter will then be concluded with the examination of regional tribunals' approaches to Multinational Corporations and their most relevant case law.

III.1 OECD Guidelines of 1976 on responsible business conduct and its last update of 2011

In 1976, while the United Nations were focused on negotiating a Code of Conduct on Transnational Corporations, the OECD adopted a Ministerial Declaration on International Investment and Multinational Enterprises[606]. It was the first multilateral instrument to include the principle of "national treatment" in the investment context: it grants to foreign-controlled enterprises a treatment which is "*consistent with international law and no less favorable than that accorded in like situations to domestic enterprises*."[607] In addition, adhering governments committed to provide an open and transparent environment for international investment and to encourage multinational enterprises to contribute positively to the economic and social progress.[608] Perhaps in an attempt to couple the principle of "national treatment" with a recognition of responsibilities on the part of multinational corporations[609], the Declaration annexed a set of "recommendations" that the OECD member states addressed to multinational enterprises: the 1976 Guidelines for Multinational Enterprises[610]. These recommendations lay out a set of 21 principles to assist governments, other public authorities and

[603] European Parliament, Resolution on Corporate Liability for serious human rights abuses in third countries, Brussels, 2016.
[604] British Institute of International and Comparative Law, Study on due diligence requirements through the supply chain final report, Directorate-General for Justice and Consumers (European Commission), Civic Consulting, LSE, 2020.
[605] Director-General for Justice and Consumers, Proposal for Corporate Sustainability Due Diligence Directive, 2022/0051(COD), 2022.
[606] Organization for Economic Co-Operation and Development, The OECD Declaration on International Investment and Multinational Enterprises: Promoting Responsible Government and Responsible Business, 1976.
[607] Ibidem, Article 2.
[608] Organization for Economic Cooperation and Development, OECD Declaration and Decisions on International Investment and Multinational Enterprises, available at https://www.oecd.org/daf/inv/mne/oecddeclarationanddecisions.htm.
[609] J.G. Ruggie, T. Nelson, Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges, Corporate Social Responsibility Initiative Working Paper No. 66, Harvard University, 2015.
[610] Organization for Economic Cooperation and Development, OECD Guidelines for Multinational Enterprises, 1976.

relevant stakeholders in their efforts to design and implement policies that enable and promote responsible business conduct[611]. Being divided in eight chapters, they cover in substantial detail major aspects of multinational enterprises activities including those relating to their general corporate policies, information disclosure, competition, financing, taxation, employment, technology and improper payments[612].

OECD member states are obligated to adopt national measures to promote the Guidelines, instead Multinationals are only encouraged to make a positive contribution to economic and social progress in their countries of operation and not harm the environment, due to the non-binding nature of the recommendations[613]. The most representative example are the National Contact Points, which will be analyzed below. Their establishment is compulsory for member states, but the mediation offered by them to MNCs is voluntary.

The Guidelines did not reference to any international standard in relation to human rights, apart from freedom of association and the right to bargain collectively, which are recognized in International Labor Organization conventions.[614] Despite this lack of reference to other internationally accepted standards, the OECD Guidelines include a broad provision on human rights obligations of corporations. In this regard, Guideline 2 stipulates in the chapter entitled "General Policies" that enterprises should *"respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments."*[615] It seems necessary to identify what does this concept mean in the general context of the Guidelines. First, interpretations of this provision may vary, even though the Commentary to the OECD Guidelines explains that enterprises are to act consistently with host states' existing international human rights obligations. Following this explanation, the second question arises: human rights coverage will vary depending on how many and which treaties a country has signed[616]. However, on the basis of the official commentary of the OECD Guidelines, it may appear that corporations are expected to adhere to widely accepted international human rights obligations. It stipulates that *"*[…] *MNEs are encouraged to respect human rights, not only in their dealings with employees, but also with respect to others affected by their activities, in a manner that is consistent with host governments' international obligations and commitments. The Universal Declaration of Human Rights and other human rights obligations of the*

[611] Organization for Economic Cooperation and Development, OECD Recommendation on the Role of Government in Promoting Responsible Business Conduct, available at https://mneguidelines.oecd.org/oecd-recommendation-on-the-role-of-government-in-promoting-rbc.htm.
[612] D.J. Plaine**,** The OECD Guidelines for Multinational Enterprises**,** The International Lawyer, 1977, p. 339.
[613] J.G. Ruggie, T. Nelson, Ibidem, p. 2.
[614] J. Murray, A New Phase in the Regulation of Multinational Enterprises: The Role of the OECD, Industrial Law Journal, 2001.
[615] OECD Guidelines, Ibidem, General Policies II, Guideline 2, 1976 version.
[616] J.L. Černič, Corporate Responsibility for Human Rights: A Critical Analysis of the OECD Guidelines for Multinational enterprises, Hanse Law Review, 2008, p. 80.

government concerned are of particular relevance in this regard. […]*"*[617] Despite the non-mandatory framework of the Guidelines, the commentary appears to recognize that corporations are obliged to comply with fundamental human rights principles and that they are also required to work with state governments towards the protection and promotion of human rights[618]. Even leading international business associations such as the International Chamber of Commerce (ICC), International Organization of Employers (IOE), and the Business and Industry Advisory Committee to the OECD, agree with the Commentary[619], supporting that all corporations are *"expected to obey the law, even if it is not enforced, and to respect the principles of relevant international instruments where national law is absent."*[620]

The OECD Guidelines have undergone several revisions over the past few decades: one in 2000 and the most recent one in 2011 which is particularly relevant for the aim of this dissertation. In fact, in 2011, it was added a chapter specifically dedicated to corporate responsibility to respect human rights, with the aim of making the Guidelines more consistent with the United Nations Guiding Principles on Business and Human Rights[621]. In 2010, the UN Special Representative on Human Rights and Transnational Corporations[622] had, in fact, suggested to dedicate a stand-alone chapter to human rights within the Guidelines. Therefore, new recommendations were added, specifically on human rights abuse and company responsibility for their supply chains, making this Guidelines the first inter-governmental agreement in this sector[623]. Firstly, the above mentioned second Guideline was modified as to request to MNCs to *''Respect the internationally recognized human rights of those affected by their activities.''*[624] With this change, the 2011 version has reduced the ambiguity of the previous version in that it applies to all internationally recognized human rights.[625] Secondly, the fourth chapter was updated, as to be entirely dedicated to human rights. Specifically, it obligates enterprises to avoid infringing human rights and avoid causing or contributing to adverse human rights impact within the context of their activities.[626] Moreover, it invites enterprises to adopt a policy

[617] Commentary of OECD Guidelines, General Policies II.2, Para. 4, 2001.
[618] J.L. Černič, Ibidem.
[619] Through this document, drafted by the International Organization of Employers, International Chamber of Commerce, Business and Industry Committee to the OECD, Business and Human Rights: The Role of Business in Weak Governance Zones, 2006.
[620] Business and Human Rights: The Role of Business in Weak Governance Zones, Ibidem, par. 15.
[621] UNCHR, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011, UN Doc HR/PUB/11/04.
[622] Organization for Economic Cooperation and Development, OECD Guidelines for Multinational Enterprises: Report by the Chair of the 2010 Meeting of the National Contact Points, Paris, 2010.
[623] Organization for Economic Cooperation and Development, iLibrary, available at https://www.oecd-ilibrary.org/governance/oecd-guidelines-for-multinational-enterprises_9789264115415-en.
[624] OECD Guidelines, Ibidem, General Policies II, Guideline 2, 2011 version.
[625] K.A. Reinert, O.T. Reinert, G. Debebe, The new OECD Guidelines for Multinational Enterprises: better but not enough, Development in Practice, 2016, p. 816-823.
[626] OECD Guidelines, Ibidem, Human Rights IV,Par. 1, 2, 3.

commitment to respect human rights and to carry out human rights due diligence as appropriate to their size, nature and context of their operations and the level of severity of adverse human rights impact.[627]

In 1984, with the aim of promoting corporations' compliance with the Guidelines and related due diligence guidance, adhering governments have obliged themselves by a legally binding decision to set up the National Contact Points (NPCs).[628] The NCPs are government offices responsible for encouraging adherence to the Guidelines at the national level.[629] For the most part, the NCPs are structured like a single government department and are usually located in ministries of economics.[630] There are currently fifty one[631] NCPs that correspond to the number of countries adhering to the Guidelines. The NCPs not only have the duty to ensure the compliance with the Guidelines, but also "*to contribute to the solution of problems which may arise"*[632] *related to the observance of the Guidelines; in short, they represent a complaint mechanism, which the OECD refers to as "specific instances*."[633] In this sense, the procedural guidance requires NCPs to provide a forum for discussion so as to contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances.[634] The Guidelines indicate that in handling complaints, NCPs should offer their good offices to help the parties involved resolve the issue providing access to non-adversarial conflict resolution, typically mediation[635]. Depending on the outcome of the mediation and the NCP's own investigations, NCP statements may include findings of whether the company acted in accordance with the Guidelines, and recommendations on the company's future actions.[636] Published NCP statements that criticize company conduct explicitly or do so implicitly through recommendations for changed conduct may cause reputational damage for the company. This can affect their 'social licence to operate'[637] and their economic situation, thus directly impacting the core foundations for an economic enterprise. Therefore, despite being non-judicial remedy institutions which thus cannot impose sanctions, directly provide compensation or even compel parties to participate in a

[627] Ibidem, par. 4, 5.
[628] Organization for Economic Cooperation and Development, National Contact Points for the OECD Guidelines for Multinational Enterprises, 1984.
[629] L. Davarnejad, In the Shadow of Soft Law: The Handling of Corporate Social Responsibility Disputes under the OECD Guidelines for Multinational Enterprises, Journal of Dispute Resolution, Article 6, 2011, p. 11.
[630] Organization for Economic Cooperation and Development, National Contact Points, OECD Guidelines for Multinational Enterprises, 2011 version.
[631] Organization for Economic Cooperation and Development, Responsible business conduct, OECD Guidelines for Multinational Enterprises, available at http://mneguidelines.oecd.org/ncps/ .
[632] Declaration by the Governments of OECD Member Countries and Decision of the OECD Council on International Investment and Multilateral Enterprises, Revised Edition 1984, p. 28.
[633] Ibidem, available at http://mneguidelines.oecd.org/ncps/.
[634] OECD Guidelines, Procedural Guidance, C.1.
[635] Ibidem, C.2.d
[636] Ibidem, C.3.
[637] G. Demuijnck, B. Fasterling, The Corporate Social License to Operate, Journal of Business Ethics, 2016, p. 675- 685.

conciliation or mediation process, their relevance resides in the shaping of businesses conduct through findings on what action a company should have undertaken to act in accordance with the Guidelines, or recommendations for future conduct[638]; the desire to avoid such criticism, in fact, acts as a driver for companies to act in accordance with the Guidelines.

One of the most successful mediations occurred in 2015, when the Dutch NCP had to handle the case *Former Employees of Bralima v. Heineken and Bralima*[639]. On December 14th 2015, the Dutch NCP received a submission from three individuals involving Heineken, a Dutch multinational and its subsidiary Bralima operating in the Democratic Republic of Congo (DRC), stating that the subsidiary had not observed the Guidelines in the dismissals of 168 former employees in the DRC between 1999 and 2003[640]. Because the issues occurred before the revision of the OECD Guidelines for multinational enterprises in 2011, the NCP decided whether the specific instance merited further consideration on the basis of the 2000 version of the OECD Guidelines. After an initial assessment, it accepted the specific instance, offering its mediation services, which both parties accepted. The dialogue resulted in a deal between the victims and Heineken that involved the company paying approximately US$2 million in compensation to the victims, including up to US$45,000 to some individual workers and widows of former workers, as well as making important forward-looking policy changes regarding doing business in conflict-affected areas[641]. In April 2022, the NCP published a follow up statement acknowledging that the company had made important progress in developing and implementing RBC[642] policies within the Heineken Group, concluding that the agreement reached by the parties had been fully implemented[643].

This is just an example on how, following the 2011 revision, there has been a significant increase in complaints relating to human rights as well as the Guidelines' chapter on 'General Principles' which include risk-based due diligence.[644] Despite being established by an international law instrument, NCPs are state-based, meaning that they do not have uniform organizational structures[645]. To limit divergence, the Guidelines establish that NCPs should act under the principle of 'functional equivalence'[646], meaning that, regardless of their organizational set-up, they must function with an

[638] K. Buhmann, Analysing OECD National Contact Point Statements for Guidance on Human Rights Due Diligence: Method, Findings and Outlook, Nordic Journal of Human Rights, 2018, p. 4.
[639] Dutch NCP, Former Employees of Bralima v. Heineken and Bralima, 2015, available at http://mneguidelines.oecd.org/database/instances/nl0027.htm.
[640] Ibidem.
[641] Ibidem.
[642] Responsible Business Conduct.
[643] Final Statement available at http://mneguidelines.oecd.org/database/instances/ie0012.htm.
[644] C. Daniel, J. Wilde-Ramsing, K. Genovese, V. Sandjojo, Remedy remains rare: an analysis of 15 years of NCP cases and their contributions to improve access to remedy for victims of corporate misconduct, OECD Watch, 2015.
[645] K. Buhmann, ibidem, p. 5.
[646] OECD Guidelines, Ibidem, Procedural Guidance, I. A.

equivalent degree of effectiveness. For this purpose, four criteria were determined including visibility, transparency, coordination and sharing of experience through various activities organized by the Paris-based secretariat and by NCP reports to the OECD Investment Committee, which is the body responsible for the Guidelines.[647] Such coordination approximates the practice of international and regional courts and treaty procedures on human rights to develop a coherent jurisprudence, even across institutional systems (such as across the ILO and Council of Europe).[648]

In conclusion, it is important to recall that the Guidelines were enacted as an annex to a Declaration which has as its first aim to promote international investment. MNEs are the main providers of investment and the governments adhering to the Guidelines are the "source of most of the world's direct investment flows and home to most multinational enterprises."[649] Therefore, the Guidelines shall also "serve" the promotion of international investment, but in a responsible way[650], inviting governments and MNEs to respect the obligations set out in this instrument. And, although their implementation mechanism is already much more efficient than others thank to its deterrent power, the possibility of potential international enforcement mechanism must be welcomed.

III.2 The 2001 Green Paper: Promoting a European Framework to CSR

European Union's CSR debate started around the early 1990s, focusing primarily on questions surrounding which might be considered to be appropriate rights and responsibilities of businesses, the degree of duty owed and to whom, and the ways in which businesses could or should be accountable[651]. It is in this period that the European Commission published the first EU's publication on CSR: the White Paper[652] on growth, competitiveness and employment and the emergence of EU sustainable development policy [653]. However, CSR policy only formally entered the EU's discourse in March 2000 in Lisbon, when the European Council appealed to business organizations' sense of corporate responsibility in assisting with the EU's strategic goals as part of the Lisbon Strategy[654]. As a consequence, the European Commission effectively took responsibility for driving and

[647] It is the Committee that represents Governments of OECD Members. Victims do not have direct access to it, but it organizes exchanges of views on matters relating to Guidelines and issues clarifications to help the work of NCPs.
[648] K. Buhmann, ibidem.
[649] Organization for Economic Cooperation and Development, Implementation of the Guidelines for Multinational Enterprises, available at http://www.oecd.org/document/43/0,3746,en 2649_34889_20747311I111,00.html.
[650] L. Davarnejad, In the Shadow of Soft Law: The Handling of Corporate Social Responsibility Disputes under the OECD Guidelines for Multinational Enterprises, Journal of Dispute Resolution, 2011.
[651] J. Airbrass, Exploring Corporate Social Responsibility Policy in the European Union: A Discursive Institutionalist Analysis, Journal of Common Market Studies, 2011, p. 949-970.
[652] European Commission white papers are documents containing proposals for European Union action in a specific area.
[653] European Commission, Growth, competitiveness, employment, The challenges and ways forward into the 21st century: White paper, 1993.
[654] European Council, Presidency Conclusions, Lisbon, 2000.

orchestrating EU CSR policy development[655]; in particular, it was the Directorate General for Employment, Social Affairs and Equal Opportunities that provided the 'home base' for the policy area. Therefore, in concrete terms, the EU's CSR policy debate began in earnest with the publication of the Commission's Green Paper on CSR[656] in 2001. The paper was elaborated by the Directorate General for Employment and Social Affairs, and it has as its focus companies' responsibilities in the social field. The European Union's concern with the topic is rooted in the expressed conviction that CSR can be a positive contribution to the strategic goal set in Lisbon: *"to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion"*[657].

In order to begin the process of building a framework for uniform standards of corporate conduct, the EU takes four important steps. First, the EC makes a powerful statement simply in the Green Paper's release: it makes clear that there is an institutional expectation that European MNCs are going to balance their will of generating profits with contributions to social and environmental objectives[658]. In other words, the EC has declared that MNC behavior will not go unchecked or ignored, and the EU will no longer be amenable to ignoring MNCs' sacrificing human rights standards for the bottom line[659].

In order to do so, the term 'Corporate Social Responsibility' has been given for the first time a precise definition by the EU as *''a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis''*.[660] For the European Commission[661], this concept has to be understood as an attempt to reconcile the freedom of enterprise with the quest for social, economic and environmental progress or welfare and this reconciliation is supposed to contribute to sustainable development. It has the aim to strengthen mutual trust and confidence between business and society[662].

Second, the fact that the Green Paper is an open, inclusive process that solicits the opinions of all the possible stakeholders, including member states, MNCs, NGOs, industry-specific organizations, and academics shows a strong sense of common purpose and a willingness to cut through red tape to

[655] J. Airbrass, ibidem.
[656] European Commission, Green Paper Promoting a European framework for corporate social responsibility, Brussels, 2001.
[657] European Commission, Green Paper, Promoting a European framework for Corporate Social Responsibility, Brussels, 2001.
[658] European Commission, Promoting a European Framework for Corporate Social Responsibility: Green Paper from Directorate-General for Employment and Social Affairs Unit, 2001.
[659] Ibidem.
[660] Green Paper, Ibidem, p. 6.
[661] European Commission, Communication, Corporate Social Responsibility: A business contribution to Sustainable Development, 2002.
[662] Ibidem.

accomplish its goals[663]. This process-based inclusiveness will necessarily yield a more effective product than would an isolated mandate from the EC.

Third, supporting major, widely accepted international standards, the Green Paper sets out uniform, applicable baselines in the critical areas of labor and human rights to which EU-based MNCs are expected to adhere[664]. For instance, it refers to the baseline set out by the UN Global Compact[665] for what concerns the role of human rights and environmental protection in the global economy; in addition, the ILO Tripartite Declaration[666] is recalled, for what concerns its base levels for wages, working conditions and child labour standards; lastly, the OECD Guidelines[667] are mentioned, for providing voluntary principles and standards for responsible business conduct. In support of these three documents and the uniform guidelines each sets forth, the EU's Green Paper establishes uniform standards in critical areas and eliminates the many compliance issues caused by the current lattice of private compliance codes. As a consequence, MNCs will no longer be forced to question which standards apply to an individual investment situation, nor will these corporations be able to pick and choose when to adopt standards and when to conveniently ignore them[668].

Fourth, in perhaps its most important substantive message, the Green Paper emphasizes the significance of consistent and uniform reporting mechanisms. Given the importance placed on self-reporting by voluntary corporate compliance codes generally, and reinforced in the language of the Green Paper, uniform reporting metrics, frequency, and depth of analysis must be required[669]. The frequent problems that exist in the current compliance code are magnified by a lack of consistency among reporting requirements. The multiplicity of incompatible tools for reporting burdens companies with unnecessary costs and makes it difficult for them to reach their stakeholders through reports that are clear and easily understood.[670] The Green Paper makes a clear case for the movement toward a global consensus in the type of information to be disclosed in each report, the reporting format to be used, and the reliability of the evaluation and audit procedure. As it will be analyzed later in this Chapter, several steps forward have been made for what concerns reporting in the EU, thanks to the Green Paper contribution.

---

[663] J.M. Chanin, The Regulatory Grass in Greener: A Comparative Analysis of the Alien Tort Claims Act and the European Union's Green Paper on Corporate Social Responsibility, Indiana Journal of Global Legal Studies, Article 18, 2005, p. 770.
[664] J.M. Chanin, ibidem.
[665] UN Global Compact, Ibidem, 2000.
[666] ILO Tripartite Declaration, Ibidem, 1998.
[667] OECD Guidelines, Ibidem, 1976.
[668] J.M. Chanin, ibidem, p. 771.
[669] Ibidem.
[670] P.A. Davidsson, Legal Enforcement of Corporate Social Responsibility Within the EU, Columbia Journal of European Law, 2002, p. 537.

EU's outlook of CSR seems to be corroborated by the Green Paper's insistence on its voluntary character. Analyzing the content of the document, it is clear that this voluntary character should be interpreted within the meaning of self-regulation[671]. Many passages stress, in fact, that voluntary instruments are complementary to state regulation and they should be seen as an expression of horizontal subsidiarity[672]. Therefore, the Green Paper urges enterprises to go beyond legal compliance in being 'socially responsible': it construes national or European regulation as a minimum, while CSR seeks to establish a 'higher' level of responsible conduct than that of the company that abides by the law of the state[673]. The legal nature of the 'higher' level might be inferior to that of state law, but the material content of the standard is supposed to be superior.

Despite all these steps in a positive direction, the voluntary character of the standards still represent one of the areas in which the Green Paper falls short. As the Council of the EU points out, the code is intended to apply to behavior by businesses beyond existing state-based legal requirements, which, the Council suggests, should continue to be properly enforced.[674] The Council's statement, while technically true, is only applicable to MNC behavior within the boundaries of the EU. Well-established international legal principles preclude extra-jurisdictional application of EU and Member State law to activity occurring in other territory outside of the EU[675]. In cases where European MNCs operate on foreign soil, these corporations are not bound by the existing "legal requirements" to which the Council Resolution refers. Moreover, the Paper is not enough specific on what concerns its implementation. These omissions are justified by the fact that the Green Paper was intended to be a first step rather than a definitive guideline on CSR[676].

In conclusion, the Green Paper represents an overt step by the EU to address issues of corporate compliance on an institutional level. While admirable in its effort to raise awareness, the Paper falls critically short in addressing the problem of corporate responsibility outside of Europe, and as a result leaves human rights advocates wanting more.

III.3 A renewed EU Strategy: 2011 Commission's Communication on a modern understanding of CSR

After the release of the 2001 Green Paper, many progress were detailed by the European Commission. For instance, the number of EU enterprises that have signed up the UN Global Company raised from

[671] F. Dorssemont, Corporate social responsibility, what's in a name? A critical appraisal of the Green Paper, Transfer: European Review of Labour and Research, 2004, p. 365.
[672] Ibidem.
[673] Ibidem, p. 366.
[674] Council of the European Union, Resolution of the Employment and Social Policy Council on CSR, 2002.
[675] J.M. Chanin, ibidem, p. 772.
[676] Ibidem.

600 in 2006 to over 1900 in 2011[677]. In addition, the number of EU companies signing transnational company agreements with global or European workers' organizations, covering issues such as labour standards, rose from 79 in 2006 to over 140 in 2011[678]. Despite this progress, important challenges remain. Many companies in the EU have not yet fully integrated social and environmental concerns into their operations and core strategy and only 15 out of 27 EU Member States have national policy frameworks to promote CSR[679]. The Commission has identified several factors that will help to further increase the impact of its CSR policy, including the need to better clarify what is expected of enterprises, and the need to promote market reward for responsible business conduct, including through investment policy and public procurement.

Because of these premises, the European Council and Parliament called on the Commission to further develop EU's CSR strategy in their two resolutions from 2007[680] and 2011[681]. As a result, the European Commission presented a renewed EU strategy from 2011 to 2014 for Corporate Social Responsibility[682]. This communication is part of a package of measures on responsible business[683] and aims at helping enterprises to achieve their full potential in terms of creating wealth, jobs and innovative solutions to the many challenges facing Europe's society. It sets out how enterprises can benefit from CSR as well as contributing to society by taking greater steps to meet their social responsibility[684].

A new and simpler definition of CSR is put forward in this Communication, defining it as the *"the responsibility of enterprises for their impacts on society and outlines what an enterprise should do to meet that responsibility"*[685]. It is clear what the Commission expects enterprises to do: have a process in place to integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy in close cooperation with their stakeholders[686]. In the Commission's view, the integration of this process, would allow corporations not only to maximize

[677] Summary of COM(2011)681 - Renewed EU strategy 2011-14 for Corporate Social Responsibility, available at https://www.eumonitor.eu/9353000/1/j4nvkkpftveemt7_j9vvik7m1c3gyxp/vitwrzhm31gk
[678] Ibidem.
[679] Ibidem.
[680] European Commission, Corporate social responsibility: implementing the partnership for growth and jobs, 2006/2133(INI).
[681] European Commission, External dimension of social policy, promoting labour and social standards and the European Corporate Social Responsibility, 2010/2205(INI).
[682] European Commission, Renewed EU strategy 2011-14 for Corporate Social Responsibility, COM(2011)681.
[683] All the measures adopted are listed in the European Parliament's press release IP/11/1238, More responsible businesses can foster more growth in Europe.
[684] European Commission, Corporate Social Responsibility: a new definition, a new agenda for action, European Commission Memo, MEMO/11/730 from October 2011.
[685] Renewed EU strategy 2011-14 for Corporate Social Responsibility, Ibidem.
[686] European Commission MEMO, Ibidem.

the creation of shared value for their shareholders, but especially to prevent and mitigate adverse impacts that enterprises may have on the society.[687]

The agenda set out by this Communication contains commitments from the Commission itself, as well as suggestions for enterprises, Member States, and other stakeholder groups covering 8 areas related to CSR. It starts, underlining the need for enhancing the visibility of CSR, including the creation of a European award for good practices and the establishment of sector-based platforms for enterprises and stakeholders to make commitments and jointly monitor progress[688]. In addition, it proposes to track the levels of citizens' trust in businesses, organizing surveys and public debates. Then, it points out how it is necessary to improve company's disclosure of social and environmental information[689], which confirms the Commission's intention to bring forward a new legislative proposal on this issue, that will be analyzed later in this chapter. Lastly, it recalls how it is important to align European approach to CSR to global ones, including the one set out by the UN Global Compact[690], the UN Guiding Principles on Business and Human Rights[691] and the ILO Declarations[692].

The 2011 strategy makes clearer, with respect to the previous measures adopted[693], that the EU's commitments and policies on business and human rights are framed as part of this broader CSR strategy and agenda for action[694]. Therefore, this policy is sending out a clear signal that CSR is more than philanthropic activities alone and that promoting positive impacts on human rights is in itself not sufficient for business enterprises to be socially responsible[695]. Furthermore, the communication encourages business enterprises to *"carry out risk-based due diligence, including through their supply chain"* in order to discharge their responsibility, addressing *"large enterprises, and enterprises at particular risk of having such impacts"* in this regard.[696] Therefore, with regard specifically to human rights, the alignment of the new EU definition of CSR and the recalling to the UNGPs permits and facilitates more effective responses to the UNGPs. State measures that aim to promote CSR, and its human rights dimension, can be better targeted at the adverse human rights

[687] Ibidem.
[688] Renewed EU strategy 2011-14 for Corporate Social Responsibility, Ibidem.
[689] Ibidem.
[690] United Nations, UN Global Compact, 2000.
[691] United Nations, UN Guiding Principles on Business and Human Rights, 2011.
[692] International Labour Organization, ILO Tripartite Declaration, 1977 and ILO Declaration on fundamental principles and rights at works, 1996.
[693] With respect to the 1993 White Paper and the 2001 Green Paper.
[694] S. Bijlmakers, M. Footer, N. Hachez, The EU's engagement with the main Business and Human Rights instruments, Fostering Human Rights among European Policies, 2015.
[695] Ibidem, p. 33.
[696] Renewed EU strategy 2011-14 for Corporate Social Responsibility, Ibidem.

impacts of business activities, and encourage business enterprises to pro-actively implement the UNGPs[697].

The 20th of April 2014, the EU Commission launched a public consultation to receive feedbacks on the implementation of the policy to learn which activities were useful, successful or whether specific actions were missing[698]. It also aimed to receive input about what future challenges exist in CSR and what prospective activities might be required. The CSR public consultation received great interest and gathered 525 responses to the online questionnaire, of which the majority came from France (139), Germany (135), Italy (109), Spain (103) and the United Kingdom (101)[699]. In terms of stakeholder audience, out of the 525 responses, the biggest group of respondents was industry (44%), followed by civil society (30%) and public authorities (8%). The remaining 18% of replies came from not-for profit foundations, CSR Consultants, CSR lecturers and researchers at university as well as think tanks[700]. Of all the eight work streams of the Commission's agenda for action, improving company disclosure of social and environmental information received the highest importance ranking from respondents: 86% replied that this initiative was important, with 60% indicating it as very important[701]. Moreover, in terms of the success rate for implementation, this initiative also received the highest rating amongst all actions with 70%[702].

As for the possible improvements to the EU's CSR strategy, stakeholders specified different measures that – in their opinion – should be added to make the policy more complete. For instance, the creation of a website with all available guidelines on CSR, best practices and reporting criteria; the need to work towards greater coherence with other policies, as for example in the areas of climate change or energy policy; with regard to the development of CSR national action plans, the Commission's work could focus on their assessment in terms of implementation at the national level; and, lastly, to work with EU Member States on issues such as how to promote aspects of the UN Guiding Principles, including due diligence and access to justice matters, including extra-territorial application[703].

In conclusion, there is no doubt that this strategy represents the starting point for the development of a more precise and more specific set of measures for EU's CSR policy. As it has been analyzed, the 2011 Communication didn't set out specific actions to be adopted at a national or private level to implement CSR, but only areas in which it was necessary to intervene. Despite this generality, the

[697] S. Bijlmakers, M. Footer, N. Hachez, ibidem.
[698] European Commission, The European Commission's strategy on CSR 2011-14: achievements, shortcomings and future challenges, 2014.
[699] European Commission, The Corporate Social Responsibility Strategy of the European Commission: Results of the Public Consultation Carried out between 30 April and 15 August 2014, Brussels, 2014.
[700] Ibidem.
[701] Ibidem, p. 20.
[702] Ibidem.
[703] Ibidem, p. 27.

strategy and, especially, the results of the following public consultation gave the EU Commission the necessary base from which develop more specific measures, which will be deeply analyzed later in this chapter.

III. 4 The 2015 Action Plan on Human Rights and Democracy

With the aim of promoting human rights in all EU areas of external action, including Corporate Social Responsibility, the Council of European Union and the High Representative of the European Union for Foreign Affairs and Security Policy adopted the second Action Plan on Human Rights and Democracy[704] for the period 2015-2020.

As opposed to the previous 2012-2014 Action Plan, which contained a set of 97 actions covering a broad range of human rights and democracy issues, this new Action Plan had the aim of not covering exhaustively all aspects of the Union's Human Rights/Democracy support policies[705]. It should rather be strategic and focus on priorities where additional political momentum and enhanced commitment is needed. Moreover, it was planned for guiding both bilateral work and EU engagement in multilateral and regional fora, in particular the United Nations and the Council of Europe[706]. The plan consists of five strategic objectives, based on five guiding principles and involving 32 actions. The principles broadly cover ways of improving the effectiveness and assessment of external EU human rights activities. The most pressing human rights challenges with which the action plan deals with are: combating discrimination; respect for freedom of expression and privacy; freedom of religion and belief; combating torture, ill treatment, and the death penalty; promoting gender equality, women's rights, children's rights and economic, social and cultural rights; encouraging corporate social responsibility; and ensuring that human rights are upheld in migration, trade or counter-terrorism policies[707].

Actions 18 and 25 are the ones that specifically set out recommendations and objectives related to the protection of human rights in the business context. The first point aims at developing capacities and knowledge on the implementation of Business and Human Rights guidelines in particular regarding the UN Guiding Principles on Business and Human Rights (UNGPs), also through strengthening the role and expertise of EU Delegations and Member State embassies in this context[708]. In addition, it sets the goal of developing and implement National Action Plans on the implementation of the

[704] EU Council and High Representative of the European Union for Foreign Affairs and Security Policy, Action Plan on Human Rights and Democracy 2015-2020, Brussels, 2015.
[705] Joint Communication to the European Parliament and the Council, Action Plan on Human Rights and Democracy (2015-2019) Keeping human rights at the heart of the EU agenda, Brussels, 2015.
[706] Ibidem.
[707] EU Council and High Representative of the European Union for Foreign Affairs and Security Policy, Action Plan on Human Rights and Democracy 2015-2020, Brussels, 2015.
[708] Plan on Human Rights and Democracy 2015-2020, Ibidem, Action 18 (a, b).

UNGPs, to share experiences and best practices concerning CSR strategies[709]. In addition, point 25 focuses on human rights in trade and investment policy. It underlines the need in continuing to develop a robust and methodologically sound approach to the analysis of human rights impacts of trade and investment agreements, both in ex-ante impact assessments and ex-post evaluations[710]. Moreover, it asks to EU members to strive to include, while negotiating or revising Bilateral Investment Treaties (BITs) with third countries, provisions on Corporate Social Responsibility in line with those inserted in agreements negotiated at EU level[711]. Lastly, it aims at systematically including in EU trade and investment agreements the respect of internationally recognised principles and guidelines on Corporate Social Responsibility, including those contained in the OECD Guidelines for Multinational Enterprises[712], the UN Global Compact[713], the UN Guiding principles on business and human rights (UNGPs)[714], the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy[715], and ISO 26000[716].

In 2019 the Council of the European Union published the final report of the implementation of the EU Action Plan, presenting the progress achieved to date. Over 200 initiatives relevant to CSR and business and human rights have been implemented since 2011, using a smart mix of voluntary and regulatory[717]. One of the most important has been the EU Non-Financial Reporting Directive[718], with which listed companies, banks, and insurance companies with more than 500 employees are required to disclose non-financial information in their management reports, including information about environmental, social and labour aspects, respect for human rights, anti-corruption and bribery issues. It will be further analyzed in the following paragraph, considering also its most recent development. Moreover, the EU continued to provide support to civil society and social partners in the implementation of the UNGPs through the European Instrument for Democracy and Human Rights, dedicating €5 million for proposals on business and human rights[719]. Lastly, the EU has included commitments to promote CSR/RBC into all its recently concluded free trade agreements, e.g. the EU-Japan Economic Partnership Agreement and the trade section of the modernized EU-Mexico Global

[709] Ibidem, Action 18 (c).
[710] Ibidem, Action 25 (b).
[711] Ibidem, Action 25 (c).
[712] Organization for Economic Cooperation and Development, OECD Guidelines, 1976.
[713] United Nations, UN Global Compact, 2000.
[714] United Nations, UN Guiding Principles on Business and Human Rights, 2011.
[715] International Labour Organization, ILO Tripartite Declaration, 1977.
[716] International Organization for Standardization, ISO 26000, 2010.
[717] Council of the European Union, EU Annual Report on Human Rights and Democracy in the World 2019, Brussel, 2020.
[718] European Parliament and European Council, Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.
[719]Council of the European Union, EU Annual Report on Human Rights and Democracy in the World 2019, Brussel, 2020, p 100.

Agreement. The latter includes a self-standing article on trade and responsible management of supply chains (Article 9 of the chapter on trade and sustainable development), with commitments from the parties to support the dissemination of relevant international instruments such as the UNGPs.

Therefore, it is possible to note already from this report that the EU's focus on responsible business practices is translating into concrete implementation activities. To continue with this path, the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy, released a new Action Plan, for the period 2020-2024[720]. For the purpose of this work, it is sufficient to point out that this policy will try to strengthen engagement in international fora and with partner countries to actively promote and support global efforts to implement the UN Guiding Principles on Business and Human Rights, including through fostering the development and implementation of national action plans in Member States and partner countries, as well as advancing relevant due diligence standards and working on a comprehensive EU framework for the implementation of the Guiding Principles in order to enhance coordination and coherence of actions at EU level[721].

In conclusion, the EU is adopting concrete measures to implement the respect of human rights, not only at a regional level, but also in its relations with third parties. For the first time, concrete actions have been taken both at a regional and national level, with the specific aim of implementing Corporate Social Responsibility. At the end of 2024 it will be possible to assess the real developments subsequent to the latest Action Plan. On the basis of the results, new and even more ambitious goals could be set, also taking into consideration the new obligations determined by the 2022 CSRD. Undoubtedly, always more and more companies will be asked not only to publish their achievements in the context of human rights periodically, but especially to adopt due diligence policies once the directive[722] will be approved. These factors will inevitably change companies' approach to human rights, making it possible to aspire to more important results with the next Action Plan.

However, it is already possible to admit that CSR measures are really growing at the European level and the instrument analyzed in the following paragraph is a proof.

III.5 EU Sustainability Reporting: 2014 NFRD and 2022 CSRD

As it has been previously analyzed, one of the hot topics with which the EU has dealt with since the 2001 Green Paper is sustainability reporting, which broadly involves the disclosure of a company's environmental and social goals and communicating the company's progress and efforts to reach them,

[720] Joint Communication to the European Parliament and the Council, EU Action Plan on Human Rights and Democracy 2020-2024, Brussels, 2020.
[721] Ibidem, Annex.
[722] Chapter III.6.

providing stakeholders, valuable information about a company's performance beyond just traditional financial measures.

Companies were not obliged to report on their sustainability effort, thus the only information we have about them are based on a voluntary decision of each entity. Since 2001, the European Union tried to at least set a uniform reporting mechanism, including common metrics, frequency and depth of analysis[723]. CSR reports were, in fact, already considered as a fundamental tool, not only for monitoring and evaluating companies' activities but also for the relevance of the company itself. If a company has been bold and successful in its CSR efforts, the release of its CSR report is as much a communication tool as it is a marketing and public relations event[724]. Especially because of the lack of mandatory guidelines before 2013, reports could be used to highlight the organization's achievements and build social responsibility into the brand's identity[725].

The stakeholders' demand for the disclosure of non-financial information kept growing in the first decade of the XXI century and, as a result, the European Union adopted in 2014 the Non-Financial Reporting Directive[726](NFRD). This instrument required publicly listed companies in EU member states[727] with more than 500 employees to include a non-financial statement in their annual reports, which provides comprehensive information (*i.e.* policies, risks, and outcomes) on environmental, social and employee matters, including respect for human rights, anti-corruption and bribery[728]. It had the aim to encourage the swift movement of EU member states towards a more sustainable global economy, surpassing the previous limited voluntary approach. Only the 10% of the EU large companies were, in fact, voluntarily disclosing environmental and social information regularly, while approximately 11700 companies fall under the remit of the NFRD[729] as of 2017. Each individual company disclosing transparent information on social and environmental matters will realize significant benefits over time, including better performance, lower funding costs, fewer and less significant business disruptions, better relations with consumers and stakeholders[730]. Investors and lenders will benefit from a more informed and efficient investment decision process, as well as society at large, which will benefit from companies managing environmental and social challenges in a more

[723] 2001 Green Paper, Ibidem.
[724] C. Cote, What is a CSR Report and why is it important?, Harvard Business School, 2021.
[725] Ibidem.
[726] Directive 2014/95/EU of the European Parliament and the Council, Disclosure of non-financial and diversity information by certain large undertakings and groups, Brussels, 2014.
[727]The EU NFRD applies to all companies listed on EU exchanges or with significant operations in the EU and at least to all large EU companies that are public interest entities exceeding 500 employees.
[728] F. Cuomo, S. Gaia, C. Girardone, S. Piserà, The effects of the EU non-financial reporting directive on corporate social responsibility, The European Journal of Finance, 2022.
[729] European Commission, Disclosure of non-financial and diversity information by large companies and groups - Frequently asked questions, MEMO/14/301, 2014.
[730] Ibidem.

effective and accountable way[731]. Companies were recognized significant flexibility in choosing the way through which disclosing relevant information. They could choose international, European or national guidelines, including the ones set by the UN Global Compact or the ISO 26000[732].

Despite the major step forward that the NFDR represented, users of non-financial information, mainly investors and civil society organizations, started demanding more and better information around 2019, supporting the fact that the text of the NFRD and its implementation suffered from several deficiencies. Besides the insufficient number of participating companies, one of the biggest problems regarding CSR reporting was mainly the report quality[733]. To address this issue, the European Commission drew up an online public consultation in 2020 and received 588 responses from companies, business associations and NGOs[734]. Firstly, it resulted that the information provided were deficient in terms of comparability, reliability and relevance. This was considered by the users a direct consequence of the flexibility left to the companies in choosing the guidelines to produce their statements and the lack of a European non-financial reporting standard[735]. Moreover, another issue was found in the "*comply-or-explain*" approach adopted by the NFRD, which stipulates that where the company does not pursue policies in relation to one or more of the five matters mentioned above, the non-financial statement shall provide a clear and reasoned explanation for not doing so[736]. This has been criticized for leaving too much space of manouvre to companies, which were basically able to decide which information to disclose and which not only explaining the reasons for their non-compliance, resulting in uncertainties concerning the transparency of the report and of the company.[737] Lastly, probably the most discussed point was about expanding the NFRD's scope of application to a larger number of companies, including ones not established in the EU but listed in the EU regulated market, all public listed entities regardless of their size and also SMEs, but ensuring them a special treatment on the basis of the principle of proportionality[738], to avoid excessive red tape.

In order to solve all these issues, on January 5th 2023 the Corporate Sustainability Reporting Directive[739] (CSRD) entered into force. This new directive modernizes and strengthens the rules

[731] Ibidem.
[732] Ibidem.
[733] K. Pilgrim, J. Koss, S. Bohnet-Joschko, CSR Communication on Twitter - A Scoping Review on Social Media Mining and Analytic Methods, International Conference on System Sciences, 2023.
[734] European Parliament, Non-Financial Reporting Directive, Briefing Implementation Appraisal, 2020.
[735] Ibidem, p. 5.
[736] Directive 2014/95/EU, Ibidem.
[737] F. Cuomo, S. Gaia, C. Girardone, S. Piserà, The effects of the EU non-financial reporting directive on corporate social responsibility, The European Journal of Finance, 2022.
[738] European Parliament, Non-Financial Reporting Directive, Briefing Implementation Appraisal, 2020, p. 8.
[739] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, Brussels, 2022.

concerning the social and environmental information that companies shall report, significantly expanding the scope and content of NFRD.

Firstly, this new Directive will dramatically enlarge its scope of application, being applicable from 2025 to all companies with more than 250 employees and a turnover of more than €40 million or a total asset of €20 million[740]. Moreover, it will also be applicable to companies with securities listed on an EU-regulated market, irrespective of whether the issuer is established in the EU or not, also including from 2026 listed SMEs, for a total of approximately 50000 companies[741]. This compliance will occur gradually, enabling companies that were not subject to NFRD to adopt the necessary measures to draw up their report. In addition, the entities in scope will be required to comply with detailed sustainability reporting standards which will be developed by the European Commission[742]. It will adopt a first set of principles on June 30th 2023, which will specify the information that undertakings should disclose with regard to all reporting areas and sustainability matters and ensure alignment with regards to existing disclosure obligations set out in the Sustainable Finance Disclosure Regulation[743]. Then, a second set of reporting standards should be adopted in the following year, which will specify complementary information requirements and sector-specific standards[744]. In this way, the situation concerning the two main issues raised by the reporting users, thus the scarce number of participating companies and the poor quality of the reporting, would be improved. Using the same standards, the reports would be easier to draw up, to compare and also more helpful in terms of evaluating and monitoring the measures adopted by each company[745]. These last two aspects would be improved also by the main novelty introduced by the CSRD: a mandatory third-party verification of the reported sustainability data. To ensure that companies comply with the reporting rules, an accredited independent auditor or certifier must ensure that the sustainability information complies with the certification standards adopted by the EU[746].

In conclusion, the amendments introduced by the CSRD set new and stricter rules than NFRD. Companies are asked to deal with a higher level of compliance, but this must be considered as an advantage by them. The new requirements will help to improve transparency in sectors which

[740] Ibidem.
[741] European Commission, Corporate Sustainability Reporting, available at https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en.
[742] K. Stehl, L. Ng, M. Feehily, S. Austin, EU Corporate Sustainability Reporting Directive—What Do Companies Need to Know, Harvard Law School Forum on Corporate Governance, 2022.
[743] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.
[744] K. Stehl, L. Ng, M. Feehily, S. Austin, ibidem.
[745] Ibidem.
[746] Council of the EU, New rules on corporate sustainability reporting: provisional political agreement between the Council and the European Parliament, Press release, 2022, available at https://www.consilium.europa.eu/en/press/press-releases/2022/06/21/new-rules-on-sustainability-disclosure-provisional-agreement-between-council-and-european-parliament/.

nowadays are becoming even more important than the financial one, including human right, environmental and social impacts[747]. By accurately depicting a business's impact and efforts on these pivotal criteria, all future stakeholders, investors, consumers and employees are able to obtain all the information necessary to decide if the company aligns with their own values or not and, at the same time, companies are able to improve their competitivity, both at a European and global level.

III.6 Corporate Sustainability Due Diligence under EU Law

The European Commission defines the concept of due diligence recalling the definition given by the OECD Guidelines[748] which finds it as the processes through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts[749]. In simpler terms, due diligence is how a business understands, manages and communicates about risk, including the one generated for third parties and the one it encounters through its strategic and operational decisions and actions[750]. This process takes place through an in-depth investigation, usually conducted by a company on another one, to explore any potential misbehaviour or a non-conformity area that is not compliant with the expectation in terms of standard of conduct[751]. Although due diligence was typically used for the purpose of gathering and analyzing as much commercial and financial information as possible about a target company from a buyer perspective[752], nowadays its functionality has expanded widely to environmental and social risk fields. Therefore, this concept is now better identified with the term CSR due diligence, and it can extend into two possible directions. The first one conceives due diligence as a tool for forecasting social, environmental, and ethical risks that could impact the company in the future. From this point of view, due diligence is considered an essential part of merger and acquisition screening processes to check the sustainability orientation of such targeted companies[753].

The second one, on the other hand, conceives due diligence as an endowment of tools to manage and mitigate sustainability risks through both operational and technical ethical codes charts and

[747] K. Stehl, L. Ng, M. Feehily, S. Austin, ibidem.
[748] Organization for Economic Cooperation Development, OECD Guidelines for multinational enterprises, chapter II, par. 10.
[749] European Commission, Due diligence explained, available at https://single-market-economy.ec.europa.eu/sectors/raw-materials/due-diligence-ready/due-diligence-explained_en#:~:text=A%20technical%20description%20of%20due,10).
[750] European Commission, Internal Market, Industry, Entrepreneurship and SMEs, available at https://single-market-economy.ec.europa.eu/sectors/raw-materials/due-diligence-ready/due-diligence-explained_en#faq-about-oecd-due-diligence-guidance.
[751] S. Camoletto, L. Corazza, S. Pizzi, E. Santini, Corporate Social Responsibility due diligence among European companies: The results of an interventionist research project with accountability and political implications, Corporate Social Responsibility and Environmental Management, 2022.
[752] P. Howson, Due diligence: The critical stage in mergers and acquisitions, Gower Publishing, 2003.
[753] V. Vastola, A. Russo, Exploring the effects of mergers and acquisitions on acquirers' sustainability orientation: Embedding, adding, or losing sustainability, Business Strategy and the Environment, 2021, p. 1104.

principles[754]. In particular, in recent years, the European Union has been working on parallel tracks along a common path: to promote the integration of sustainability issues and stakeholders' long-term interests into corporate value creation processes and ensure more accountability for the economic, social and environmental impacts of firm activities[755].

The inclusion of human rights and environmental concerns is a factual example of the paramount importance of due diligence processes implemented by companies to prevent and mitigate the risk of corporate misbehaviour[756]. For the purpose of this work, it is important to underline that also the concept of human rights due diligence has been coined, specifically by the UNGPs, as the process to "*identify, prevent, mitigate and account for actual of potential adverse human rights impact a company may be involved in through its own activities and business relationship, including the supply chain*"[757]. Since the adoption of this Principle, human rights due diligence domestic laws have multiplied, also at the EU level.

The use of corporate soft law and international framework to manage CSR due diligence has been always legitimated by the European Commission. A wide range of internationally recognized principles and guidelines could be labelled as useful tools for this purpose, including the OECD Guidelines for Multinational Enterprises, the 10 principles of the United Nations Global Compact, the ISO 26000 Guidance Standard on Social Responsibility and the ILO tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. In 2001, the European Commission has favourably argued that a due diligence approach towards CSR would have been entirely explained by a proactive behaviour of companies with the intent of "going beyond common regulatory and conventional requirements"[758]. Ten years later, indeed, the European Commission admitted that "public authorities should play a supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation"[759]. Despite being legitimate for the European Commission, the wide range of international guidelines, frameworks and standards has not been always effective with a pure voluntaristic approach in managing sustainability risks[760]. And, although the European Union has adopted several regulatory instruments in the last decade, as it has been analyzed in the last paragraphs, they only represent an initial step towards the acquisition of proactive social responsibilities. There is therefore a need to orient the European economic system

[754] O. Boiral, D. Talbot, M.C. Brotherton, Measuring sustainability risks: A rational myth? Business Strategy and the Environment, 2020.
[755] G. Nicolò, G. Zampone, G. Sannino, S. De Iorio, Sustainable corporate governance and non-financial disclosure in Europe: does the gender diversity matter?, Journal of Applied Accounting, 2022.
[756] S. Camoletto, L. Corazza, S. Pizzi, E. Santini, ibidem.
[757] UNGP 15.
[758] European Commission, Green Paper, Promoting a European framework for Corporate Social Responsibility, COM(2001) 366, Brussels, 2001.
[759] European Commission, A renewed EU strategy 2011–14 for corporate social responsibility, 2011.
[760] S. Camoletto, L. Corazza, S. Pizzi, E. Santini, ibidem, p. 1125.

towards greater consistency, and with this aim in mind, the European Commission has adopted numerous measures to implement CSR due diligence, and the most relevant ones will be now discussed, adopting an approach focused specifically on human rights due diligence.

III.6.1 The 2016 European Parliament Resolution on Corporate Liability

On 25 October 2016, European parliamentarians overwhelmingly voted (569 for, 54 against) for a resolution on corporate liability for serious human rights abuses in third countries[761]. This Resolution represented the starting point in the elaboration of a European regulation on human rights due diligence. Its aim was, in fact, to invite the EU Member States and the EU Commission to adopt regulations concerning corporate liability when causing serious human rights abuses throughout their global supply chains, therefore not only in EU territories, but also outside its boundaries[762]. Although the resolution is in no way binding, it does indicate that the debate over multinational companies' duty of care is extending beyond the borders of the few EU members that had already adopted national initiatives on this matter, such as France[763]. In this way, the Parliament started at least to make pressure on its members and on the EU Commission, and it undoubtedly resulted in relevant steps forward.

The Resolution begins reaffirming that the protection of human rights represents a priority for the EU and for its members, and that the Union has played a leading role in negotiating and implementing a number of initiatives for global responsibility which go hand in hand with the promotion and respect of international standards, including the UNGPs[764]. Despite this engagement, the Parliament notes that increasing globalization and internationalization of business activities and supply chains have made corporations' role in ensuring respect for human rights more important and have created a situation in which international norms, rules and cooperation are crucial to avoid human rights abuses in third countries[765].

Therefore, the Parliament not only welcomes the adoption of the UNGPs and strongly supports their implementation, but also calls for the UNGPs and other international corporate responsibility standards, such as the ISO 26000 and the ones set by the UN Global Compact, to be consistently raised by EU representatives in human rights dialogues with third countries and obviously, implemented by companies through the establishment of due diligence policies and risk management

[761] European Parliament, Resolution on Corporate liability for serious human rights abuses in third countries, (2015/2315(INI)), Brussels, 2016.
[762] Ibidem.
[763] At the beginning of 2017 France launched its supply chain legislation with the "Duty of Vigilance Act" (Loi de Vigilance). It requires all large French companies – with over 5,000 employees in France or over 10,000 worldwide – to undertake due diligence with regard to the companies they control and all their contractors and suppliers.
[764] Resolution on Corporate liability for serious human rights abuses in third countries, Ibidem, H.
[765] Ibidem, 1.

safeguards[766]. In relation to this last point, the Resolution specifically stresses that mandatory human rights due diligence should follow the steps required in the UNGPs and it should be guided by certain overarching principles related to the proactive identification of risks to human rights, the drawing up of rigorous and demonstrable action plans to prevent or mitigate these risks, adequate response to known abuses, and transparency[767]. In this way, Member States would have enough flexibility in drawing up their legislations, but at the same time, they could use as a point of reference the standards set out by the UNGPs to ensure a better harmonization. For the Parliament, it is important to maintain and continue to ensure a certain amount of flexibility to member states when implementing CSR guidelines, mainly to cater for the specific requirements of each Member State and region, with particular regard to the capacities of SMEs[768] and thus to avoid possible conflicts of interest.

In addition to the request to Member State, this Resolution urges the building of a consistent body of law by the European Commission, including rules governing access to justice, jurisdiction, the recognition and enforcement of judicial decisions in civil and commercial matters, the applicable law, and judicial assistance in cross-border situations involving third countries[769]. In this way, both Member States, at a national level, and the Commission, at a regional one, would be called to legislate in a coherent, holistic, effective and binding manner in order to fulfil their duty to prevent, investigate, punish and redress human rights violations by corporations acting under their jurisdiction, including those perpetrated in third countries[770].

Undoubtedly, the position adopted by the European Parliament with this Resolution encouraged the European Commission to consider an extension of jurisdictional rules under the Brussels I Regulation to third-country defendants in actions against companies that have a clear link with one EU MS among others[771] or companies for which the EU is an essential outlet[772]. But, for now, no such extension has been made.

Despite the pressure that this Resolution made on States and on the Commission, its main deficiency was found in its non-binding character. Therefore, EU member states started debating on the adoption of a binding measure concerning EU due diligence and the Commission gave its support, launching a study on this subject-matter in 2020.

[766] Ibidem, 4 and 5.
[767] Ibidem, 20.
[768] Ibidem, 8.
[769] Ibidem, 32.
[770] Ibidem, 17.
[771] Because they are domiciled or have substantive business there or their main place of business is in the EU.
[772] European Parliament resolution 2015/2315, OJ C, 2018, p. 125-132.

III.6.2 Commission's 2020 study on due diligence throughout the supply chain

In July 2020 the European Commission made available the final report on the study on directors' duties and sustainable corporate governance[773]. This study was launched by the Commission with the aim of assessing the root causes of the "short termism" that characterized the decisions related to corporate governance in Europe. It was noted by the Commission that corporate decision-makers were still focused on short-term shareholder value maximization rather than on the long-term interests of the company and this inevitably resulted in a reduction of the long-term economic, environmental and social sustainability concerns and measures adopted by European businesses[774].

On the one hand, companies do not properly identify and address climate change and other environmental, social and human rights (including workers' rights, child labour etc.) risks and impacts in their operations and supply chains[775]. Many EU companies are sourcing supplies from entities based in countries with lesser social, human rights or environmental standards and the identification and mitigation of related risks and impacts is weak[776].

On the other hand, companies fail to integrate potential new opportunities either for investment or for building resilience. While several large companies are frontrunners, most corporate strategies are rarely elaborated with proper measurement or aligned with science-based targets such as for example the goals of the Paris agreement on climate change. In addition, frontrunner businesses face issues of level playing field, which could hamper their leading efforts in the long run[777].

Because of these assumptions, the report identifies seven main problem drivers contributing to such "short-termism" in corporate governance. For instance, the study considers an issue the growing pressures from investors for short-term financial returns[778] or the lack of a strategic perspective over sustainability and current practices by companies[779].

Moreover, it analyzes the impacts of possible EU level solutions, from the publication of guidance documents or recommendations to the adoption of hard/legislative measures[780]. For example, it was included the requirement that directors should integrate ESG issues while performing their mandate, or that corporate boards consider sustainability criteria in the board nomination process and that Member States introduce mechanisms to incentivize longer shareholding periods[781].

---

[773] European Commission and EY, Study on directors' duties and sustainable corporate governance, Final Report, Brussels, 2020.
[774] Ibidem, p. 1.
[775] European Commission, Inception Impact Assessment, Sustainable Corporate Governance, 2021.
[776] Ibidem, p. 2.
[777] Ibidem.
[778] Study on directors' duties and sustainable corporate governance, p. 79.
[779] Ibidem, p. 93.
[780] M. Siri, S. Zhu, Integrating Sustainability in EU Corporate Governance Codes, Sustainable Finance in Europe, 2021.
[781] Ibidem.

The Initiative gained global attention because it mainly indicated that an EU level measure to empower corporate directors to integrate wider interests into corporate decisions was in sight[782]. Specifically, the Study sets out the basis for a reform option which has the aim to require company directors to take into account all stakeholders' interests which are relevant for the long-term sustainability of the firm or which belong to those affected by it (employees, environment, other stakeholders affected by the business, etc.), as part of their duty of care to promote the interests of the company and pursue its objectives[783]. The first and only State to have adopted general mandatory due diligence requirement for human rights and environmental impacts before this Study was France[784]. In 2017 it adopted the Duty of Vigilance Law[785], which imposed for the first time to companies with more than 5,000 employees to implement a vigilance plan which should identify risks and prevent serious infringements of human rights and fundamental freedoms, the health and safety of persons, and the environment. It represents the first mandatory domestic law in which the notion of "interested party" is defined very broadly, including all kind of affected people and communities[786]. After this Study, also Germany adopted its Supply Chain Due Diligence Act of 2021[787], which is intended to implement the United Nations Guiding Principles for Business and Human Rights of 2011 and a number of other international conventions listed in the appendix to the Act. Also in this case, the law primarily aims to establish the companies' duty to prevent human rights violations and environmental risks that are sufficiently likely to occur on the basis of factual circumstances.

Despite the ambitious goal and the results that it had in some MS, fierce critics were drawn by scholars from all around the world, all indicating the presence of misleading and erroneous elements in the Study. For instance, four Harvard Professors published their strong critique on the Report[788] in which they observe that it defines the corporate governance problem as one of pernicious short-termism that damages the environment, the climate, and stakeholders, but they believe that the Report mistakenly conflates time-horizon problems with externalities and distributional concerns[789]. It should have analyzed the three aspects separately, meaning short-termism as the inefficient focus on short-term gains at the expense of larger losses in the longer term; negative externalities as costs borne by people

[782] W.G. Ringe, A.A. Gözlügöl, The EU Sustainable Corporate Governance Initiative: Where are We and Where are We Headed?, Harvard Law School Forum on Corporate Governance, 2022.
[783] Ibidem.
[784] France's approach to CSR and Due Diligence will be deeply analyzed in Chapter IV.4.
[785] The French Duty of Vigilance Law: Loi no. 2017/399 du 27 mars 2017 relative au devoir de vigilance, J.O. 2017, Texte 1 sur 99.
[786] Ibidem.
[787] Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten of 16 July 2021, Official Gazette 2021 I 2959 (German Supply Chain Due Diligence Act).
[788] M.J. Roe, H. Spamann, J.M. Fried, C.C.Y. Wang, The European Commission's Sustainable Corporate Governance Report: A Critique, Yale Journal on Regulation Bulletin, 2020.
[789] Ibidem.

other than those who make the decision, which may create incentives to take actions that are harmful overall but that benefit the decision-maker; and distributional concerns as those that arise even in the absence of externalities when some gain much more than others, or value is distributed from groups that should be favored to groups that should be disfavored[790]. In sum, due to this lack in considering aspects other than the mere short-termism, this critique considers the Report's analytical framework wholly inadequate to shed light on the complex problems that the subject-matter in question should face[791].

Critics didn't fail to come also from European scholars. The European Company Law Experts Group (ECLE)[792] published several comments on the Study, all focused on the methodological shortcomings that can be found in it. First, it does not document nor examine in depth the relationship between short-termism and sustainability issues, it only assumes that it is the main problem for EU Companies[793]. Second, its empirical component is based on a review of listed companies in 16 European countries, including a significant portion of UK's companies. This alone is unacceptable, considering that the study is intended to form the basis of legal reforms exclusively in countries other than UK[794]. Lastly, they believe that the study contains analytical deficiencies. With 'short-termism', the Report focuses only on the evolution of the ratio between company pay-outs (dividends and buybacks) and net income, not including capital inflows through equity issuances and investments in the business[795]. Therefore, the assumption seems to be that distributed funds disappear and this is not the case in a market totally dominated by long-term institutional owners, in which funds paid out are essentially re-deployed in new investments in the business community[796].

In conclusion, this Study appears biased towards producing preconceived results rather than containing an impartial and comprehensive analysis. It proceeds by unsupported assertions, including that managers and investors are short-termists and corporate law is responsible for it, rather than rigorous demonstration and, for this reason, scholars are strongly convinced that this is not a document on which to base sustainable proposals for legislative action[797]. Despite these strong

[790] Ibidem, p. 136.
[791] Ibidem, p. 138.
[792] The European Company Law Experts Group is an independent and not-for profit group of European company and financial law experts dedicated to publishing policy papers on selected topics of European company law and financial regulation.
[793] ECLE, EC Corporate Governance Initiative Series: A Critique of the Study on Directors' Duties and Sustainable Corporate Governance Prepared by Ernst & Young for the European Commission, Faculty of Law Oxford University, 2020.
[794] Ibidem.
[795] Ibidem.
[796] Ibidem.
[797] ECLE, EC Corporate Governance Initiative Series: A Critique of the Study on Directors' Duties and Sustainable Corporate Governance Prepared by Ernst & Young for the European Commission; and M.J. Roe, H. Spamann, J.M. Fried, C.C.Y. Wang, The European Commission's Sustainable Corporate Governance Report: A Critique.

assertions, on the basis of the results of this Study, several Member States other than France and Germany, (Belgium, the Netherlands, Luxembourg and Sweden) are expected to adopt a mandatory due diligence domestic law in the near future[798].

Moreover, the Study is, undoubtedly, a strong demonstration of the European Commission's intention of intervening in the area of corporate governance and it represented the basis for the negotiation of the first Directive on due diligence adopted at the European level.

III.6.3 The 2022 Proposal for the Corporate Sustainability Due Diligence Directive

After months of drafting, on February 23rd 2022 the European Commission adopted a proposal for a Directive on corporate sustainability due diligence[799]. As it has been previously analyzed, one of the main weaknesses of European due diligence was the lack of a binding and homogeneous legislation, which determined the same duties and obligations for all companies. Thus, this proposal aims to foster sustainable and responsible corporate behaviour throughout global value chains, laying down rules for companies to respect human rights and the environment[800].

The proposed rules will have a range of limitations to their application, specifically applying to only two "Groups" of EU and non-EU companies. The first one would be formed by all EU limited liability companies of substantial size and economic power, meaning with more than 500 employees and more than €150 million in net turnover worldwide[801]. Whereas part of the second group would be other limited liability companies operating in defined high impact sectors, including agricultural and textiles ones, which do not meet both Group 1 thresholds, but have more than 250 employees and a net turnover of €40 million worldwide and more[802]. For these companies, rules will start to apply 2 years later than for group 1. The same thresholds would apply to companies active in the EU, but formed in accordance with the legislation of a third country[803]. In this way, the same duties imposed to companies incorporated in the EU would be imposed to companies formed elsewhere but actively present in the territory of the Union. Treating both at the same way will make possible to bring legal certainty and picture a realistic European playing field[804]. To ensure these aims, the proposal applies

---

[798] K.J. Hopt, Corporate Purpose and Stakeholder Value - Historical, Economic and Comparative Law Remarks on the Current Debate, Legislative Options and Enforcement Problems, Max Planck Institute for Comparative and International Private Law and ECGI, 2023.

[799] European Commission, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Brussels, 2022.

[800] European Commission, Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains, Press Release, 2022.

[801] Proposal for a Directive on Corporate Sustainability Due Diligence, ibidem, Article 2(1)(a).

[802] Ibidem, Article 2(1)(b).

[803] Ibidem, Article 2(2).

[804] Business & Human Rights Resource Center, EU Commission publishes proposal for a Directive on corporate sustainability due diligence, available at https://www.business-humanrights.org/en/latest-news/eu-commission-publishes-proposal-for-a-directive-on-corporate-sustainability-due-diligence/, 2022.

not only to the company's own operations, but also to their subsidiaries and their value chains with which it has direct and indirect established business relationships[805]. At the moment, the proposal's scope does not include SMEs, because it would be too difficult to agree on an alternative and special treatment reserved to them, being the Directive at its embryonic stage[806]. Being already a matter of discussion, amendments will be made once the Directive will enter into force to expand always more its scope of application, including sooner or later the SMEs.

To comply with the corporate due diligence duty, companies would need to integrate due diligence into policies[807], adopting a description of the company's approach, including long-term due diligence, a code of conduct describing the rules and principles to be followed by the company's employees and subsidiaries and a description of the processes put in place to implement due diligence. Moreover, companies would have to identify, prevent, and mitigate actual or potential adverse human rights and environmental impacts[808], developing and implementing a periodic prevention action plan and seeking contractual guarantees from direct business partners, ensuring compliance with the company's code of conduct[809]. When this last option is not possible, the company should refrain from establishing new relationships or extending existing ones with the partner in the relationship or in the value chain where the impact could arise[810]. In the case the impact has already verified, the company must bring it to an end or minimize its consequences[811]. In addition, companies must establish and maintain complaints procedures[812], allowing the State, trade unions and other workers' representatives, civil society organizations and persons affected or potentially affected by the adverse impact, to file complaints if they have legitimate concerns about actual or potential adverse human rights impacts and adverse environmental impacts in connection with the company's operations, their subsidiaries' operations, and their value chains[813]. Lastly, Member States shall monitor the effectiveness of the due diligence policy and measures through periodic assessments and reports issued by companies themselves[814]. It is important to note that many of the provisions are drafted in a sufficiently broad way to capture and develop on existing practices developed both before and after

[805] Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains, Ibidem.
[806] Ibidem.
[807] Proposal on a Directive on Corporate Sustainability Due Diligence, ibidem, Article 5.
[808] Ibidem, Articles 6 and 7.
[809] Ibidem, Article 7(3).
[810] C.G. Corvese, La sostenibilità ambientale e sociale delle società nella proposta di Corporate Sustainability Due Diligence Directive (dalla «insostenibile leggerezza» dello scopo sociale alla «obbligatoria sostenibilità» della due diligence), Banca Impresa Società, 2022.
[811] Proposal on a Directive on Corporate Sustainability Due diligence, Ibidem, Article 8.
[812] Ibidem, Article 9.
[813] Ibidem, Article 9(3).
[814] Ibidem, Articles 10 and 11.

the UNGPs[815]. What stands out is the strong focus on preventing and mitigating harm and bringing actual adverse impacts to an end, especially compared to the weak provisions on 'complaints procedures', which seem a long way away from the expectations of Pillar Three of the UNGPs and have little or no reference to the effectiveness of such procedures[816].

The proposed Directive makes important step forwards in two main aspects, both necessary to ensure due diligence compliance: supervision and civil liability. For what concerns the first issue, the Proposal designates Member States, specifically the one in which the company has its registered office or a branch, to appoint national administrative authorities to be responsible for supervising the effective compliance and respect of the new rules set out by the Directive[817]. These Authorities must have adequate powers and resources to carry out the tasks assigned to them, including the power to request information and carry out investigations related to compliance with the obligations set out in the Directive[818]. In addition, Authorities may initiate investigations on their own motion or following a communication of substantiated concerns, and as a result they can order the cessation of infringements, abstention from any repetition of the relevant conduct and also a remedial action proportionate to the infringement[819]. Moreover, they can adopt interim measures to avoid the risk of severe and irreparable harm and, lastly, impose pecuniary fines in case of non-compliance[820]. The designation of apposite impartial and independent supervising authorities represents a complete novelty in the area of CSR and due diligence. One of the biggest issues that has impeded the attribution of obligations to companies and MNCs, not only at a European, but also at a Global level, has always been the lack of control by a third party. Whereas this Proposal not only attributes to these Authorities as their own and single duty to verify the due diligence compliance by EU companies and adopt the following measures, but it allows Member States to choose which National Administrative Authority would be best suited for this job.

For what concerns civil liability, the proposed Directive also requires Member States to ensure that companies may be civilly liable where they fail to comply with the obligations laid down in Articles 7 and 8[821] of the proposed Directive. The potential liability route comes where companies' fail to comply with these provisions causes adverse impacts and damage[822]. In this case, companies can use several potential defenses to justify themselves in relation to indirect business partners, including that

[815] S. Gibbons, Some initial thoughts on the proposed EU Due diligence directive, Cambridge Core Blog, 2022, available at https://www.cambridge.org/core/blog/2022/02/25/some-initial-thoughts-on-the-proposed-eu-due-diligence-directive/.
[816] Ibidem.
[817] Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains, Ibidem.
[818] Proposal on a Directive on Corporate Sustainability Due diligence, Ibidem, Article 18.
[819] Ibidem, Article 18(5)(a).
[820] Ibidem, Article 18(5)(b)(c).
[821] Therefore, the duties of Preventing potential adverse impacts and bringing actual adverse impacts to an end.
[822] Ibidem, Article 22.

they were actions contemplated by the proposal such as seeking contractual guarantees, verification of compliance through industry initiatives, and third-party verification[823]. Undoubtedly, all these actions could be used as defense by the company, but rationally they would have never prevented or brought to an end the impacts in question, thus inevitably leading to an uptick in litigation. That litigation will still be challenging to prove for victims in terms of both legal proof and also the inevitable cost and procedural barriers[824]. Although some may, rightly, criticize the simplicity of the defenses contemplated under the proposal, it may be that the outcome would be a welcome and long overdue proper scrutiny of the validity of relying on verification and auditing schemes, let alone simply relying on cascading of contractual requirements[825]. For what concerns verification, the Directive limits the defense to verification by "an auditor which is independent from the company, free from any conflicts of interests, has experience and competence in environmental and human rights matters and is accountable for the quality and reliability of the audit"[826]. This provision might potentially lead to greater regulation, independence, and accountability of social auditing and its parallels.

The publication of this Proposal is undoubtedly a landmark moment. It is a ground-breaking legislative project, which seeks to cover issues and concepts that are practically and legally complex. It finally signals a moving away from an apparently endlessly circular debate on how to make companies subject to human rights law onto the question of how to reform company law to address human rights issues in an effective manner[827]. Despite these characteristics, there are many who, yet understandably, criticize various elements of the proposal for not going far enough. For instance, Siobhán Mullally, the Special Rapporteur on trafficking in persons[828], welcomes the Proposal, but considers essential the inclusion of an effective accountability mechanism for prevention of trafficking in persons[829]. In her opinion the current draft Directive does not ensure effective prevention and accountability for human trafficking, primarily because its scope of application is not broad enough. That constitutes a serious gap in a Directive that is aiming to make businesses accountable for their impact on people[830]. Additionally, the UN expert criticizes the lack of a

[823] S. Gibbons, ibidem.
[824] Ibidem.
[825] Ibidem.
[826] Proposal on a Directive on Corporate Sustainability Due diligence, ibidem, Article 22.
[827] S. Gibbons, ibidem.
[828] UN Special Rapporteur on trafficking in persons, appointed by the UN Human Rights Council in 2020to promote the prevention of trafficking in persons in all its forms, and to encourage measures to uphold and protect the human rights of victims.
[829] EU Corporate Due Diligence Directive must be strengthened and prevent trafficking: UN expert, Statement by the UN Special Rapporteur on trafficking in persons, 2023, available at https://www.ohchr.org/en/statements/2023/04/eu-corporate-due-diligence-directive-must-be-strengthened-and-prevent.
[830] Ibidem.

consultative process with the affected people and communities in the drawing up of a due diligence plan. She strongly believes that those "who would otherwise pay the price of failures of prevention and accountability"[831] must be consulted in order to completely understand their needs and, consequently, how to act properly.

It is critical that all parts of the supply chain are covered by the Directive, including those stages where high numbers of women, and indigenous peoples are present, and where we see high risks of trafficking for purposes of child labour. Lastly, she firmly supports the strengthening of the role of civil society organizations, trade unions, workers' representatives, and human rights defenders under the Directive, because this is the only way to ensure effective access to justice and compensation for victims of human rights violations[832].

On the 1st of June 2023 the text of the Proposal as amended by the EU Parliament was finally voted in favour[833]. The text adopted has huge potential for the climate: companies' transition plans will be mandatory, evaluated based on strengthened criteria and include short, medium and long-term objectives[834]. The EP position represents significant improvements in this area compared with the Commission proposals. On the other hand, despite some effort to remove barriers to access to justice for victims of corporate abuse, the text falls short of being truly meaningful in this area, leaving the burden of proof on the shoulders of victims[835]. On the second half of 2023 the EU Council will express its position on the voted text and, hopefully, it will propose some amendments strengthening even more the protection of victims of corporate abuses. Once that both the European Parliament and Council will approve the proposal, Member States will have two years to transpose the Directive into national law and communicate the relevant texts to the Commission.

In conclusion, even though it was necessary to make political compromises that for some watered down the ambition and potential of harmonized environmental and human rights obligations for businesses, text adopted by the EP is a landmark in the EU's due diligence framework[836]. It represents the closest point the EU has ever been to turning long-standing OECD standards into law and to ensuring justice for victims of corporate abuse and corporate accountability for environmental harm.

[831] Ibidem.
[832] Ibidem.
[833] Amendments adopted by the European Parliament on 1 June 2023 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Brussels, 2023.
[834] Report on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Brussels, 2023.
[835] Ibidem.
[836] Patrizia Heidegger, Director for EU Governance, Sustainability and Global Policies.

III.7 Regional tribunals' approaches to Corporations

This paragraph aims at pointing out the different approaches that human rights regional tribunals, specifically the European Court of Human Rights[837] and the Inter-American Court of Human Rights[838], have adopted toward Corporations. As it has been analyzed in the last paragraph of the previous chapter, International Tribunals, including the ICJ and the ICC, have been and still reluctant in admitting companies' prosecution in their jurisdictions. On the other hand, in terms of legal standing, recourse to the ECtHR is available for corporations under arts. 34 and 35 of the ECHR[839]. According to art. 34, corporations are included within the scope of the term "non-governmental organizations."[840] As Muijsenbergh & Rezai argue, *"The Court has never doubted the capability of corporations to bring claims before it and does not view corporate claims with suspicion"*.[841] Therefore, it is immediately possible to understand the opposite approach that the ECtHR has towards corporations: not only they are clearly included in its jurisdiction, but they are also allowed to bring claims on their own against State parties.

The most relevant case law by the ECtHR concerning companies does not found them as liable. On the contrary, corporations submit claims to the Court to restore their violated rights at the national level in accordance with the principle of subsidiarity[842]. Since 1998, the number of legal entities appealing to the Court has been increasing, due to many factors, such as the ratification of the Convention by new countries, like Moldova (1997), Ukraine (1997), Russian Federation (1998) or the non-fulfilment or inappropriate execution of national courts decisions with the state or state-owned enterprises primarily being the debtor[843].

Since corporate claims and interests often pose difficult questions, the ECtHR has been using different methods of interpretation regarding the evolving nature of the convention to provide a reasoned response, namely contextual interpretation, the principle of effective interpretation and the principle of dynamic interpretation[844]. Moreover, in granting rights to corporations under the ECHR, the Court analyses the applicability of the rights in each specific case within their scope. In the *Yukos case*[845], for instance, the Court was confronted with the particular circumstance that the applicant corporation

[837] European Court of Human Rights, Strasbourg, 1959.
[838] Inter-American Court of Human Rights, San José, 1979.
[839] Council of Europe, European Convention of Human Rights, Rome, 1953.
[840] Ibidem, Art. 34.
[841] V.H. Muijsenbergh and S. Rezai, Corporations and the European Convention on Human Rights, Global Business & Development Law Journal, 2012.
[842] L. Deshko, Application of Legal Entities to the European Court of Human Rights: a Significant Disadvantage as the Condition of Admissibility, Croatian International Relations Review, 2018.
[843] Ibidem, p. 85.
[844] B.O. Giupponi, Disentangling human rights and investors' rights in international adjudication: the legacy of the Yukos Cases, Willamette Journal of International Law and Dispute Resolution, 2017.
[845] Case of Oao Neftyanaya Kompaniya Yukos v. Russia, European Court of Human Rights, 14902/04, 2014.

had, in the meantime of the submission of the claim, ceased to exist. The Court acknowledged that the presence of a "victim" is indispensable to activate the Convention's protective mechanisms but refused to adhere to a rigid application of this criterion throughout the proceedings even when the company was dissolved. To hold otherwise would, according to the Court, undermine the right to submit individual applications by legal persons, since it would encourage governments to deprive entities of the opportunity to pursue an application that was submitted at a time when they enjoyed legal personality[846].

Not only Corporations are entitled to bring claims before the ECtHR, but they are also entitled under Article 41[847] to compensation for non-pecuniary harm suffered by the company itself. This was a contentious matter in ECHR law and it only settled with the *Comingersoll*[848] *judgment*. This case represents a novel appreciation of the institution of monetary compensation for non- material loss and has led to a flow of new remedial claims before the Court by legal persons[849]. The case also represents a new approach to provisions of the ECHR that were traditionally reserved, or believed to be reserved, for the protection of the interests of natural persons, provisions which now tend to safeguard the interests of certain entities (including businesses) as well[850].

In these two specific cases, companies were victims of their own States of incorporation. In order to submit a valid claim to the ECtHR it is, in fact, necessary that the claimant has the status of "victim"[851] and that the claim is brought against a State or a group of State, parties to the Convention. Therefore, there is no ECHR case law on corporations' liability, but this analysis was important for two main reasons. First, to understand the different approaches that this Court has adopted towards legal persons, compared to international ones. The ECtHR allows corporations, in the same way as they do with individuals, to submit a complaint about a violation of their rights. Second, because "judicial dialogue", meaning the mutual interaction and cooperation between national and regional forums, is fundamental to enhance the internal coherence of international law where there are parallel proceedings, achieving unity in the seemingly fragmented contemporary international legal order[852].

On the other hand, the Inter-American Court of Human Rights[853] does not allow individuals or organizations to submit cases, reserving this possibility only to State Parties or to the Inter-American Commission. Individuals or group of persons that believe a situation exists in violation of the

[846] Ibidem, par. 525.
[847] European Convention of Human Rights, Ibidem, Art 41.
[848] Case of Comingersoll S.A. v Portugal, European Court of Human Rights, 35382/97, 2000.
[849] M. Emberland, Compensating companies for non-pecuniary damage: Comingersoll S.A. v. Portugal and the ambivalent expansion of the ECHR scope, The British Yearbook of International Law, 2004.
[850] Ibidem.
[851] European Convention of Human Rights, Ibidem, Art 34.
[852] B.O. Giupponi, Ibidem, p. 152.
[853] Inter-American Court of Human Rights, San José, 1979.

Convention and wish to use the Inter-American System must direct their complaints to the Inter-American Commission, which is competent to hear petitions presented by any person, group of persons, or legally recognized non- governmental entity that may have reports or complaints of violations of the Convention by a State Party[854].

According to its precedents, the Court has made clear that it has authority to adjudicate over human rights violations committed by executives of public corporations[855] or corporations assuming the provision of public services[856]. Moreover, in cases where private corporations commit atrocities, the Court has reaffirmed a state's responsibility to investigate and prosecute those responsible for criminal activities.

The Commission has followed this approach adopted by the Court. For instance, it granted precautionary measures to *Honduran Campesino Leaders of the Bajo Aguán* region[857], after that some petitioners provided information that suggested that the beneficiaries needed protection from a "death squadron" of private security forces hired by corporate actors acting in conjunction with public officials. In that case, the Commission reaffirmed the state obligation to ensure the life and personal integrity of the affected groups[858].

Following this overall tendency, it seems highly likely that the Inter-American System will be ever more open and disposed to address claims exposing criminal responsibility of corporate executives, or liability of corporations themselves[859]. The interpretation of the American Convention on Human Rights, along with the Inter- American openness to import universal standards may present ways for victims and their representatives to formulate claims under the more recent documents codifying the responsibility of corporate actors under international law[860].

In conclusion, despite the different approaches that the two regional human rights' courts have adopted, both have recalled in their case law the importance of the collaboration of national tribunals. It is a duty of the State to ensure the respect of human rights and to prosecute corporations who violate them. Moreover, national courts must collaborate with regional and international ones to ensure coherence and try to fill the fragmentation of international law[861].

---

[854] What is the I/A Court H.R.?, available at https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en#:~:text=It%20is%20an%20autonomous%20legal,it%20can%20order%20provisional%20measures.

[855] See Abrill Alosilla and others v. Peru, Merits, Reparations, and Costs, Judgment, Inter-American Court of Human Rights, No. 223, 2011.

[856] See Suarez Peralta v. Ecuador, Preliminary Objections, Judgment, Inter-American Court of Human Rights, No. 261, 2013, par. 164.

[857] See Campesino Leaders of Bajo Aguán, Honduras, Inter-American Commission of Human Rights, Precautionary Measure No. 50/14, 2014.

[858] Ibidem.

[859] J. Orozco-Henríquez, Corporate Accountability and the Inter-American Human Rights System, Spring, 2016, p. 50.

[860] Ibidem.

[861] B.O. Giupponi, Ibidem.

CHAPTER IV
CSR APPROACHES BY NATIONAL JURISDICTIONS

The previous chapters of this work have been dedicated to the analysis of measures adopted at the international and regional levels and it has already been pointed out how the majority of them are very generic since they have to be applied by several and different jurisdictions. This chapter, instead, will be dedicated to the study of a purely domestic approach to Corporate Social Responsibility, specifically the Italian one. After a general introduction concerning the development of the concept in the Italian legal system, the most relevant measures adopted concerning CSR will be analyzed.
First, the CSR-SC Project issued by the Italian Ministry of Labour and Social Policy in 2003 will be taken into consideration, as being one of the first national initiatives to be proposed in the CSR context. Second, the two Action Plans on Business and Human Rights will be discussed, starting with the one that was effective from 2016 to 2021[862]. After having explained its aim and the operational principles and implementation measures on which it was based, its results, weaknesses and strengths will be considered. This analysis will guide the reader through the study of the following Action Plan, knowing how and on the basis of what it has been developed and the new goals that it was set for.
The chapter will then focus on the Legislative Decree n. 254/2016[863] , which is the instrument through which the Italian government has implemented the EU Directive on the disclosure of non-financial information (NFRD), analyzed in the previous chapter[864]. Afterwards, it will be made a brief consideration about possible judicial and non-judicial remedies that the Italian legal system makes available to the victims of corporate human rights abuses.
The last paragraph will be dedicated to a different domestic approach to CSR, the French one, which is the European member state with the most ancient tradition in terms of compulsory CSR. In 1977, it was a pioneer in adopting the Law con compulsory corporate social reporting[865], making it the European state with the most developed framework in this context, as it has been renewed several times during this decades. The analysis will compare the Italian and the French approaches to CSR, in order not only to have another example of a domestic approach to this concept, but also to have a more in-depth comprehension of the relevance that this type of responsibility is gaining at the national level.

[862] Minister of Foreign Affaires and International Cooperation, National Action Plan on Business and Human Rights, Rome, 2016.
[863] D. Lgs. 254/2016, adopted on 30th December 2016 by the Italian Parliament.
[864] Chapter III.5.
[865] Loi n° 77-769 du 12 juillet 1977 relative au bilan social de l'entreprise.

IV.1 The Italian voluntary approach to CSR

CSR has been discussed in Italy for many years and, as it will be analyzed in the following pages, it has proven to be a relevant player in triggering and promoting both the CSR discourse and its implementation. In the last few decades, several initiatives have been launched by national and local public authorities, as well as by private organizations[866].

Corporate Social Responsibility became a relevant topic of investigation among Italian academics mainly in the late 1980s, due especially to the rise of the "business ethics"[867], meaning the relevance of moral principles to guide companies' conducts. However, it is necessary to specify that the Italian academic field of Accounting and Management has always emphasized that companies have the function of satisfying individual and collective needs and not the goal of maximizing profits[868]. For instance, Zappa, the scholar who is considered the founder of this academic field, has affirmed in one of his works that the company in Italy has been conceived as a *"system and a socio-economic institution"*[869]. This systemic vision means that the company is a synergic unity of elements and relationships that interact with each other and with the broader economic and social system[870]. Therefore, the incorporation of CSR and its idea of a firm's interdependence with stakeholders within the Italian context appeared almost natural[871].

Several were the initiatives developed and implemented at the private level at the end of the 1990s. For instance, some business associations, including the Italian Banking Association or Federchimica, had active working groups on the topics concerning CSR and several research centers, technical committees, and institutes that provide important theoretical and management contributions[872]. In addition, several organizations promoted by companies and business associations, including Gruppo di Frascati/Cittadinanzattiva, Sodalitas, Impronta Etica and Anima, operated already in the field of CSR[873].

For what concerns public initiatives, the most relevant ones were developed by regions and provinces. For instance, the Department of Productive Activities of the Campania Region initiated in 2000 an

[866] For example, the GBS, which is the Italian Group for Social Reporting that has been created in 1997 by a group of volounteers.
[867] S.L. Wartick, P.L. Cochran, The evolution of the corporate social performance model, Academy of Management Review, 1985, p. 758–769.
[868] S. Aureli, M.G. Baldarelli, M. Del Baldo, Corporate Social Responsibility in Italy: Current and Future Developments, in Current Global Practices of Corporate Social Responsibility, Springer Nature Switzerland, 2021.
[869] G. Zappa, La nozione di azienda nell'economia moderna, Giuffrè, 1954.
[870] S. Aureli, M.G. Baldarelli, M. Del Baldo, Ibidem.
[871] Ibidem.
[872] Ministero del Lavoro e delle Politiche Sociali, Progetto CSR-SC, Il contributo italiano alla campagna di diffusione della CSR in Europa, Venezia, 2003, p. 12.
[873] Ibidem.

exploratory process of models and best practices in the field of CSR in the local, national and international spheres[874].

Despite these initiatives, at the beginning of the XXI century, Italy still lacked relevant national measures concerning the introduction of social and environmental concerns in MNCs activities. In this regard, it should be recalled that in 2001 the European Commission has included the issue of Corporate Social Responsibility among the activities it intended to develop within its remit through the adoption of the Green Paper[875], also calling on member states to take the lead in raising awareness and developing CSR in their own localities.

In this context, the Italian Ministry of Labour and Social Policy played a key role in promoting the CSR culture among companies through training and information activities, but also through the adoption of important measures, with the aim of disseminating socially responsible behaviours, independently of companies' sizes and sectors[876].

IV.1.1 The 2003 CSR-SC Project

On November 2003, on the occasion of the Third European Conference on CSR, the Italian Ministry of Labour and Social Policy, in agreement with the Secretary General of the National Association of Labor Consultants, presented the Corporate Social Responsibility – Social Commitment Project[877] (CSR-SC), one of the most innovative and effective initiatives in this sector. The CSR-SC Project represented, in fact, an initial proposal for work on which, however, it was intended to set up a further process of in-depth study and verification. It was a protocol with a three-year validity and had the aim of giving impetus to the spread of CSR and, specifically, to sustainable reporting. It, in fact, introduced a reporting document, the Social Statement, based on a modular set of key indicators that could be adopted voluntarily by companies, to measure and report their CSR performance and a reward system, including fiscal incentives, for the companies that adhered to it.

This Project was, in fact, based on the assumption that, even though CSR is defined as voluntary, in order to be credible and effective it must be measurable and evaluable. Evaluating CSR performance helps companies improve their procedures and behaviors, facilitating effective and credible measurement of their social and environmental performance and enabling stakeholders to measure how companies are meeting their expectations[878]. Therefore, it is essential to use units of measurement that correctly reflect the factors that comprise it, namely competitiveness, social

[874] Assessorato alle Attività Produttive della Regione Campania, Progetto CSR Campania, 2000.
[875] Analyzed in Chapter III.2.
[876] Ibidem.
[877] Ministero del Lavoro e delle Politiche Sociali, Progetto CSR-SC, Il contributo italiano alla campagna di diffusione della CSR in Europa, Venezia, 2003.
[878] Ibidem, p. 7.

cohesion and environmental protection. Building on these principles, the Ministry of Labor and Social Policy had since 2002 initiated a path of in-depth study, research and experimentation with the support of experts and qualified stakeholders, in an attempt to develop a standard consistent with the European Union's position on CSR and meeting the criteria of simplicity, modularity and flexibility described[879]. In this sense, the CSR standard proposed was intended to be a voluntary tool, designed primarily to guide companies in improving their social behavior, fostering a process of standardization of the methods and procedures for the detection, measurement and communication of CSR performance.

In order to provide an effective unit for measurement and reporting, the Project sets a two-level standard framework.

The first stage (the CSR Level) is the part of the project that is specifically dedicated to the identification of a measurement standard and the relative document that companies should base their reporting on, which is the Social Statement (SS). The SS is a voluntary document, designed primarily to guide companies in the activity of reporting on their social performance, standardizing the way in which information is collected and presented and encouraging forms of comparison and evaluation of the results obtained[880]. This document was intended to be simple, modular, and flexible in order to involve the majority of Italian companies, regardless of size, industry, legal nature, experience in reporting, etc. For the same reason, a special attention was devoted to small and medium-sized enterprises (SMEs), which are a fundamental component of the Italian industrial system[881]. The Ministry was, therefore, intended to prepare a tool that does not constrain this category of actors, but starts from their needs by offering new interesting opportunities in management and competitive terms. Thus, the CSR-SC Project deeply analysis in this first stage the structure of the Social Statement, describing the several performance indicators that companies should refer to in redacting it and the system of guidelines that they should follow.

As being non-compulsory, companies decide on a voluntary basis to participate to the CSR-SC Project, but after having agreed to it, they periodically have to present the Social Statement according to its indicators, as an independent Authority, proposed by the Ministry of Labour and Social Affairs, is expected to do a final evaluation of each reporting document sent by participating companies[882]. Lastly, this first stage includes the creation of a comprehensive database in which all the relevant information on the initiative will be collected and made available to the public[883].

[879] Ibidem, p. 22.
[880] Ibidem.
[881] Ibidem.
[882] Ibidem.
[883] Ibidem.

The second stage of the project (SC Level) is based upon companies undertaking a proactive role in supporting the welfare policies promoted by the Government and local authorities. If a company, on a voluntary basis, decides to go beyond the CSR Level, thus the mere presentation of the Social Statement and review carried out by the independent Authority, it participates, through its own resources, in the financing of projects of social intervention proposed by policy makers, through the creation of a specific SC Fund[884]. The underlying perspective is to integrate private and public resources according to a modern welfare mix approach and the subsidiary principle.

Therefore, the system proposed by the CSR-SC project has the aim of both promoting socially responsible behavior among companies and guaranteeing standardization in data presentation and comparability between the results obtained by different companies.

One of the most important innovations proposed by this project was the verification procedure, which was linked to a system of incentives for companies that join the project and obtain a positive evaluation of their Social Statement. The assessment had to be conducted by the CSR Forum[885] not only on the basis of the latter document, but also considering the opinions, comments and complaints that may be proposed by the enterprises' stakeholders. If a company obtained a positive evaluation, it would have been enrolled in a special national database in which the reporting document will be published with the aim of making it public and accessible by other companies[886]. For these companies, the facilitation system proposed by the Project envisioned the possibility of tax incentives, modulated according to the degree of participation in the CSR-SC Project[887]. Specifically with reference to the devolutions to the SC Fund, the facilities would also aim to reward those loans that represent an additional effort with respect to the company's past CSR commitments. In this way, the government's initiative aimed to avoid interfering in CSR interventions already implemented independently by companies. A second proposed goal was related to forms of promoting companies' CSR efforts, including through targeted government-supported campaigns and broadly visible awards.

In addition, as a guarantee of the companies' commitment to CSR and the quality of the results achieved and communicated through the Social Statement, independent third parties would carry out additional by sample, on-site assessments in order to both increase the credibility of the company's activities and the trust of different categories of stakeholders[888]. If the audits reveal nonconformities

[884] Ibidem.

[885] The CSR Forum has the primary function of presiding over all processes of collecting, evaluating and validating Social Statements submitted by companies. More specifically, it is responsible for the examination and evaluation of Social Statements, on-site verification activities on a sample basis of enterprises participating in the CSR-SC Project and monitoring of enterprises that have accessed the facilitation system.

[886] S. Loprevite, Le politiche istituzionali di promozione della responsabilità sociale delle imprese, in Responsabilità sociale e cooperazione: l'etica come identità, Cooperstudi, 2002, p.33.

[887] Ibidem.

[888] Ministero del Lavoro e delle Politiche Sociali, Progetto CSR-SC, p. 42.

with respect to what was documented in the Social Statement that cannot have immediate resolution, the application of moral suasion mechanisms is proposed. The aim of these mechanisms was to prevent opportunistic and non-transparent behavior by companies, through for example the registration in a special database of companies that have joined the government's initiative and the activation of procedures aimed at giving public notice of the violation or incentive-related mechanisms, including the withdrawal of the tax benefit and the retention of any funding provided to the SC Fund[889].

This proposal by the Italian Ministry of Labour and Social Policy showed an immediate and strong interest and intention to support its companies in the transition to the new way of doing business that was emerging. In application of the first phase of the project, various institutional communication campaigns were launched in 2004, both by press and via television, with the aim of reaching as wide an audience as possible to which to announce the National Conference *"CSR a Commitment to the Future"*[890] held that same year. Through these first steps, dialogue was fostered among institutions, businesses and stakeholders whose common goal was the creation of a shared strategy on Social Responsibility, also understood as a tool to increase the competitiveness of our country.

In addition, the 2005 Finance Act[891] established the Foundation for the Diffusion of Corporate Social Responsibility, known by the acronym I-CSR, Italian Centre for Social Responsibility[892], founded by the Ministry of Welfare and other public and private entities that share its aims, including, for example, INAIL (National Institute for Insurance against Accidents at Work), Unioncamere and Luigi Bocconi University. The main purposes of this independent body concern the promotion and dissemination of social responsibility in relations with various actors, the development of research on the CSR theme to contribute to national and international scientific production and the facilitation of dialogue among the various actors involved in Social Responsibility.

In spite of the great initial fervor shown by the Italian government, the CSR-SC project has not been pursued by subsequent governments with the same emphasis, so much so that ample space has been left for local, then regional and provincial, and private initiatives. Undoubtedly, it represented a groundbreaking initiative at the Italian level, where CSR had never been regulated before this Project. Despite being non-binding, companies were encouraged to participate to the CSR-SC, not only for the reward system set by the Project itself, but especially for the positive consequences that it would have on all the possible stakeholders. The transparency ensured by the adoption and the approval of

[889] Ibidem.
[890] National Conference "CSR: a commitment to the Future", organized by the National Chamber of Commerce in Rome, in 2004.
[891] L. 311/2004, art. 1 § 160.
[892] Italian Centre for Social Responsibility, founded in 2005.

a Social Statement would increase stakeholders' trust and loyalty in a company, thus allowing it to become stronger, both economically and socially.

IV.2 Italian Action Plan on Business and Human Rights (2016-2021)

As it has been analyzed in the previous chapters of this work, one of the main weaknesses of international and regional instruments adopted concerning CSR is represented by their lack of specificity. Being measures that should be applicable to several different subjects, including States and MNCs, the obligations set by these instruments are very general, representing only guidelines that each actor should implement. For this reason, different Governments have adopted National measures with the aim of develop internal strategies for the implementation of international instruments. For instance, the drafting process of the UN Guiding Principles[893], together with their espousal by numerous international organizations, such as the Organization for Economic Co-operation and Development (OECD), provided an opportunity for renovated attention to States' failures in abiding by their duty to protect individuals within their jurisdiction from corporate abuses[894]. As a consequence of heightened scrutiny and more precise requirements, actors as different as independent experts, international organizations and human rights NGOs advanced calls for governments to produce National Action Plans (NAPs) on business and human rights. These documents have the aim of recognizing the normative validity of the UN Guiding Principles, assessing their own performance in comparison with the newly adopted framework and developing strategies for the full implementation of the UN document, meeting the new requirements for interaction between human rights and the economic dimension, as prescribed by the UNGPs[895].

Italy didn't miss this opportunity and the 1st of December 2016 adopted the first National Action Plan on Business and Human Rights[896]. The body that has been identified by the Italian Government as the leading authority in the drafting of the National Action Plan (hereinafter NAP) was the Inter-ministerial Committee for Human Rights (CIDU)[897], composed of representatives of the different administrations involved in human rights decisions. The drafting process was organized around two working groups, one composed of CIDU's members and thus "institutional", and the other one

[893] See Chapter II.2.3.
[894] D. De Felice, A. Graf, The Potential of National Action Plans to Implement Human Rights Norms: An Early Assessment with Respect to the UN Guiding Principles on Business and Human Rights, Oxford University Press, 2015, p. 42.
[895] Ibidem.
[896] Minister of Foreign Affaires and International Cooperation, National Action Plan on Business and Human Rights, Rome, 2016.
[897] The CIDU is located within the framework of the Ministry of Foreign Affairs, in the General Directorate for Political and Security Affairs and it was established with the Decree 519/1978.

gathering trade unions, non-governmental organizations, scholars, and corporations[898]. The text was subsequently published for an open consultation in fall 2016, during which Human Rights International Corner, European Coalition for Corporate justice, and the International Federation for Human Rights (FIDH) submitted comments to the Italian NAP's proposal as a contribution[899]. They noticed that with this Action Plan, Italy is to promote human rights due diligence processes and they suggested that, in accordance with the UNGPs related provisions, it would be more appropriate to introduce a mandatory Human Rights Due Diligence in the Italian legislation, also referring to the recent solution adopted by France, considered a recommended model to follow[900]. Even though the objection was raised before the issuance of the official NAP, Italy did not modify its priorities and officially launched the NAP in December 2016.[901]

After the statement of commitment and a brief introduction to the background and context, the six national priorities are set, for which Italy declares that they will be subject to a regular review and update by the steering group[902]. The six priorities include promoting human rights due diligence processes, promoting fundamental labour rights in the internationalization process of enterprises, strengthening the role of Italy in a human-rights based international development cooperation, tackling discrimination and inequalities and promoting equal opportunities[903]. What draws attention is that the word '*promotion'* appears in four out of six priorities, giving an impression of vagueness and imprecision that returns frequently in the further parts of the document[904]. The generality of the text inevitably affects the ability to adopt implementing measures and valuate the results achieved. However, if this vagueness seems to 'depower' the NAP, it is also true that this document has another indispensable function: that of contributing to the dissemination of knowledge and preparing the cultural substrate necessary for the creation and entrenchment of a strong consensus and common consciousness on the issue, elements that are necessary for political and legislative calls for action[905]. Therefore, this generality is necessary in order to allow both MNCs and the government to adopt the relative measure.

---

[898] M. Bordignon, The Italian National Action Plan on Business and Human Rights, Nova Centre on Business, Human Rights and the Environment, 2020.
[899] All the contribution to the Italian NAP on Business and Human Rights 2016–2021; Available at: https://www.fidh.org/Img/pdf/comments_to_italian_nap_2016.pdf.
[900] M. Żenkiewicz, A. Smoleńska, Operationalizing the UN Guiding Principles on Business and Human Rights. Polish and Italian Steps to adopt National Action Plans, SSRN, 2017, p. 90.
[901] Ibidem.
[902] Ibidem.
[903] Minister of Foreign Affaires and International Cooperation, National Action Plan on Business and Human Rights, Rome, 2016, p. 6.
[904] M. Żenkiewicz, A. Smoleńska, Ibidem.
[905] Agenzia per la Cooperazione e lo Sviluppo, Business e Diritti Umani, Come vincolare l'attività d'impresa al rispetto dei diritti umani, 2019.

The Italian NAP is divided into two main parts, which respectively determine the foundational and operational principles of the Plan. For what concerns the first part, it contains few promising declarations of the Italian government. For instance, one concerns the establishment of an independent National Human Rights Institution in adherence with the 1993 Paris Principles[906]. Another one, contained in the same paragraph of the previous one, regards the approval of the draft law which aims at introducing the crime of torture in the Italian Criminal Code[907]. Even though these measures were well-received in the public consultations, the FIDH and other commenting organizations emphasized that the government should provide more specific information on timing and methodologies of the monitoring process[908], but this additional information were not added in the final version of the NAP.

The second part of the Plan, being the one dedicated to the operational principles, identifies specific commitments made by the Government over the five-year period during which the Plan was applicable (2016-2021) and the expectations that the Italian government places on its private sector in relation to the protection of human rights.

First, for what concerns the creation of a regulatory framework conducive to corporate accountability for human rights, the Action Plan has the merit of highlighting how it is, at least partly, already in existence in Italian law thanks to the fact that some specific regulations are already applicable for this purpose. This is the case, for instance, of the discipline on the so-called *"legality rating"*[909] and which entrusts the Competition and Market Authority with the task of certifying the compliance of the company with the national legislation in force (including some provisions on labor rights) or its compliance with social responsibility practices. Moreover, such is the case, also and especially, of the regulation on the administrative liability of legal persons under the Legislative Decree 231/2001[910]. The decree in object introduced into the Italian legal system the corporate responsibility for administrative wrongful acts, defined on a formal level as 'administrative' but operating de facto according to procedural-criminal schemes[911]. Its discipline, born to prosecute crimes related to corruption, has gradually been extended to a whole series of additional criminal offenses attributable to the activities of companies some of which can also be linked to a negative impact on the

[906] Paris Principles were adopted by the UN general Assembly on 20 December 1993. It is a set of international standards that regulate status, role and functions of national human rights institutions (NHRIs).
[907] Introduced in 2017 with Law n. 110 and it is now regulated by articles 613 bis and ter of the Italian Penal Code.
[908] Contribution to the Italian NAP on Business and Human Rights 2016–2021; Available at: https://www.fidh.org/Img/pdf/comments_to_italian_nap_2016.pdf.
[909] Art. 5ter d.l. 24 gennaio 2012, n. 1 recante "Disposizioni urgenti per la concorrenza, lo sviluppo delle infrastrutture e la competitivita".
[910] D.Lgs. 8 Giugno 2001, n. 231, Disciplina della responsabilita' amministrativa delle persone giuridiche, delle societa' e delle associazioni anche prive di personalita' giuridica.
[911] See in this sense inter alia Italian Corte di Cassazione (joint criminal sections), I. s.p.a., F. s.p.a, F.C. s.p.a., F.I. s.p.a, Judgment of July 2, 2008, No. 26654.

fundamental rights of the individual[912]. The accountability mechanism outlined by these two instruments can certainly serve as a model for introducing into the Italian domestic legal system a general human rights corporate due diligence obligation both from a criminal liability perspective, extending, for example, precisely the ratione materiae scope of Decree 231 to human rights compliance, and from a civil liability perspective. From this point of view, one of the strengths of the Action Plan is that it highlights what is the already existing regulatory framework and what needs to be further developed. In the case of due diligence, the NAP underlines how the already existing framework should be implemented and 'systematized' in order to bring it in line with international standards and especially with the content of the UN Guiding Principles.

Second, several measures are related to the *"State-Enterprise nexus"*[913], with a specific focus public companies or state-owned enterprises. It provides for the promotion of respect for human rights concerning companies competing in public procurement and with contracts stipulated with corporations for goods and services, with particular focus on enterprises operating abroad and enterprises availing themselves of foreign suppliers, with specific regard to the following subjects: anticorruption, non-financial disclosure, supply chain – including *ex ante* – environment, labour, non-discrimination[914]. Third, the Action Plan focuses on the most vulnerable categories. It envisages a reinforcement of inspections for fighting irregular and illegal employment and for the promotion of decent work conditions, especially in the agricultural sector[915]. Lastly, a particular attention is dedicated to the Third Pillar of Ruggie's Framework[916], access to remedies. In this regard, the Action Plan should be credited with an initial, albeit brief and non-exhaustive, reconstruction of the main barriers that exist in the domestic legal system and that may impede the proper exercise of the right of access to a remedy by individuals in the sphere of the economic activities of businesses, and consequently identified a series of priority measures on the adoption of which to "sensitize" the legislative bodies as part of the reform of the judicial system. These measures include remedies against the excessive length of the civil trial, measures to strengthen the special courts for enterprises with extension of jurisdiction also to actions for consumer protection, unfair competition, misleading advertising, the introduction of criminal law rules against economic crimes, including those committed abroad and verification of the possibility of introducing class action[917].

[912] For example, crimes committed as a result of the violation of rules on safety and health at work, some specific environmental crimes, the employment of labor of migrants whose stay is irregular, and crimes against the individual.
[913] M. Bordignon, Ibidem.
[914] National Action Plan on Business and Human Rights, Ibidem, Measure 34 and 35, p. 22.
[915] Ibidem, Measures 3, 4 and 5, p. 15.
[916] Chapter II.1.3.
[917] National Action Plans on Business and Human Rights, Ibidem, p. 28.

As it was previously mentioned, regarding possible critical profiles of the action plan, it must be emphasized that the organization of the subjects analyzed within it and the general framework set by the NAP can be confusing and unclear, appearing too vague and imprecise[918]. The organization of the subjects covered is sometimes unclear in the overall: the document provides a high quantity of information, some of which are extremely important, but are sometimes poorly contextualized due to its heterogeneity and the different levels of detail with which it is explored. This is true, for example, for issues related to corporate responsibility, due to the fact that there are two different corporate responsibility regimes that the UNGPs refers to and that result in different obligations for companies. The first is the objective responsibility that imposes on the company a typical result obligation, i.e., to avoid causing, or helping to cause, the negative human rights impact that results from its economic activities and which is violated when such an impact occurs, regardless of whether the enterprise itself has acted with due diligence or not[919]. The due diligence responsibility, on the other hand, imposes on the enterprise a precise standard of conduct, namely that of seeking to prevent the negative human rights impact arising from the activities of third parties and which is dependent on the enterprise's ability to induce third parties to change their illegitimate practices[920]. The NAP lacked to specify which type of responsibility was referring to when analyzing this concept, making its analysis unclear. Moreover, the confusion is enhanced by the Statement of the Action Plan, in which it is pointed out that the Government while recognizing *"the profound relationship that exists between the issue of respect for human rights by businesses and corporate social responsibility"*[921] comes to the conclusion however that "*the two policy areas are the subject of two different National Action Plans."*[922] This statement makes the goal of the NAP really doubtful and more difficult to be reached, due to the fact that CSR and the respect of human rights by companies are necessarily connected, if not interdependent. Instead of working on two different NAPs, which inevitably contain similar provisions and implementing measures, it would have been more effective to work on a single Action Plan that would have dealt with the issue in a more in-depth and comprehensive way[923]. Several risks could verify on the basis of this choice. First, there's a risk of reiterating the traditional contraposition between an approach based on voluntary, self-regulation by the company and a regulatory and binding approach to the subject matter[924]. This separation could induce in economic practitioners the mistaken belief that there is a kind of 'double way' that can be used alternatively, avoiding any potential binding

[918] M. Żenkiewicz, A. Smoleńska, Ibidem.
[919] See UNGP, Principle 13, lett. A.
[920] See UNGP, Principle 13(b) and Principle 17.
[921] National Action Plan on Business and Human Rights, Ibidem, p. 7.
[922] Ibidem.
[923] M. Żenkiewicz, A. Smoleńska, Ibidem.
[924] M. fasciglione, Il Piano d'azione nazionale italiano su impresa e diritti umani e l'attuazione dei Principi guida ONU del 2011, Il Mulino, 2017.

regulation that could be enacted in the future. Second, in the absence of forms of coordination between the two actions, the separation risks to implement, rather than reducing, the fragmentation of the subject matter under consideration, increasing also the risk of overlapping between them as well as the risk of uncertainty for Italian companies about the standards to be followed.

IV.2.1 The Second National Action Plan (2021-2026)

The Italian Working Group on Business and Human Rights (GLIDU)[925], previously set up by the International Cooperation and Inter-Ministerial Committee for Human Rights (CIDU) in the framework of the first NAP, launched an online consultation with the aim of working on the second NAP taking into consideration stakeholders' feedbacks and recommendations. The GLIDU took advantage of the results and, after months of work, published on December 1st 2021 the Second National Action Plan on Business and Human Rights[926]. The Plan updates and ensures continuity with the commitments already undertaken in the previous edition, but it also introduces new voluntary commitments, with the intention of ensuring consistency between the national position and the Guiding Principles on Business and Human Rights[927]. The updated document is based on a new approach, which is still dedicated to the interaction between respect for human rights and business dimension, but it has also found a renewed dynamism with the launch of the 2030 Agenda for Sustainable Development, Italy being strongly committed to its implementation[928].

Relevant in this Second Plan are issues and practices related to the protection of the environment, health, decent work and 'Human Rights Defenders.' It is also related to the context of the new challenges posed by the gig economy and the National Recovery and Resilience Plan (PNRR), in correlation with the opportunities offered in post-Covid-19 recovery[929]. In addition, new issues related to technological development and artificial intelligence were investigated, in order to highlight their possible impact on the enjoyment of human rights. Lastly, it enhances the need for preventive efforts, referring specifically to proper due diligence and impact assessment by companies, and underlines the need for collective actions with the aim of protecting the most vulnerable groups from human rights violations, especially in the case in which individual aspects related to business activities can have a significant impact on these groups from a labour and economic point of view[930].

[925] GLIDU is a theme-specific inter-ministerial body comprising experts on business and human rights which convenes on two sessions a year over which they deliberate on the implementation of the NAP and revision efforts.
[926] Minister of Foreign Affairs and International Cooperation, Second National Action Plan on Business and Human Rights 2021-2026, Rome, 2021, available at https://globalnaps.org/wp-content/uploads/2017/11/Italy-2021-2026-NAP.pdf.
[927] Ibidem, p. 5.
[928] Ibidem.
[929] Ibidem, p.7.
[930] Ibidem.

Specifically, one of the first commitments stated in the Second Action Plan is related to the Legislative Decree 231/2001[931]. In this context, a dedicated Working Group has been set up by the Ministry of Justice, with the intention of proposing solutions to remedy the following critical aspects of the current legislation, which include insufficient focus on the size and organizational complexity of companies covered by the Decree, with particular reference to small and medium-sized companies, as well as public bodies; heterogeneous nature of the catalogue of offences; difficult adaptability of criteria such as interest and advantage to cases when the offence upon the company makes it directly responsible and many more[932]. The implementation of this measure would represent a fulfilment of the commitments already assumed in the first NAP, concerning the systematization of the accountability legal framework already adopted in Italy with the objectives of the UNGPs.

A difference with the first NAP, that can be immediately depicted is the more practical approach that this second NAP adopts. Instead of analyzing the current regulatory situation, considering its strengths and weaknesses, it proposes practical solutions for the issues pinpointed in the previous version. The same approach is applied for what strictly concerns labour rights, which are really relevant in this second NAP. Here, for instance, the NAP identifies the specific commitment to develop and implement another Plan, specifically dedicated to combat smuggling of migrants and human trafficking[933]. In particular, this Plan will be based on the several key priorities, which include the improvement of the reliability and availability of data on trafficking, as a precondition for adequate monitoring of the phenomenon and better policymaking and the intensification of actions to address trafficking for sexual exploitation, forced marriages, begging, forced crime, organ trafficking, sale of infants, all forms of labour exploitation[934]. In addition, it aims at addressing trafficking in the new context of the migration crisis, as many victims of trafficking are involved in asylum application systems and at intensifying the training of professionals who, in various capacities, have contact with victims, also in relation to the evolution of traffickers' operational methods. Lastly, another fundamental goal is to combat impunity for those who knowingly use trafficked persons and facilitate and ensure access to compensation for trafficked persons[935].

These new several goals set by the Second NAP can be reached only with the cooperation of companies. The dialogue with business actors, started and managed already in the framework of the first NAP, has allowed Italy to identify the most relevant aspects regarding positive experiences and lessons learnt, as well as critical issues in the private sector at all levels, for the full transposition and

[931] Previously analyzed in Chapter I, p. 17.
[932] Second National Action Plan on Business and Human Rights 2021-2026, Ibidem, p. 17.
[933] Ibidem, p. 24.
[934] Ibidem.
[935] Ibidem.

effective implementation of the UNGPs. Especially since 2019, after the measures adopted at a European level, a wider and more comprehensive view about corporate social responsibility and responsible business conduct has been encouraged, concretely confirmed witnessed by numerous business good practices in compliance with a series of voluntary measures and regulations[936]. Another relevant aspect to foster dialogue with companies is the transition to a circular economy[937]: particular attention is paid in this area to the measurement of economic activities for a proper performance assessment through standardized and verifiable budgets. It is necessary to define precise references to this scope. By measuring circularity, companies identify the kind, characteristics and quantity of resources used (materials, energy, water and air/emissions) in an input-output process, and are able to assess how efficient their management, throughout the life cycle, is able to limit costs and impacts. Equally important is the challenge posed by digitization: it is a priority for the country's economic recovery, and the allocation of PNRR[938] resources will lead to greater connectivity with the strong benefits in terms of growth, not only economic. This rapid evolution must not turn into a critical issue that could jeopardize the protection of human rights. The involvement of Italian companies in the multistakeholder approach within the national and international cybersecurity ecosystem could represent an opportunity to act accordingly in cyberspace, safeguarding and promoting democratic standards and human rights[939].

IV.3 Implementation of the EU Directive on non-financial information: D.Lgs. 254/2016

Already mentioned above multiple times as being a fundamental measure adopted by the Italian Parliament concerning CSR, it is now necessary to analyze in-depth the Legislative Decree 254/2016[940]. It represents the Italian implementation of the EU NFRD[941], therefore it regulates the disclosure of non-financial information provided by Italian companies, making it mandatory for specific types of business entities. As it has already been analyzed, the European Directive has set up the foundation for a comprehensive disclosure of the company, highlighting the importance of promoting a new perspective of doing business that is furthering social, environmental, and economic development[942].

---

[936] Ibidem.
[937] The circular economy is a model of production and consumption, which involves sharing, leasing, reusing, repairing, refurbishing and recycling existing materials and products as long as possible. In this way, the life cycle of products is extended.
[938] National Recovery Resilience Plan, part of the Next Generation EU programme which allows EU countries to recover after the Pandemic. Specifically, the PNRR has a validity of 6 years, from 2021 to 2026.
[939] Second National Action Plan on Business and Human Rights 2021-2026, Ibidem.
[940] D. Lgs. 254/2016, adopted on 30th December 2016 by the Italian Parliament.
[941] Chapter III.5.
[942] European Union, Directive 2014/95/EU.

Notably, the Italian Decree applies to large public interest entities (PIEs), such as listed companies, banks, and insurance companies, which meet the following criteria. First, an average number of employees for the year of 500 units and a balance sheet total of more than €20 million or a net turnover of more than €40 million, are required[943].

It should be noted that, in a break with normal practice in Italy, this decree adopted a community norm in a not entirely faithful way, introducing modifications and additions. Specifically, these include differentiation of the degree of detail required in reporting depending on the type of entity, a mechanism for imposing sanctions on non-compliant entities, and a voluntary certification scheme for those entities that are not covered by the decree but seek to enhance their reputation[944]. With regard to the non-financial information, in fact, the Legislative Decree recalls the requirements listed in the Directive, which states that the report should include "*information to the extent necessary for an understanding of the development, performance, position, and impact of corporate activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, and anti-corruption and bribery matters*"[945], but it also goes further. It requests that the non-financial information needs to respect some principles such as relevance, clarity, and comparability[946] and that the selection of relevant information must be based on the principle of materiality. Therefore, the Decree gives very clear indications of the principle of relevance or significance, being more specific than the EU Directive. For instance, it requests that the information must be sufficient to ensure the understanding of the business activity, its performance, its outcomes and impact, the individual non-financial statement must cover the issues considered relevant to the specific business[947], or concerning the well-known Community principle of "comply or explain", it requests that when the undertaking does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a reasoned explanation for not doing so[948]. This last principle allows companies to still have some flexibility in doing their non-financial reporting, without compromising the transparency duty. As the EU NFRD does, Decree 254/2016 leaves enough flexibility to companies on choosing their own reporting standards. But, regardless of the reporting standards adopted, paragraph 2 of Article 3 establishes the minimum content of the non-financial disclosure[949], which include information on

[943] A. Venturelli, F. Caputo, R. Leopizzi, S. Pizzi, The state of art of corporate social disclosure before the introduction of non-financial reporting directive: A cross country analysis. Social Responsibility Journal, 2018.
[944] A. Venturelli, F.Caputo, S. Cosma, R. Leopizzi, S. Pizzi, Directive 2014/95/EU: Are Italian Companies Already Compliant?, Sustainability, 2017.
[945] D. Lgs. 254/2016, Ibidem, Art. 3
[946] Ibidem.
[947] Ibidem, Art. 3 § 1.
[948] Ibidem, Art. 3 § 6.
[949] Ibidem, Article 3 § 2.

environmental, social and employee matters, on the company's business model and on its policies to prevent human rights violations and avoid discriminatory attitudes.

Before the adoption of this Decree, the debate in the literature on non-financial disclosure has focused on the possibility of introducing a voluntary and/or mandatory element. With regard to mandatory reporting, the idea that regulation could improve the quality and comparability of non-financial reporting was initially confirmed in the literature[950]. Therefore, some believed that regulation would be preferable to voluntary disclosure which may be incomplete and lack accuracy, neutrality, objectivity and comparability[951]. Moreover, according to some studies[952], the imposition of specific rules and reporting models by governments could result in the short-term standardization of practice and a consequent increase in the number of reports containing non-financial information, while providing benchmarking and best practices. On the other hand, a quantitative increase would not necessarily be associated with a qualitative increase in information. Some empirical studies have shown that regulation does not always improve the quality of non-financial reporting in financial statements or that this alone can guarantee a better level of disclosure[953]. Advocates of voluntary reporting attach strong strategic value to the development of CSR, which spreads as a result of the value attributed to it by the company and managers, and where there is a positive relationship between non-financial reporting and company share value[954]. Therefore, the development of proactive CSR practices and the consequent (voluntary) non-financial reporting help to generate trust among investors and improve company reputation[955]. However, it would seem that scientific debate on the voluntary adoption of non-financial disclosure has not yet reached a consensus.

For this reason, it can be helpful to examine and compare the Italian situation on non-financial reporting before and after the adoption of the Legislative Decree 254/2016. In order to make this comparison, a sample of 147 companies[956] which, for their dimension, on 31 December 2015, were considered as large undertakings as defined in the Decree, and therefore, which would have been subject to disclosure. Two types of analysis were performed: a statistically descriptive one and an inferential one. The former is based on content analysis of the company non-financial disclosure.

---

[950] C. Deegan, Introduction: The legitimizing effect of social and environmental disclosures–a theoretical foundation. Audit Account Journal, 2002, p. 282–311.

[951] M. La Torre, S. Sabelfeld, M. Blomkvist, L. Tarquinio, J. Dumay, Harmonising non-financial reporting regulation in Europe: Practical forces and projections for future research. Meditari Accounting Resolutions, 2018, p. 598–62.

[952] For instance, D. Hess, T.W. Dunfee, The Kasky-Nike threat to corporate social reporting: Implementing a standard of optimal truthful disclosure as a solution. Business Ethics, 2007, p. 5–32.

[953] Ibidem.

[954] K.T. Wang, D. Li, Market reactions to the first-time disclosure of corporate social responsibility reports: Evidence from China, Journal of Business Ethics, 2016.

[955] Ibidem.

[956] F. Caputo, R. Leopizzi, S. Pizzi, V. Milone, The Non-Financial Reporting Harmonization in Europe: Evolutionary Pathways Related to the Transposition of the Directive 95/2014/EU within the Italian Context, sustainability, 2019.

More specifically, the disclosures conforming to Leg. Decree 254/2016 were analyzed. To this end, it should be noted that the law permitted those companies that were within the requirements of the norms to submit their non-financial disclosure in a specific section of the Management Report or, alternatively, in independent documents such as the sustainability report or the integrated report. The comparative analysis of the years 2015 and 2017 shows a net improvement. This is due to the physiological increase in the number of reports that included non-financial information and to the more detailed and consolidated framework used by companies[957]. During the period studied, an average increase of 21.248%[958] in the quality of reporting was observed. This was due to the increased awareness of companies in sectors that were hitherto less inclined towards corporate social responsibility. On the basis of these results, it can be confirmed the existence of a qualitative increase of the non-financial declarations prepared in according to the Legislative Decree 254/2016.

In order to ensure the respect of disclosure duties, Legislative Decree No. 254/2016 provides that a pecuniary administrative sanction ranging from Euro 20,000 to Euro 100,000 can be applied by CONSOB[959] on directors of public-interest entities when, inter alia, the individual or consolidated non-financial statement filed with the Companies' Register does not comply with the Decree's requirements[960]. The same penalty can be applied to members of the control body who, in breach of their supervisory duties, fail to report to the shareholders' meeting that the individual or consolidated non-financial statement does not comply with the above-mentioned requirements. If the statement contains material untrue facts or if it omits significant material facts, directors and members of the control body of the public-interest entity are subject to a pecuniary administrative sanction ranging from Euro 50,000 to Euro 150,000[961]. Furthermore, other pecuniary administrative sanctions can be applied to external auditors who fail to comply with their certification duties.

As mentioned above, both the NFRD and Legislative Decree No. 254/2016 only provide for a disclosure obligation. However, despite due diligence in this context being mainly about reporting, companies, also in order to ensure an effective disclosure, may anyway implement due diligence processes into broader enterprise risk management systems, as recommended for instance by the OECD Due Diligence Guidelines for Responsible Business Conduct ("RBC")[962]. In particular, such Guidelines recommend companies to adopt RBC policies in order to prioritize risks in conducting the corporate due diligence and approaching stakeholders, explaining why some risks are considered

[957] KPMG, The Road Ahead, The KPMG Survey of Corporate Responsibility Reporting, London, 2017.
[958] F. Caputo, R. Leopizzi, S. Pizzi, V. Milone, Ibidem.
[959] The Commissione Nazionale per le Società e la Borsa (CONSOB) is the public authority responsible for regulating the Italian financial markets.
[960] D. Lgs. 254/2016, Ibidem, Art. 8.
[961] Ibidem.
[962] Chapter III.1.

more significant than others and how the company intends to take action on its value chain and business relationships.

IV.4 Judicial and non-judicial remedies in the Italian Legal System

As it has been previously analyzed, the Legislative Decree 231/2001519 endowed the Italian legal system with adequate tools capable of combating corporate abuses, introducing the possibility of affirming the criminal-administrative liability[963] of legal persons and imposing penalties for crimes committed by those in apical management positions within the company and for those committed by its employees. The crimes that can give rise to the liability of the business entity under the Legislative Decree 231/2001 are analytically set forth within the same decree and in complementary legislations, through which the list of offenses has been progressively expanded from 2001 to the present. Initially it was limited to the crimes of bribery, extortion and fraud against the state[964], while now it also applies to some cases directly relevant to the protection of human rights. These include the crimes of terrorism[965], enslavement and trafficking in human beings[966] or female genital mutilation[967]. Therefore, even though the Italian legislator has not provided for a generalized application of the legislation in question following the commission of any crime, its scope of application has been and continues to be enlarged, in order to protect the victims of any abuse that a company can perpetrate.
Moreover, the Decree has extraterritorial application on the basis of Article 4, which provides that, in the cases and under the conditions set forth in Articles 7, 8, 9 and 10 of the Italian Criminal Code[968], entities having their head office in the territory of the Italian State shall also be liable in the Italian system in relation to crimes committed abroad, provided that the State of the place where the act was committed does not proceed against them[969]. The aspect noted here is noteworthy not only because of the transnational nature that some of these crimes often take on, but also because of the very international nature of the operations of some companies, which may make themselves the perpetrators or accomplices of crimes in a foreign country through entities functionally connected to them. In this way, even if the locus delicti commissi is a State in which there are judicial lacks or a high rate of corruption, the victim can go before an Italian judge, admitted that the company has its head office in Italy.

[963] Meaning a type of liability that is formally defined as administrative, but which provides procedural guarantees akin to those of the criminal procedure.
[964] D.Lgs. 231/2001, Ibidem.
[965] Included through the adoption of Law 7/2003.
[966] Included through the adoption of Law 228/2003.
[967] Included through the adoption of Law 38/2006.
[968] Italian Criminal Code, Artt. 7, 8, 9, 10.
[969] Art 4, D.Lgs. 231/2001, Ibidem.

Equally relevant is the recent passage of legislative reform for the conduct of class actions with respect to entrepreneurial plaintiffs, which occurred through Law No. 31 of April 12, 2019[970], which became effective on May 19th 2021. In its executive dimension, this measure provides for the possibility for the competent court to impose an obligation on the relevant enterprise to disclose relevant documents in case the plaintiffs prove that such documents were necessary for the decision on the case[971]. The possibility to access companies' documents is a huge step forward in the corporate liability context, which ensure even more protection to human rights victims.

It is not surprising that, despite the criticalities previously pointed out[972], the Legislative Decree 231/2001 has been warmly welcomed, both at national and international level. For instance, in 2009, in the occasion of the G8 Meeting, a comparative an analysis of the regulation in question was made, and the Italian legislation has emerged as one of the most comprehensive and effective examples of jurisdictional remedy, especially with reference to transnational crimes[973].

If it's true that the Italian legal system has developed an effective legal framework for what concerns companies' accountability and the correspondent judicial remedies, it is also true that it presents weaknesses for what concerns non-judicial ones. With the exception of the NCP's conciliation and mediation activities[974], the Italian state has no extra-judicial mechanisms for access to remedies in cases of human rights abuses committed by companies.

One of the main lacks, is that Italy does not have a National Human Rights Institution (NHRI)[975] , which are the first example of a non-judicial state complaint mechanism cited by the Guiding Principles, for which these Institutions would ensure access to effective remedies for entrepreneurial human rights abuses[976]. In order to be a NHRI, the institution must be constituted under a legislative act and have adequate resources and investigative powers to carry out their advisory, information and monitoring responsibilities[977]. In addition, its members must be independent and exercise their functions independently. Italy has never had anything that can be identified as a NHRI and at the present, is one of the only five EU member states that don't have one. It is not easy to establish the reason why Italy still lacks such an institution, but mainly it is because an agreement between different political forces couldn't be reached on its competences and powers. One of the most similar

[970] Legge 31 del 12 Aprile 2019.
[971] Ibidem.
[972] Chapter IV.3 and Chapter IV.3.1.
[973] Comunicazione del Ministero della Giustizia, Dicembre 2012.
[974] Analyzed in Chapter III.1.
[975] Assemblea Generale dell'ONU, Resolution: Principles relating to the status of national institutions, UN Doc. A/RES/48/134, 20 Dicembre 1993, Annex.
[976] International Coordinating Committee (ICC) of National Institutions for the Protection and Promotion of Human Rights,10th Biennial Conference, Business and Human Rights: What Role for NHRIs?, 2010.
[977] Ibidem.

institutions that Italy has had was the CIDU[978], whose main tasks were to monitor the implementation in the State of international Conventions and to take care of the preparation of the periodic reports that the Italian state is required to submit in this regard. However, it did not have the competence to receive any individual complaints and, in any case, the body was abolished in 2012 as part of the "public spending review" process under the Monti Government[979]. More recently, since 2021, the Government is working on a Code for the establishment of a National Commission for the promotion and protection of human rights and combating discrimination[980], but it has not been adopted yet. However, the Government has already stated that this Commission is in no way a substitute for the judicial function of the State, considering that it cannot and should not issue sanctions or establish reparations. Rather, it observes that its strength should lie in its ability to act preventively with respect to violations of laws and possible appeals, thus helping to reduce public spending in the justice system[981].

Therefore, at the present, the only non-judicial remedy that the Italy legal system offers to victims of companies 'abuses is mediation through the National Point of Contact. In order to overcome the obstacle represented by this lack of alternatives, companies should be encouraged to establish internal, non-judicial mechanisms for the settlement of disputes over human rights abuses related to the activities of the companies themselves, in line with the OECD Guiding Principles and Guidelines. At the same time, the government should commit to ensuring widespread public information about the existence of the NPCs among all potential stakeholders, in order to make their work more effective. Lastly, all the efforts should be put by the government in reaching an agreement for the establishment of an NHRI, because otherwise, having already passed 30 years from the adoption of UN Resolution 48/138, Italy risks losing its credibility in the human rights context.

IV.5 A comparison with French approach to CSR

The way CSR is conceived and implemented in a country today is certainly affected by the international academic discourse, by the international practices of multinational companies, nongovernmental organizations (NGOs) and trade unions, and by initiatives of supranational organizations. For the aim of this work, it could be useful to briefly discuss another national approach

[978] Chapter IV.3.1.
[979] With the Legislative Decree No. 95/2012 it was established that, as of the date of expiration of the collegial bodies operating in public administrations (including the CIDU), the activities carried out by them were definitively transferred to the competent offices of the administrations within which they operate (Art.12(c) 20), in this case the Directorate General for Political Affairs and Human Rights of the Ministry of Foreign Affairs.
[980] Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani fondamentali e per il contrasto alle discriminazioni, Testo unificato C. 855 Quartapelle Procopio C. 1323 Scagliusi e C. 1794 Brescia, seduta del 13 Novembre 2021.
[981] Ibidem.

to CSR, in order to pinpoint and better understand how broad this concept can be and how much space of manoeuvre each jurisdiction has left in its implementation. An interesting comparative analysis can be made with the French approach, as France has been the very first EU country to adopt a compulsory CSR law already in 1977 and now has one of the most complex and developed CSR legal framework in the Union.

The most significant principle distinguishing the business–society nexus in France from other contexts is the strong role of the State. The *"government's right to influence and, where necessary, intervene quietly and effectively behind the scenes is expected, respected, and, it would seem, admired"*[982].The longstanding tradition of centralized power and faith in changing society via legislation in France is one factor behind the acceptance of what in other cultures would be seen as intolerable state interventionism. It is thus not surprising that the discourse and practice of CSR in France has generated a body of legislation regulating business behavior corresponding with the culturally shared understanding of roles and responsibilities. For example, France was a pioneer in introducing mandatory corporate social reporting in 1977[983], and it used legislation again in 2001 to try to mainstream the integration of social and environmental criteria in the annual report of listed companies[984]. Through the New Economic Regulations in 2001 that supplemented the 1977 law on the "bilan social" the scope of reporting was expanded and, as of 2002, all the companies listed on the French stock market were required to publish social and environmental information in their annual report[985]. Of course, the mere fact of imposing a common framework on reporting by defining a precise list of social and environmental criteria to report on is still a mark of the role the French State intends to play in the field, while the governments of most other countries remain quite reluctant to intervene.

Even though these interventions by the French Government have represented important steps in regulating CSR, in the last years new approaches were tempted with the aim of going beyond legislation. For example, in 2004 the Government created a label for companies with particularly proactive policies toward female workers[986]. Such an action based on incentives complementing mandatory rule is a major change in the policy of public powers in France and seems even more surprising as it deals with employees' rights, the traditional heart of CSR activities in France[987]. A

[982] Charkham, J. P. (1995). Keeping good company. A study of corporate governance in five countries. Oxford, UK: Oxford University Press.
[983] Loi n° 77-769 du 12 juillet 1977 relative au bilan social de l'entreprise.
[984] Law on New Economic Regulations, which expanded the scope of its predecessor.
[985] A. Berthoin Antal, A. Sobczak, Corporate Social Responsibility in France, A Mix of National Traditions and International Influences, Business and Society, 2007.
[986] Ministère de la Parité et de l'Egalité Professionnelle. Label Egalité. Pour l'égalité, la France des entreprises s'engage [Equality label. French enterprises commit to equality], 2004.
[987] A. Berthoin Antal, A. Sobczak, Ibidem.

second example for the French State using new forms to favor CSR is its role in the success of the Global Compact[988]. The United Nations initiative, launched by the secretary general in 1999, provides a platform for companies to engage in and report about voluntary CSR activities around the world. The president of France, Jacques Chirac, started in 2002 to appeal to the heads of French companies to become signatories to it and from 8 French companies that had signed up by January 2003, the number jumped to 190 in the fall of that year, reaching 393 by May 2005[989]. The secretary general of the United Nations thanked *"President Chirac for making France a leading country in the Global Compact movement"* because *"French companies are rightly seen as among today's champions of corporate citizenship"*[990].

France continues to be one of the countries at the forefront of promoting corporate social responsibility through legislation. For instance, in 2017 the Corporate Duty of Vigilance Law[991] entered into force, with the aim of preventing severe human rights violations. This law applies to a limited number of large French-based companies, as well as a small number of multinationals based outside of France with important French subsidiaries. For most U.S.-based multinationals, if the law has an impact on them, it is because they have an established commercial relationship with an entity that is subject to the law[992]. Companies that are subject to this law must establish a reasonable vigilance plan to allow for risk identification and the prevention of severe violations of human rights, health and safety or environmental damage resulting from the operations of the company, its subsidiaries, subcontractors and suppliers. Specifically, the vigilance plan must include a risk mapping to identify and analyze the risks of human rights violations or environmental harms in connection with the company's operations, as well as procedures to regularly assess risks associated with subsidiaries, subcontractors and suppliers with which the company has an established commercial relationship[993]. Moreover, companies must take any actions to mitigate and prevent identified risks and collect signals of potential or actual risk and adopt any mechanisms to assess measures that have been implemented as part of the company's plan and their effectiveness. In order to be effective, the law prescribes that companies must discuss their vigilance plan with their stakeholders and report on its implementation in their annual management reports[994]. If a company fails to create, implement or publish a vigilance plan, an interested person may send a written notice

[988] Chapter II.1.2.
[989] A. Berthoin Antal, A. Sobczak, Ibidem.
[990] K. Annan, Secretary-General's remarks at meeting with President Chirac and business executives on the Global Compact, Paris, 2004, Available at www.un.org/apps/ sg/sgstats.asp?nid=754.
[991] Corporate Duty of Vigilance Law, n° 2017-399.
[992] Business & Human Rights Resource Centre, France's Duty of Vigilance Law, available at https://www.business-humanrights.org/en/big-issues/corporate-legal-accountability/frances-duty-of-vigilance-law/.
[993] Ibidem.
[994] Ibidem.

of non-compliance to the company. After this occurs, the company has three months to take appropriate corrective action. If the company fails to do so, an interested person may request that a court take legal action. Furthermore, any natural or legal person may seek damages for corporate negligence for any harm suffered that could have been avoided if the company had complied with the requirements of the vigilance law[995]. Therefore, France has been a pioneer also in this sector, considering that the European Commission's proposal for mandatory human rights due diligence legislation still at its first stages.

Given the still prevailing role of the State in the field of CSR, the expectations of the stakeholders to the public authorities continue to be very high. For example, public authorities are expected to organize stakeholder dialogue and structure the NGOs like the State did in the past for the unions, and to define their relationship with these unions[996]. An opportunity would be to build on the national and regional economic and social councils that are consulted by the public authorities on issues linked to business and society. Employers, trade unions, and civil society each occupy one third of the seats on these councils, which may therefore offer a platform for stakeholder dialogue[997].

It is now easy to pinpoint that the French approach to CSR is completely different from the Italian one. France has been a pioneer in regulating social reporting, requesting to its companies always more precise information about the environment and human rights since 1977[998]. Moreover, the French government has constantly intervened in the last decades with ad-hoc legislations, without leaving too much space of manoeuvre to any voluntaristic approach. Therefore, institutional contexts highly affect the way in which CSR practices are adopted locally and some light may be shed on how this happens using a cross-national comparison[999].

[995] Ibidem.
[996] A. Berthoin Antal, A. Sobczak, Ibidem.
[997] Ibidem.
[998] M. Blasco, M. Zølner, Corporate Social Responsibility in Mexico and France, Exploring the Role of Normative Institutions, Business and Society, 2010.
[999] Ibidem.

CHAPTER V
ANALYSIS OF A MULTINATIONAL'S POLICY ON CSR: ENI'S BUSINESS MODEL

Most of the measures analyzed in the previous chapters, despite being adopted by very different subjects of law, have a common characteristic: they set very general guidelines for multinational corporations, not specific duties[1000]. This is because, as it has already been pointed out multiple times, the provisions listed in every measure should be applicable by the highest number of entities possible. Therefore, CSR instruments only set out very generic duties, leaving every multinational corporation enough space of manouevre to interpret and apply them at their best through the development and the implementation of a precise business model that includes social and environmental concerns. To have a complete understanding of how Corporate Social Responsibility works, it will now be analyzed Eni's business model, an Italian energy company with subsidiaries all over the globe, that specifically organized its work with the mission of contributing to a "*Just Transition to create long-term value*"[1001]. In 2001, it was the first Italian company to sign up the UN Global Compact[1002] and, in more than 20 years, it has now developed a very complex framework concerning CSR. Especially considering the dimensions of this multinational corporation that operates in more than 60 countries all over the globe, a business model that finds complete transparency at its basis was necessary. The company hasn't, in fact, failed to find itself criticized or suited by NGOs for some of its activities. For instance, in 2013 Amnesty International Italy and Re:Common publicly reported Eni and other oil companies for its activities in Nigeria, specifically in the Niger delta area[1003]. These companies have been accused a number of serious and systematic human rights violations directly related to the way the oil industries operate. Oil spills and gas flaring have contributed to such a level of pollution and environmental damage that the right to health and a healthy environment, the right to an adequate standard of living, and the rights to food and water of the hundreds of thousands of people living in the Niger Delta have been affected[1004]. At that time, Eni didn't use to publish any data related to gas flaring, making it impossible to check on its activities, as much as making them suspicious. This is just an example of the situations in which a multinational corporation can find itself involved if it

[1000] For instance, the UN Guiding Principles on Business and Human Rights analyzed in Chapter II.1.3 or the OECD Guidelines on Responsible Business Conduct analyzed in Chapter III.1.1.
[1001] Integrating sustainability into our business model, available at https://www.eni.com/it-IT/trasformazione/modello-business.html.
[1002] Eni's Commitment to Respect Human Rights, available at https://www.eni.com/en-IT/just-transition/respect-for-human-rights.html.
[1003] Amnesty International Italia e Re:Common intervengono all'Assemblea generale degli azionisti di Eni, Re:Common, 2013, available at https://www.recommon.org/amnesty-international-italia-e-recommon-intervengono-allassemblea-generale-degli-azionisti-di-eni/.
[1004] Ibidem.

doesn't respect the environment and, consequently, human rights and if it doesn't periodically publish reports about its activities.

In order to try to avoid any negative impact on the environment and on human rights with its activities, in 2020 Eni totally renewed its business model, integrating its already adopted document with new strategies and new goals, all entirely based on transparency and interaction with its stakeholders. As being an energy company, Eni recognizes the need to be lean and flexible in coping with energy issues, through for example the diversification of energy types and geographical sources, the development of new technologies and the central role of natural gas. In fact, for Eni, the energy transition is above all a technological transition that requires strong industrial and innovation capacity, which must come along with a deep focus on social issues[1005]. For this reason, it has developed a business model based on three pillars: Operational Excellence, Carbon Neutrality by 2050 and Alliances for Development[1006]. Specifically, the second pillar aims at the total decarbonization of products and processes through especially the use of natural gas, that will allow the company to reduce its carbon footprint. For what concerns the first and the third pillar, they necessarily go hand by hand. Operational excellence is the company's commitment to enhancing the value of people, their health and safety, the integrity of assets, environmental protection, the respect of human rights, resilience and the diversification of operations and financial solidity[1007]. While, through Alliances for Development, Eni aims to reduce energy poverty in the countries where it operates by developing infrastructure related to its traditional business, but also the new frontier of renewables, with the goal of generating value in the long term, transferring its know-how and competencies to local partners[1008]. In those countries, several initiatives are promoted in support of local communities to foster not only access to energy, but also economic diversification, training, community health, access to water and hygienic services and protection of the territory, in collaboration with international actors and in line with the National Development Plans and 2030 Agenda. Eni, in fact, considers sustainability as part of every aspect of its business and each of the 17 Sustainable Development Goals of the UN 2030 Agenda is integrated into its mission[1009].

The most relevant instruments adopted in the pursuing of this mission will be now analyzed. First, the focus will be on how Eni contributes to the protection of human rights. Several measures have been adopted in the last years with this aim, including the 2019 Global Framework Agreement on

[1005] Ibidem.
[1006] Ibidem.
[1007] Ibidem, more at https://www.eni.com/assets/documents/eng/just-transition/2022/eni-for-2022-just-transition-eng/carbon-neutrality-by-2050.pdf.
[1008] Ibidem.
[1009] Ibidem.

International Relations and CSR[1010], the 2020 Code of Ethics Slavery[1011] and the Human Trafficking Statement from 2021[1012]. Then, Eni's due diligence and risk assessment strategy will be studied, considering all the different aspects that the company takes into consideration in its implementation. After that, the company's social reports will be analyzed, starting from the voluntarily adopted "Eni for" reports and ending with its last Consolidated Disclosure Declaration of Non-financial information[1013]. Lastly, this chapter will be concluded considering the several collaborations that the company has established with international bodies, in order to fully be able to implement its business model.

V.1 Eni's commitment to respect human rights

This entire work has been dedicated to underline the fundamental role that multinational corporations can play in the respect of human rights. But important results in this context cannot be reached without the collaboration and involvement of other stakeholders that have to deal with companies' activities, including customers and suppliers. Each of them must play its part, and its for this reason that Eni developed its mission to respect human rights based on the involvement of different categories of stakeholders, other than the mere employees. Specifically, its business model focuses on four different key dimensions – workers, suppliers, communities and customers[1014] and since 2016 the company has worked to provide greater systematization in terms of human rights within its work, ensuring a dialogue between its stakeholders which aims to strengthen the commitments and actions already put in place, defining strategies, targets and indicators to be monitored over time to assess the effectiveness of the path undertaken. The starting point and linking element between Eni's strategy and the management of the social repercussions and opportunities brought by this path is the human rights management model[1015]. The company is, in fact, aware of the relevance of the social dimension of the ambitious path outlined, but is also aware that enhancing opportunities for people will be a normal consequence of the energy transition on which it is already working on. In this direction, the company works to develop new value chains and to convert existing activities with relevant opportunities for workers, economies and communities of the countries where the company operates,

[1010] Eni, Global Framework Agreement on International Relations and CSR, 2019, available at https://www.eni.com/assets/documents/global-framework-agreement_eng.pdf.
[1011] Eni, Code of Ethics, 2020, available at https://www.eni.com/assets/documents/eng/enirewind/who-we-are/Eni_Code_of_Ethics_2020.pdf.
[1012] Eni, Slavery and Human Trafficking Statement, 2022, available at https://www.eni.com/assets/documents/eng/just-transition/2022/Slavery-and-Human-Trafficking-Statement-2022.pdf.
[1013] Eni, Annual Report, 2022, https://www.eni.com/assets/documents/eng/reports/2022/Annual-Report-2022.pdf.
[1014] Eni, Eni for 2022- Human Rights, 2022, available at https://www.eni.com/assets/documents/eng/just-transition/2022/eni-for-2022-human-rights-eng.pdf.
[1015] Ibidem.

and, at the same time, Eni is committed to manage any potential negative impacts on workers, communities, consumers, and business partners[1016].

Eni's approach to human rights is embedded into its mission and it is further strengthened in Eni's Statement on Respect for Human Rights[1017], approved by the Board of Directors in December 2018, which will be analyzed below.

The company's approach to human rights respects what it has been the common thread of this work: companies have the responsibility to respect and to contribute to the well-being of local individuals and communities in which they operate, going beyond the mere obtaining of a social licence to operate, it must be an integral part of MNCs' identity and their way of doing business. Indeed, Eni believes that business must respect internationally recognized human rights, as established in the UN Guiding Principles on Business and Human Rights, for which the company has expressed its full commitment[1018]. Moreover, the company collaborates with human rights experts and organizations to contribute to the debate on the topic[1019].

In order to develop its strategy for the protection of human rights, in 2017 the Rights and Business Working Group (HRBWG) was created, and it started its activities by hosting a workshop aimed at launching the identification of the company's salient human rights issues, with the support of the Danish Institute for Human Rights. The workshop took place at Eni's Headquarters in San Donato Milanese and involved 26 Managers from 22 Functional Areas. The workshop gave the opportunity to participants discuss about their experiences and views regarding the main human rights issues for the Company, with a specific focus on possible risks to people. This activity led to the identification of a list made of 13 salient issues[1020], split into 4 main areas, deemed to be the topics where lie the most severe, potential, negative human rights risks. These four priority areas will be analyzed in-depth later in this chapter. For now, it is sufficient to pinpoint some of the most relevant inputs that came up during this engagement which were, for instance, issues related to the working conditions of temporary and subcontracted workers, especially those hired locally, who are involved in several phases of the O&G industry (preparation phase, construction, etc.), without enjoying in some circumstances the same benefits guaranteed to workers hired by the Company directly[1021]. Moreover, the need to keep vulnerable groups' rights at the center of Eni's approach has been underlined, granting them full access to consultations. Inputs and feedbacks received during these meetings have

[1016] Ibidem.
[1017] Eni, Eni's statement on Respect for Human Rights, 2018, available at https://www.eni.com/assets/documents/documents-en/Dichiarazione-Eni-DU-ENG.pdf.
[1018] Ibidem.
[1019] Eni for- 2022 Human Rights, ibidem.
[1020] Available at https://www.eni.com/assets/documents/eni-report-human-rights.pdf.
[1021] Ibidem.

been integrated in the development and planning of policies and tools, informing both Eni's policy commitment and its due diligence process, strengthening the Company's approach to human rights in these areas[1022].

The solidity of the company's approach to the matter has been recognized by the Corporate Human Rights Benchmark[1023], which in 2020 ranked Eni first in the index, recognizing it as a pioneer in the industry.

Eni's work is guided by the values and principles described in the Code of Ethics, Eni's Statement on Respect for Human Rights, and the Suppliers Code of Conduct, which will all be analyzed in the following sections, starting with the Statement on Respect for Human Rights of 2018.

V.1.1 Statement on Respect for Human Rights of 2018

With the aim of spreading and making clear its vision and commitments on human rights, Eni's Board of Directors approved in December 2018 its official Statement on Respect for Human Rights[1024].

This document mirrors the requirements set out in the UNGPs, starting from an explicit commitment to implementing both the human rights due diligence and providing access to remedy.

It can be defined as a resume of the company's mission for the respect of human rights, that lists the main five specific commitments that Eni wants to pursue. Being a major operator in several countries, Eni's Statements is based on the belief that, by respecting human rights in its activities and relations, it can give a critical contribution to enhancing the protection of human rights. For this reason, it is actively committed to respecting the four ILO core labour standards as set out in the Declaration on Fundamental Principles and Rights at Work[1025], therefore freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of all forms of discrimination in respect of employment and occupation[1026]. To do so, the company offers to its workers fair remuneration and provides a safe and healthy working environment as well as working conditions in line with international standards and access to preventive and curative health services, including emergencies. Moreover, Eni is committed to respecting the ILO Convention n. 135 explicitly banning any discrimination of workers' representatives in connection with their activity, providing for proper access to the workplace for union representatives, other than employees, and remaining neutral

[1022] Ibidem.
[1023] World Benchmarking Alliance, Total Ranking, 2020, available at https://www.worldbenchmarkingalliance.org/publication/chrb/rankings/type/ungp/.
[1024] Eni, Statement on Respect for Human Rights, 2018, available https://www.eni.com/assets/documents/documents-en/Dichiarazione-Eni-DU-ENG.pdf.
[1025] Chapter II.1.1.
[1026] Statement on Respect for Human Rights, Ibidem, p. 2.

concerning employee preference to join and remain with a union organization, as well as transfer or abandon their relationship with such an organization[1027]. In addition, particular attention is dedicated to the rights of individuals and the local communities in which the company operates, with reference to biodiversity, the rights to ownership and use of land and natural resources, the right to water and the right to the enjoyment of the highest attainable standard of physical and mental health.

Lastly, the Statement stresses that the company takes into account the potential impact on human rights deriving from activities carried out by Business Partners in the management of its business relations and plans specific measures in this regard. From the very first feasibility evaluation phases of new projects and relevant operational changes, the company carries out assessments on its potential partners on possible environmental, social, health and human rights impacts with the aim of preventing and mitigating adverse ones[1028]. Eni, in fact, expects that its Business Partners respect the principles and content of the Statement, and, for this reason, it makes all reasonable efforts to include contractual obligations to respect human rights into its agreements with them when working for or together with Eni[1029].

Then, the document continues with determining the remedy and grievance mechanisms in case of violations of human rights. Specifically, in this Statement the Company prohibits, and undertakes to prevent, any retaliation against workers and other stakeholders for raising human rights-related concerns. Moreover it stresses how neither threats, intimidation, retaliation or attacks, both physical and legal, against human rights defenders and affected stakeholders in relation to its operations would be in any way tolerated. Grievance mechanisms and other reporting channels, both at operational level and company-wide, are made available to enhance the opportunities for the company to identify and promptly investigate potential and actual human rights impacts and take appropriate action[1030].

As it can be easily noted, the structure and the content of the Statement is in line with the foundations set by the UN Guiding Principles on Business and Human Rights. This document represents not only a strong declaration of the mission on human rights that the company wants to pursue, but it also represents a starting point for the several projects that have been undertaken after its publication, all starting from the assumption that respect for human rights is a necessary condition to make a just and equitable energy transition.

As a consequence, to the adoption of this Statement, in September 2019, Eni was confirmed as a participant in the Global Compact LEAD, the global movement of sustainable companies and stakeholders taking on shared responsibilities to create a sustainable future, as a testament to its

[1027] Ibidem.
[1028] Ibidem, p. 3.
[1029] Ibidem, p. 4.
[1030] Ibidem.

ongoing commitment to UNGPs. Moreover, several collaborations with international entities have been established after the adoption of this Statement – including the ones with UNIDO and FAO that will be analyzed later[1031] – that demonstrate the positive impacts that this document has had on the international community.

More importantly, this document only represents the starting point for what concerns Eni's approach to human rights. In fact, pursuing the mission stated in this document, other important measures have been adopted by the company and now the most important ones will be analyzed.

V.1.2 2019 Global Framework Agreement on International Relations and CSR

The key demands of stakeholders, the evolution of the institutional and regulatory framework, and the international economic and social context in which Eni operates is overshadowed by a continuous debate on corporate social responsibility. This context compels Eni and trade unions to identify the core priorities used to define sustainability objectives and common strategies, based on integrity and transparency principles, the fight against corruption, respect for human rights and for the work, and people's health and safety[1032]. All these principles and actions must be done in full consistency with the national and company-level collective agreements, signed by Eni with the Italian trade union organizations[1033] recognized by IndustriALL[1034], also to prevent social and contractual dumping, in respect to the fundamental international labour standards.

The search for other goals rather than just the economic one, including respect for human rights, sustainable business growth and care for the environment and health of their communities, has always been a key element of the corporate dialogue between Eni and Workers' Representatives and played a decisive role in the Model of Industrial Relations that the Parties have been able to develop over time[1035]. Since 2002, when the first Eni Global Framework Agreement was signed, Eni and IndustriALL have been working together in a constant dialogue, sharing and applying a set of fundamental values and principles of human and labour rights, each within their own spheres of influence, including protection for workers, equal opportunities, and respect for socio-cultural diversity of the countries where Eni operates[1036]. With the renewal of the global framework agreement

[1031] Chapter V.4.
[1032] Eni, IndustriALL, CIGL, CISL, UIL, Global Framework Agreement on Industrial Relations and Corporate Social Responsibility, 2019, available at https://www.eni.com/assets/documents/global-framework-agreement_eng.pdf.
[1033] Therefore Filctem CGIL, Femca CISL and Viltec UIL.
[1034] IndustriALL Global Union represents 50 million workers in 140 countries in the mining, energy and manufacturing sectors and is a force in global solidarity taking up the fight for better working conditions and trade union rights around the world.
[1035] Global Framework Agreement on Industrial Relations and Corporate Social Responsibility, Ibidem, p. 3.
[1036] Ibidem.

in 2019, the Parties reconfirm their commitment to fundamental human and worker rights, responsible development and the protection of the environment.

This renewed GFA includes improvements in Eni's human rights due diligence process to ensure its alignment with the UN guiding Principles on Business and Human Rights[1037]. Moreover, the company has also made a strong commitment to workers' rights by collaborating with the ILO to produce a guide named "International Labour Standards and Eni" which would serve as a useful reference book to implement both the GFA and ILO Conventions in countries where Eni is operating and which haven't ratified fundamental conventions. The GFA, in fact, openly recalls several ILO Conventions, including ILO Conventions 29[1038] and 105[1039] (Prohibition of forced or compulsory labour) and number 135[1040] (Non-discrimination against workers' representatives). In this way, subsidiaries located in countries that have lacked to ratify one of these Conventions, are anyway bounded to respect their fundamental principles through this agreement[1041]. This is due to the fact that this global framework agreement covers all Eni's subsidiaries throughout the world, including the case of a merger or an acquisition of a new company where Eni holds majority control[1042].

In addition, as the International Labour Conference overwhelmingly adopted a new convention to eliminate violence and harassment in the world of work[1043] on the same day as the signing, a paragraph was added to the GFA forbidding any form of violence or harassment, either sexual or based on personal and cultural diversity, without exception, and affirming that that the parties will not tolerate harassment, violence or bullying of any kind, whether inside the workplace or outside[1044].

Moreover, the strengthened GFA puts greater emphasis on improving working conditions in supply chains, and a includes a new article on sustainable development and environmental protection in which the company commits to continue reducing the carbon intensity of its operations and investing in the development of low carbon energy products[1045].

In conclusion, this GFA represents a very important document through which the company expressly commits to respect throughout its entire supply and value chain, the most relevant international instruments for CSR, including not only the ILO Conventions, but also the OECD Guidelines for Multinational Enterprises, the United Nations Guiding Principles on business and human rights

[1037] IndustriALL Global Union, IndustriALL renews global agreement with global energy company Eni, 2019, available at https://www.industriall-union.org/industriall-renews-global-agreement-with-energy-company-eni.
[1038] International Labour Organization, Convention 29, Forced Labour Convention, Geneva, 1930.
[1039] International Labour Organization, Convention 105, Abolition of Forced Labour Convention, Geneva, 1957.
[1040] International Labour Organization, Convention 135, Workers Representatives Convention, Geneva, 1971.
[1041] IndustriALL renews global agreement with global energy company Eni, Ibidem.
[1042] Global Framework Agreement on Industrial Relations and Corporate Social Responsibility, Ibidem, p. 2.
[1043] International Labour Organization, Convention concerning the elimination of violence and harassment in the world of work, Geneva, 2019.
[1044] Global Framework Agreement on Industrial Relations and Corporate Social Responsibility, p. 7.
[1045] Ibidem, p. 11.

(2011) and the principles of the UN Global Compact, which for the company *"constitute the appropriate tools for responsible, ethical and moral behaviour in business operations"*[1046]. As Marcellino Tufo, coordinator for the GFA and representative for CGIL said *"the innovations introduced in the GFA can improve the conditions of workers and support the communities in which Eni operates. From today our task, together with IndustriALL, will be to transform what's written in the GFA into reality."*[1047]

A demonstration that the company is really making efforts to translate its commitments into reality is, for example, the Eni against violence and harassment in the workplace[1048] document, adopted in December 2021, which will be analyzed later in this chapter.

V.1.3 Code of Ethics of 2020

A code of ethics is a guide of principles designed to help professionals conduct business honestly and with integrity; it specifically outlines the mission and values of a business, how professionals are supposed to approach problems, the ethical principles based on the organization's core values and the standards to which the professional is held[1049]. Eni renewed its Code of Ethics[1050] in March 2020, with the aim of disseminating its values through the members of the administrative and control bodies, all the so-called Eni's people, thus Eni's employees and to any third party who collaborates or works on behalf of Eni's interest and making sure that all of them act on their behalf and respect. Integrity, respect and protection of Human Rights, transparency, development promotion, operational excellence, innovation, teamwork and collaboration are the main values set out by the Code and which guide Eni's actions[1051]. Along with Eni's values, the Code of Ethics contains general principles and specific rules of conduct, providing a practical guide for the company operations. In general, the Code commitments can be resumed in: operating in accordance with the United Nations' Universal Declaration of Human Rights, the eight Fundamental Conventions of the ILO and the OECD Guidelines on Multinational Enterprises, carrying out Eni's activities in compliance with international standards, engaging stakeholders and integrate the outcomes of these informed consultations into its projects in order to minimize impacts and providing potential users of a whistleblowing process with transparent information on the process and guarantee confidentiality and non-retaliation[1052].

[1046] Ibidem, p. 4.
[1047] IndustriALL renews global agreement with global energy company Eni, Ibidem.
[1048] Eni, Eni against violence and harassment in the workplace, 2021.
[1049] A. Hayes, Code of Ethics: Understanding Its Types, Uses Through Examples, Business Essentials, available at https://www.investopedia.com/terms/c/code-of-ethics.asp.
[1050] Eni, Code of Ethics, 2020, available at https://www.eni.com/assets/documents/governance/eni-code-of-ethics.pdf.
[1051] Eni, Code of Ethics, available at https://www.eni.com/en-IT/about-us/governance/code-of-ethics.html.
[1052] Eni, Eni for 2021-Human Rights, 2021, p. 16.

The Code is divided in six parts, each of which is dedicated to a commitment that the company assumes toward its employees and its stakeholders. Then, each part sets a specific list of actions that the company undertakes to promote or support the acknowledgement of one or more UN SDGs[1053].
Always more and more multinational corporations and business entities in general are choosing to adopt a code of ethics. Ethics, in fact, forms the foundation of responsible business conduct, because operating ethically means adhering to principles of honesty, integrity, transparency, and fairness in all business activities[1054]. This necessarily involves treating employees, customers, suppliers, and the community with respect and dignity and, by upholding ethical standards, businesses can build trust, credibility, and long-term relationships with stakeholders. Therefore, the implementation of CSR measures by companies necessarily goes hand in hand with the adoption of a Code of Ethics and they both represent an integral part to modern business operations. By upholding ethical standards, embracing social and environmental responsibility, and meeting stakeholder expectations, businesses can create sustainable and resilient organizations that contribute positively to society[1055].
For this reason, it is a great tool through which spread and make clear companies' concerns that are not strictly linked to the economic sphere and, therefore, a Code of Ethics is a great measure through which spread Corporate Social Responsibility in a business entity dimension.

V.1.4 Zero Tolerance Policy of 2021 – Eni against violence and harassment in the workplace

As stated in the Code of Ethics, Eni is committed to ensuring a work environment free from any form of discrimination or abuse, by establishing working relationships characterized by fairness, equality, non-discrimination and attention and respect for the dignity of everyone[1056]. Based on these premises, Eni adopted in December 2021 its Zero Tolerance Policy[1057] that defines a broad perimeter of types of harassment that allows the company to identify misconducts and behaviors that should not be engaged in and should be reported.
This Annex to the Code of Ethics was started to be configured because in January 2021 Italy began the process for the ratification of the International Labor Organization Convention No. 190 on the Elimination of Violence and Harassment in the Workplace[1058], adopted in Geneva. In October 2021, the ratification process concluded marking a momentous milestone as it recognizes that violence and

[1053] Chapter II.4.
[1054] J. Simpson, J.R. Taylor, Corporate governance ethics and CSR, Kogan Page Publishers, 2013.
[1055] Ibidem.
[1056] Code of Ethics, Ibidem.
[1057] Eni, Annex E, Eni against violence and harassment in the workplace, 2021, available at https://www.eni.com/assets/documents/ita/governance/msg-eni-contro-violenza-molestie/Ann-E-Eni-against-violence-and-harassment-in-the-workplace.pdf.
[1058] International Labour Organization, Convention No. 190 on the Elimination of Violence and Harassment in the Workplace, Geneva, 2019.

harassment in the workplace can constitute not only a violation of human rights and a threat to equal opportunity, but also a real risk to the health and safety of workers. Eni decided to move ahead of the issuance of national implementing decrees by forming a large working group that in a very short time drafted and then published the Eni against violence and harassment in the workplace Annex[1059].

To really understand why this Zero Tolerance Policy was adopted, it is first useful to frame the phenomenon of violence and harassment in the workplace. According to ISTAT research[1060] published in 2018, 1,404,000 women aged between 15 and 65 had experienced physical harassment or sexual blackmail. Only in a very low percentage of those cases (no more than 3%) did the victim chose to report the incident: this significant finding reveals people's fear of not being believed, being judged, or suffering personal or professional reprisals, and reflects a lack of trust towards those meant to protect them[1061]. Data such as this also shows only a fraction of the real scale of the problem. Harassment and violence don't affect only women and is not just confined to physical or sexual acts; it also extends to psychological harassment, humiliation, mobbing, stalking, abuse, and blackmail. Having this in mind, Eni issued this new Policy, which aims to combat and raise awareness of these issues, providing everyone with very specific tools to identify misconduct in any form and report any cases where the Policy is breached[1062].

After giving general definitions of, for example, "sexual harassment" and "gender-based violence and harassment", the Annex sets out the general principles of the Zero Tolerance Policy. They basically state that Eni's employees have the right to a workplace free from violence and harassment and, at the same time, they have the responsibility to work together to create a working environment based on respect, to support as much as possible those who report conduct or episodes of violence and harassment and to cooperate in the relative investigations[1063]. The responsibility for the promotion of a zero-tolerance culture of violence and harassment in the workplace is attributed to Eni's management and employers, which also must ensure that appropriate whistleblowing channels are made available for the timely handling of reported[1064]. Obviously, protected persons have the right to privacy and confidentiality for all the information reported and revealed during any investigation,

[1059] Interview to Gennaro Mallardo, Eni's Head of Eni Model 231 and Corporate Liability, Corporate Social Responsibility, Anti-Corruption & AML Compliance, Eni e la Zero Tolerance Policy contro la violenza e le molestie sul lavoro, 2022, available at https://www.linkedin.com/pulse/eni-e-la-zero-tolerance-policy-contro-violenza-le-sul-mallardo/?trackingId=tPk9v1JERCyLCK9q0mKKxQ%3D%3D.
[1060] ISTAT, Sexual Harassment and Sexual Blackmail at Work, 2018, available at https://www.istat.it/it/archivio/209122.
[1061] Ibidem.
[1062] Interview to Gennaro Mallardo, Ibidem.
[1063] Annex E, Eni against violence and harassment in the workplace, Ibidem, p. 8.
[1064] Ibidem.

to avoid any retaliation against the Whistleblowers, Harassed Persons, Bystanders, witnesses or informants, which is anyway prohibited[1065].

With the aim of preventing any form of violence and harassment, its employees shall be informed and trained on the contents of this Annex, of Eni's Code of Ethics and of the applicable regulations on the subject, as well as on the shared responsibility of Eni's People to promote a work culture based on mutual respect and on the dignity of the human being. To this end, the company will provide and make compulsory the participation for every employee to specific training initiatives concerning the Code of Ethics, its Annexes and Sustainability Issues[1066].

Therefore, this Policy further bolsters Eni's Code of Ethics, providing the company with a stronger platform from which to act even more decisively in combating a very real phenomenon that cannot be ignored. People shall feel safe and protected in their workplace, free to express themselves in all their diversities, otherwise it would inevitably result in a violation of human rights and a threat to equal opportunities. Eni, in fact, is not the only company that decided to adopt a Zero Tolerance Policy. Such policies allow a company to proactively prevent and manage employee behaviour that is illegal, inappropriate or against your organization's basic principles, also providing clear direction for employees and makes it easy to understand when an employee has veered off course. As a consequence, it would be possible to create work environments free from any form of discrimination or abuse.

V.1.5 Slavery and Human Trafficking Statement of 2022 and the Risk Based Human Rights Model

To conclude this paragraph concerning Eni's approach to human rights, it will now be analyzed an innovative document that the company adopts and renews every year since 2018 for the prevention of modern slavery: the Slavery and Human Trafficking Statement[1067]. In particular, the most recent one will be the object of this study, thus the one adopted in June 2023 referring to the results obtained in 2022.

With this document, Eni demonstrates its specific commitment to maintain and improve its practices to combat slavery and human trafficking in its operations and describes the model that the company has recently developed to assess its impact on human rights along the supply chain. Eni is aware that in some Countries of operations, since Eni employs more than 32,000 people in 62 Countries around the world[1068], relevant risks related to human rights violations can be detected, including modern

[1065] Ibidem, p. 9.
[1066] Ibidem, p. 10.
[1067] Eni, Slavery and Human Trafficking Statement, 2023.
[1068] Ibidem, p. 3.

slavery. Conscious of this, the company has developed an articulated framework of policies, management models, contractual clauses, and practices in place to be mandatorily adopted by Eni's subsidiaries, which allow these risks in direct workforce management to be managed effectively. This complex framework aligns with the commitments undertaken by the parent company in the Code of Ethics and Eni's Statement on Respect for Human Rights[1069].

A key function of the Statement is to underline the importance of controls and risk management to prevent human rights abuses. With this aim, the document analyses the structure and the results obtained by the evaluation model set up by the company in 2020. It is a "risk-based" model[1070], which segments Eni subsidiaries according to specific quantitative and qualitative parameters aimed at outlining the issues and risks of the country/operating context that are linked to the human resources management process, including contrasting all forms of discrimination, gender equality, working conditions, freedom of association and collective bargaining[1071]. This approach identifies possible areas of improvement, requiring specific actions to be defined and monitored over time. Eni applies the human rights risk-based model to its subsidiaries and to its suppliers, to assess and manage human rights along the entire supply chain. The diagram below easily shows the steps that the company follows based on the model. After having selected the target to evaluate, all the possible risks are listed and then prioritized, always taking into consideration elements like the type of activity conducted by the selected target or its location. The following step is to assess the level of severity of possible or actual human rights violations conducted by the target and, because of this assessment, preventive and/or corrective actions are determined. Lastly, the target is constantly monitored to both detect if the determined actions are really being followed and if the situation of risk has changed or not[1072].

[1069] Ibidem.
[1070] Ibidem, p. 6.
[1071] Ibidem.
[1072] Table 2.

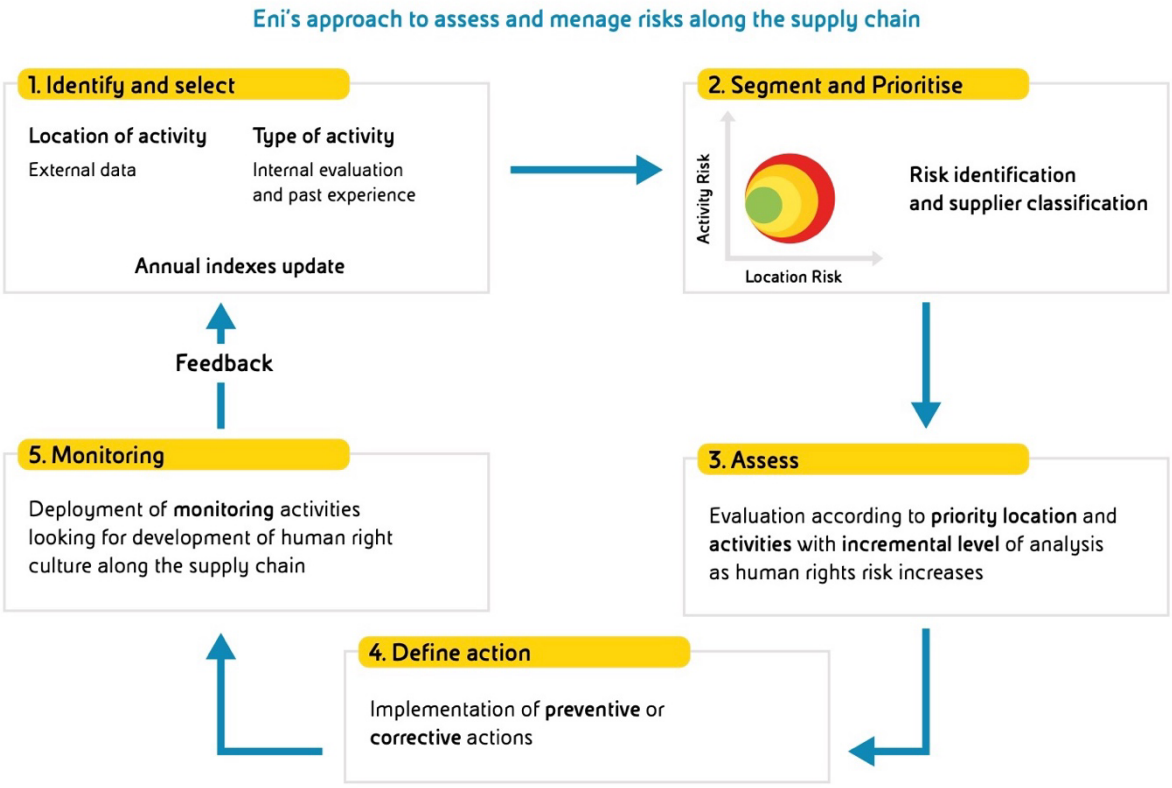


Table 2.[1073]

By applying the risk-based model in 2022, Eni has reached the target of more than 6,000 suppliers[1074] assessed on social responsibility, including respect for human rights, to prevent the risk of human rights violations along Eni's supply chain. In addition, during 2022, more than 350 in-depth human rights evaluations were carried out through documental and on-fields audits. In the contract execution phase, more than 2,000 feedback questionnaires have been evaluated, with 63 related to a potential violation of human rights[1075]. The in-depth assessment revealed that Nigeria, Congo and Mozambique had the highest number of suppliers at risk, but none of the suppliers assessed was related to modern slavery issues[1076].

Eni is committed to continuously improving its monitoring and evaluation processes applied to human rights issues, because it is a fundamental tool to verify of Eni's efforts to prevent human rights violations, also, but not only, in terms of modern slavery practices. In 2022, relevant risk-based assessments related to staff training, suppliers' assessments, critical issues, and any human rights violations, as well as whistleblowing events, were monitored in continuity with the previous years

[1073] Table 2, Eni, Slavery and Human Trafficking Statement, 2023, Eni's approach to assess and menage risks along the supply chain, p. 6.
[1074] Ibidem, p. 7.
[1075] Ibidem.
[1076] Ibidem.

and drove Eni's actions to improve. It also allows the company to set annually specific targets, which are embedded in the objectives assigned to the management in charge of the processes more at risk regarding human rights impact[1077].

In conclusion, in 2023 Eni will take further necessary steps to spread and consolidate a culture of respect for human rights by strengthening the effectiveness of the risk-based Human Rights Models in the supply chain in Italy and abroad and related management actions[1078]. Dedicated awareness activities will be implemented for high-risk and strategic suppliers leveraging a systemic approach. Concerning compliance, Eni is taking note of legislative developments occurring at both national and regional EU levels regarding corporate sustainability and human rights due diligence, such as the proposal for a Directive on Corporate Sustainability Due Diligence. Eni has long been structuring and implementing human rights processes in line with international standards and best practices, focusing on the United Nations Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises, from which the European Commission's Proposal draws inspiration[1079]. Thus, Eni has been laying the groundwork to further strengthen such processes in anticipation of any new applicable laws that will be adopted in business and human rights.

V.2 Human rights due diligence and the risk assessment

The risk-based human rights model is just one example of the complex framework that Eni has built over the years for what concerns the risk assessment of possible human rights violations. As it has been analyzed in the third chapter of this work, the OECD Guidelines define human rights due diligence (HRDD) as the processes through which enterprises can identify, prevent, mitigate, and account for how they address their actual and potential adverse impacts on human rights[1080]. In addition, in the previous chapters, it has already been argued how neither at the international nor national level mandatory regulations have been configured for what concerns the application of HRDD by multinational corporations. In this context, the first relevant efforts are now being made by the European Union with the proposal for the Corporate Sustainability Due Diligence Directive[1081], in the meantime only a few multinational corporations have decided to voluntarily develop and implement HRDD processes in their business models, and one of these is Eni.

Eni's approach to human rights due diligence has been established by the internal procedure "Respect and Promotion of the Human Rights in Eni's Activities"[1082], issued in March 2020 and which

[1077] Ibidem, p. 11.
[1078] Ibidem.
[1079] Ibidem.
[1080] OECD Guidelines, discussed in Chapter III.1.
[1081] Analyzed in Chapter III.6.
[1082] Eni, Respect and Promotion of the Human Rights in Eni's Activities, 2020.

represents the framework for all the people involved in preventing human rights violations and managing human rights issues. The due diligence is set on an on-going basis process, context-specific and covers the entire spectrum of human rights implications for the company[1083], therefore the entire framework appears to be complex and highly specific. In fact, Eni's HRDD has been developed to be multidisciplinary, as the analysis considers all the social, health, environmental and legal dimensions that could be impacted, and multilevel, as the process is carried out both at central level, taking into account the company as a whole, and at single department level, by focusing on business processes most exposed to human rights violations according to the risk- based approach[1084].

To fulfill its tasks, the human rights due diligence model is translated into practice in four different and separate dimensions. The first one is the due diligence evaluation at corporate level, which considers the evolution of the company, the external context and best practices emerged in the field of business and human rights to be eventually applied to Eni's processes[1085]. Every year the Sustainability Department updates a Corporate Action Plan on human rights[1086] considering the results of the monitoring process of the previous Plans and the issues emerging from the other due diligence dimensions.

The second HRDD dimension is the one of industrial projects, which is performed to identify specific risks of the projects and evaluate the proper actions to be undertaken, as part of the wider integration of sustainability issues into the business cycle[1087]. In 2018 Eni developed a risk-based model to classify the business projects of the upstream activities based on the potential risk to human rights. For instance, if a project is evaluated as high risk, it is analyzed through the "Human Rights Impact Assessments"[1088](HRIA), which include a preliminary analysis of the local context on human rights based on desktop searches and remote interviews, and a field visit, where rightsholders (communities, workers, both direct employees and sub-contractors) are consulted during dedicated meetings. The results are finalized in Reports with specific recommendations, followed by a dedicated action plan to allow an effective and monitored implementation of each action[1089].

The third due diligence dimension focuses on specific processes connected with Eni's salient human rights issues. There are some specific functions primarily interested in managing human rights due to the process managed, including procurement for the issues along the supply chain, human resources for issues at the workplace and security for the issues in managing security operations[1090]. Each of

[1083] Eni, Eni for 2022- Human Rights, p. 31.
[1084] Ibidem.
[1085] Ibidem, p. 32.
[1086] Available on Eni's website.
[1087] Eni for 2022- Human Rights, Ibidem.
[1088] Ibidem, p. 68.
[1089] Ibidem.
[1090] Ibidem, p. 33.

them sets a due diligence tailored to seize potential impacts of the specific processes managed. It is a risk-based model consistent with the corporate level one, because it considers the same elements, like the external context and the best practices.

The last due diligence dimension concerns possible counterparties and it is conducted before the conclusion of a joint venture agreement or in case of merge & acquisition operations[1091]. The process is based on open sources screening to identify if the counterparts have been involved in human rights violation or are exposed to specific risks. If the screening reveals recent critical issues, Eni's Sustainability function will deepen such information and provide feedback to the proposing unit to undertake proper actions to manage the issues or exercise Eni's leverage over its partners. In the JV agreements specific clauses on human rights (responsible contracting clauses)[1092] are negotiated, which require partners to perform its respective obligations in compliance with the main human rights International Standards and in accordance with the UN Guiding Principles on Business and Human Rights.

V.2.1 The four priority areas

A key step in the development of Eni's HRDD was identifying the major actual or possible human rights issues that can arise in its activities, in order to consequently develop specific strategies and solutions to prevent or mitigate abuses. This process of identification started in 2017, when Eni established a Human Rights and Business Working Group (HRBWG), who started its activities with the support of the Danish Institute for Human Rights[1093]. The workshop gave the opportunity to participants to share their experiences and views regarding the main human rights issues for the Company, leading to the identification of a list made of 13 salient issues, split into 4 main areas, deemed to be the topics where lie the most severe, potential, negative human rights risks: human rights in the workplace, human rights in the supply chain, human rights in communities and human rights in security activities[1094].

Starting from the priority area, the major human rights issues that were identified concerned equal treatment, safe and healthy working conditions and freedom of association and collective bargaining[1095]. With the aim of preventing these types of abuses, Eni has adopted a structured framework of policies, management models, contractual clauses, and programs in line with the commitments made by the parent company in the Code of Ethics and in Eni's Statement on Respect for Human Rights. This framework includes for example the human rights risk-based model, analyzed

[1091] Ibidem.
[1092] Ibidem, p. 62.
[1093] Danish Institute for Human Rights, founded in 1987.
[1094] Eni for 2022-Human Rights, Ibidem, p. 34.
[1095] Ibidem.

in the previous paragraph, which, together all the other tools, allows for the effective prevention of these risks in the direct management of the workforce. Several actions have been taken to manage the critical areas arose in the workshop related to the workplace. For instance, in order to spread a culture based on equal treatment, Eni annually monitors the gender pay gap between women and men (gender pay ratio), using a comparison methodology at the same role and seniority level, according to the UN principle of "equal pay for equal work", which shows a substantial alignment between the remuneration of women and men for the Italian and global population[1096]. In addition, Eni ensures that all its people are treated regardless of any differences in gender, nationality, sexual orientation, physical abilities and age. These principles are affirmed in the regulatory framework and Corporate Governance, as well as in the Mission that inspires its values. For example, in 2022, particular attention was paid to disseminating an inclusive mindset on sexual orientation and gender identity through engagement, listening, awareness-raising and communication actions addressed to all employees in Italy and abroad[1097]. As part of the internal awareness-raising and communication format, the company organized and took part to several events focused on the biases and rights of the LGBTQ+ community, where best practices of inclusion as leverage for the energy transition path were shared[1098]. Moreover, for what concerns health and working conditions, Eni developed an integrated health management system across all operations, based on an operational platform of qualified health providers and collaborations with national and international university and government institutions and research centers, with the aim ensuring a safe workplace to all its employees and their families[1099]. As part of the activities aimed at improving corporate welfare, the "Più Salute" pilot project, a home and digital healthcare program that provides employees and their family members with free services through access to a phone/video consultation with a doctor, available 24/7, and a specialist by appointment, was launched in the parent company and some subsidiaries in Italy[1100].

The second area identifies the possible issues that can arise throughout the entire supply chain, thus with all Eni's suppliers and business partners, and the detected ones have been modern slavery, migrant workers, as well as freedom of associations and collective bargaining and safe and healthy working conditions[1101]. As it was previously underlined, Eni expects its business partners to respect all the principles stated in Eni's Human Rights Statements, which is why the company makes every effort to include human rights clauses in their contractual agreements in relation to activities with or

[1096] Ibidem, p. 42.
[1097] Ibidem, p. 43.
[1098] Ibidem.
[1099] Ibidem, p. 45.
[1100] Ibidem, p. 46.
[1101] Ibidem.

for Eni. The results of these endeavors are evident: the 97% of the total of the contracts concluded by the company contain the responsible contracting clause and the 100% of the new suppliers from these last two years have been assessed according to Eni's social criteria[1102].

Moreover, to become or maintain the status of Eni's supplier, all companies that are willing to collaborate with Eni are requested to undersign the Supplier Code of Conduct[1103], which will be analyzed in the following paragraph, and which is a document based up on social responsibility's principles, amongst which human rights is one. To deeply understand how HRDD strategies are developed when issues arise in the supply chain, a company's case study[1104] will now be analyzed. From the application of the risk-model of Eni's procurement process, an on-site audit was conducted in a high-risk African Country on a local supplier working in a critical sector for employees' human rights. The aim of the inspection was to evaluate the supplier's human rights management in highlighting its strong and weak points. The process started with the supplier's active involvement, encouraging open communication and cooperation throughout the assessment, together with an on-site visit to gain knowledge of the supplier's operations and work environment. Furthermore, interviews were conducted with both managers and workers such as to gain valuable insights into their experiences and perspectives. Additionally, a comprehensive review of the company's policies and procedures was conducted through the examination of relevant documents, as well as an analysis of the company records for the last three years, focusing on sensitive documents to ensure thoroughness. From the assessment, different nonconformities and findings resulted: there were delays in the payment of contributions for pension funds and delays in payments of salaries. Moreover, it was observed that most of the employees were not aware or instructed in regularly checking their pension funds accounts to ensure that their contributions were up to date. Because of these findings, this Action Plan was developed, and its application was requested to the supplier. First, a root cause analysis was performed to verify why salaries and contributions were credited in delay, and consequently, evidence of resulting corrective actions was asked to supplier, who was also requested to provide the contract holder monthly with evidence to prove that contributions and salaries have been credited to the employees' accounts in a timely manner. Furthermore, to increase the employees' alertness, the vendor was solicited to provide them a specific training session regarding their funds and salary accounts. Thanks to the shared action plan, improvement in human rights management was obtained from the supplier within the requested period. Not all the

[1102] Eni's commitment to respect human rights, available at https://www.eni.com/en-IT/just-transition/respect-for-human-rights.html.
[1103] Eni, Supplier Code of Conduct, available at https://www.eni.com/assets/documents/eng/just-transition/supplier-code-of-conduct-march-2020.pdf.
[1104] Available at Eni for 2022-Human Rights, p. 58.

assessments result in a success story like the one described in the case study: vendors that do not result as being compliant with the requested corrective action are subjected to exclusion from Eni vendor lists and so all of their business is interrupted[1105].

The third priority area identifies the possible issues that can arise in dealing with host communities. The commitment to respecting the human rights of local communities is structured around the recognition of the fundamental principle of free, prior, informed consultation, together with the attention given to distinctive rights of the indigenous people, vulnerable groups, and the role of human rights defenders[1106]. Moreover, it is underlined the importance of the consolidated practice of conducting environmental, socio-economic, health and cultural impact assessments, to identify, prevent, and when applicable mitigate the possibly adverse potential and/or actual impacts on human rights the Company caused, contributed to or is associated with[1107]. Such impacts can, for example, be related to rights to adequate food and drinking water, the highest attainable standard of physical and mental health, adequate housing, education, and rights related to land and property[1108]. Concerning this last case, Eni has a crucial commitment to avoid the involuntary resettlement and restriction on land use of local communities and persons and to provide appropriate compensations in case of unavoidable land acquisitions and resettlements. In such a case, joint agreements with the affected people should be reached[1109]. Whenever Eni operates in a host territory, the involvement of residents is promoted through information sessions and community meetings. Moreover, tools for management of complaints, stakeholder mapping and to promote participation in the management of local development projects are adopted. It is worth mentioning the 2018 "Stakeholder Management System"[1110] (SMS), which is a web-based platform designed to support the management of relations with stakeholders in the territories where Eni operates.

Eni's policy commitment to promoting forms of free, prior and informed consultation to host communities becomes especially crucial when dealing with relations with indigenous communities. Considering the industrial contexts in which it operates, Eni has direct contacts with indigenous populations and their representatives exclusively in Australia, Alaska and Norway[1111]. In these cases, the relationship is managed in compliance with international and local regulations that define how to involve and consult them. In Australia, for instance, Eni operates in the Northern Territory, near the Wadeye community, and regularly engages local administrative bodies which protect the rights of

[1105] Ibidem.
[1106] Ibidem, p. 65.
[1107] Ibidem.
[1108] Eni's commitment to respect human rights, Ibidem.
[1109] Ibidem.
[1110] Eni, Stakeholder Management System, 2018.
[1111] Eni for 2022-Human Rights, Ibidem, p. 67.

Aboriginal populations, developing participatory projects aimed at local development and environmental conservation. Moreover, in 2007, Eni signed the Eni Australia Indigenous People Policy[1112], in 2013 the Eni Norge Indigenous People Policy[1113] and in 2021 the Alaska Indigenous People Policy[1114] was updated. In these policies Eni commits to establish an effective and inclusive framework for the free and informed participation of the Indigenous People in the consultation process, cognizant of their social and cultural values, and the provision of information about our activities in local languages and through appropriate communication methods.[1115]

The last priority area concerns possible human rights abuses and security, meaning the respect of the right to life, the bodily integrity and the health of both its employees and members of local communities, in case of need of security events[1116]. Eni manages its security activities in accordance with international principles, including the UN Basic Principles for the Use of Force and Firearms[1117] by Law Enforcement Officials and the Voluntary Principles on Security & Human Rights[1118], taking into account the specific needs of the Countries where it operates. Being conscious that security events can affect almost the entire spectrum of human rights, including economic, social and cultural rights, the company has developed in 2020 the "Security and Human Rights Risk Based Model"[1119], a tool aimed at identifying, analyzing and prioritizing the risk of negative impact on human rights in security activities and assessing, accordingly, the use of appropriate preventive or remedial measures. Moreover, in December 2022, Eni was admitted as Full Participant to the Voluntary Principles Initiative (VPI), the multi-stakeholder initiative which brings together the main energy companies, governments and NGOs in the protection and promotion of the Voluntary Principles on Security and Human Rights. Eni is publicly committed to maintaining the safety and security of its operations in compliance with the guidelines set out by the Voluntary Principles on Security & Human Rights and, to this end, the Company has progressively embedded such principles into its external and internal framework[1120].

In conclusion, the identification of these four priority areas has allowed the company to not only detect the most critical issues concerning human rights for each of them, but especially to determine the most appropriate strategies and measures for their prevention, mitigation and reporting. Moreover, this division makes the company able to identify different solutions also based on the population of

[1112] Eni, Eni Australia Indigenous People Policy, 2007.
[1113] Eni, Eni Norge Indigenous People Policy, 2013.
[1114] Eni, Eni Alaska Indigenous People Policy, updated in 2021.
[1115] Eni for 2022-Human Rights, Ibidem, p. 67.
[1116] Ibidem, p. 75.
[1117] Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Havana, Cuba, 1990.
[1118] Voluntary Principles on Security and Human Rights, multi-stakeholder initiative established in 2000.
[1119] Eni, Security and Human Rights Risk Based Model, 2020.
[1120] Eni for 2022-Human Rights, Ibidem, p. 75.

the area of intervention, taking into consideration their culture and their needs. Starting from possible human rights abuses and then conceiving appropriate and specific measures appears as a really smart way of drafting HRDD strategies.

V.2.2 The Supplier Code of Conduct

As it was previously discussed, an assessment of human rights risks is performed by the Eni already during the procurement process through the continuous evaluation of suppliers. The very first step to entertain business relations with Eni is to undersign the Supplier Code of Conduct, a document published in April 2020 that sets out principles in line with the renewed Eni's Code of Ethics that suppliers are asked to comply with. It represents a mutual commitment to recognizing and protecting the value of people, operating with integrity, protecting company resources and promoting the adoption of such principles in their own people and their supply chain[1121]. As it has been reiterated multiple times, Eni's approach to human rights does not limit to the company and its subsidiaries, but it is designed to ensure the full commitment of the entire supply chain, therefore all suppliers will be asked to sign the Code and to promote the principles contained in it along their supply chain[1122].
Among these principles, regarding human rights and work, the reference is the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work[1123]. In this context, the main commitments that the suppliers are asked to fulfill are the following. First, they must combat and prohibit in their businesses forced labor, undeclared labor, compulsory labor and all the forms of modern slavery and human trafficking[1124]. In this sense, it is also explicitly forbidden to seize the identity documents, request deposits of money and withhold part of the wage associated with the payment of hiring fees, the immigration and transfer as well as putting in place other practices that hinder the free termination of the employment relationship[1125]. In addition, they must contribute to the prevention of any form of work by children under the age of 15 and ensure, in compliance with local law, that teenagers under the age of 18 are not employed in hazardous jobs. At the same time, they need to restrain and prevent any kind of discrimination, or abuse, establishing working relationships characterized by fairness, guaranteeing equal opportunities for all and ensuring a non-discriminatory or non- persecutory work environment free from any kind of harassment and oppression[1126].

[1121] Ibidem, p. 18.
[1122] Ibidem.
[1123] Chapter II.1.
[1124] Eni, Suppliers Code of Conduct, 2020, p. 6.
[1125] Ibidem.
[1126] Ibidem.

Moreover, they shall ensure respect of workers' rights and trade unions freedoms, such as freedom of association and collective bargaining, including the right of workers to freely choose their representatives and to represent other workers. Lastly, they must establish clear and fair working conditions, respecting what was defined in the employment contract and they need to respect the cultural, economic and social rights of the local communities, minorities, indigenous peoples and other vulnerable groups[1127].

Eni reserves itself the right to verify the suppliers' compliance with the Code whenever it deems it appropriate, and together with the periodic qualification assessments. This last type of assessments is based up on performance indicators, documental or on-site audits and dedicated questionnaires with the aim of minimizing the risks of human rights violation[1128]. During this step, companies are also verified in relation to technical-operational capacity, ethical, economic and financial reliability, health, safety, environmental protection and cyber security to minimize the risks inherent in working with third parties[1129]. In the case of a failure to comply with the principles of this Code, an Action Plan is drawn up by Eni and its application is asked to the supplier within a specific period of time, at the end of which a feedback process starts in order to verify the supplier's compliance. If some criticalities are still detected, they may affect the qualification as Eni supplier and result in Eni's interruption of its relationship with the specific Supplier depending on the circumstances and the severity of the violation[1130]. For this reason, each violation is analyzed on a case-by-case basis and processed in accordance with all the internal procedures, the agreements and the applicable legal requirements. Every possible issue is analyzed by the company, which tries to manage it before cutting the business relation.

Table 3.[1131]

SUPPLIER ASSESSMENT

		2018	2019	2020	2021	2022
Suppliers subject to assessment on social responsibility aspects	(number)	5,184	5,906	5,655	6,318	6,622
of which: suppliers with criticalities/areas for improvement		1,008	898	828	487	659
of which: suppliers with whom Eni has terminated the relations		95	96	124	34	54[a]
New suppliers assessed using social criteria[b]	(%)	100	100	100	100	100

(a) Includes 18 suppliers with whom Eni has terminated the relations due to violations related to corruption.
(b) Evaluation is carried out based on information available from open and/or supplier-reported sources and/or performance indicators and/or field audits, through at least one of the following processes: reputational Due Diligence, qualification process, performance evaluation feedback on HSE or compliance areas, feedback process, assessment on human rights issues (inspired by SA8000 standard or similar certification).

[1127] Ibidem.
[1128] Ibidem, p. 14.
[1129] Ibidem.
[1130] Ibidem.
[1131] Table 3, Eni for 2022-Human Rights, Ibidem, p. 61.

As it can be seen in Table 2, during 2022, 6,622 suppliers[1132] were subject to checks and assessments with reference to environmental and social sustainability aspects (including health, safety, environment, human rights, anti-corruption and compliance). Potential critical issues and/or areas for improvement were identified for the 10% (659) of the suppliers audited, an increase compared to 2021[1133]. The critical issues mainly referred to gaps in compliance with health and safety regulations and the principles established by the Code of Conduct and the Code of Ethics. In the same way, there was an increase in the number of suppliers with whom relations were interrupted (54), due to a negative evaluation during the qualification phase or due to the suspension or revocation of the qualification[1134]. Hopefully, this trend is going to reverse during 2023, especially considering that the European Union is making steps further in the approval of the Corporate Sustainability Due Diligence Directive, that without any doubt is going to make compulsory the integration of due diligence for several Eni's suppliers.

V.2.3 The grievance mechanism

In order to ensure the respect of human rights, business should cooperate with judicial or state-based non-judicial mechanisms. This is not always effective, due to the fact that both judicial or non-judicial state-based systems could be weak or inaccessible. This is especially true when considering that it is estimated that around five billion people around the world currently live in conditions where they cannot adequately rely on the protection of the rule of law or lack meaningful access to justice[1135]. For this reason, business enterprises' active engagement in remediation should take the form of not only state-based mechanisms, but also at the operational-level grievance mechanisms for individuals and communities, as recognized by the UNGP[1136] 29 and by the OECD Guidelines for Multinational Enterprises[1137]. The operational-level grievance mechanisms can serve as a primary form of remedy, for this reason since 2016, Eni makes use of a Grievance Mechanism, an internal procedure that specifically defines the set of activities to be carried out when the company receives concerns or grievances in relation to its own activities[1138].

In order to make the mechanism effective, Eni sets multiple access points to receive complaints or receiving grievances, including through specially dedicated offices of the Company, such as the Community Liaison Officers, by writing to a dedicated e-mail address, by letter, through the

[1132] Ibidem.
[1133] Ibidem.
[1134] Ibidem.
[1135] The Task Force on Justice, Justice for All Report, available at www.justice.sdg16.plus
[1136] Chapter II.1.3.
[1137] Chapter III.1.
[1138] Eni for 2022-Human Rights, Ibidem, p. 82.

Company web- site, through a dedicated telephone number or through trusted third parties (NGOs, local associations, etc.)[1139]. For example, in Nigeria, the involvement in 2022 of the NGO Stakeholder Alliance for Corporate Accountability (SACA)[1140] in ad-hoc induction on Eni's grievance mechanism access and functioning was a way to support local communities in using the channel and expressing their concerns and claims in a well-substantiated and factual manner. In this way, SACA was able to disseminate among the communities more information on how the management procedure is implemented, how grievance management works and what affects its timeliness in addressing some of the grievances received[1141]. Each complaint is, in fact, analyzed locally because the knowledge of the cultural context, makes it possible to ensure applying the most pertinent modes of dialogue and management for potential conflict.

After having received a complaint, the examination phase starts, asking, first of all, for the understanding of the causes and grounds for the grievance. Afterwards, depending on the issue, either financial and non-financial actions could be taken to eliminate such causes and/ or minimize their impact. Possible solutions are always shared and discussed with the complainants in order to gather their observations and evaluate alternative solutions to the one proposed[1142]. For example, in the case of any proven damage to private properties or activities, relevant compensation will be assessed in collaboration with local authorities and paid in accordance to publicly defined tariffs. Or, in the case of grievances related, for instance, to any environmental impact or any agreement with local communities, the resolution could leverage on specific engagement to identify proper measures[1143].

In the case the complainant is not satisfied with the proposed solution, a third-party identified in agreement between Eni and the complainant, can be engaged for the verification. This involvement may consist in, for example, referring the matter to a review committee composed of representatives from Eni and from the local community in equal measure or suggesting recourse to an independent third-party who assesses the complaint and proposes an impartial resolution that the parties will decide whether to accept or reject[1144].

As stated in the document that describes the Grievance Mechanism, all the actions and resolutions taken must be consistent with internationally recognized human rights and the UN Guiding Principles on Business and Human Rights[1145], with particular focus on Guiding Principle 31 on effectiveness

[1139] Ibidem.
[1140] Stakeholder Alliance for Corporate Accountability (SACA) is a non-governmental organization founded in 2012 which was conceived to pragmatically engage multinational oil companies operating in the Niger Delta region to improve their practices in environmental management, social responsibilities in the community and respect for human rights and humanitarian laws.
[1141] Eni for 2022-Human Rights, Ibidem.
[1142] Ibidem.
[1143] Ibidem.
[1144] Ibidem.
[1145] Chapter II.1.3.

criteria. Therefore, every solution adopted will be in line with the human rights-based approach followed by the company in every activity.

Since 2021, a different level of severity is assigned to each grievance, depending on which different processes of sharing and approval of grievance resolution proposals are identified. This in order to ensure that the management of high severity grievances is more rapid, ensuring also the involvement of top management[1146].

In 2022, Eni received a total of 141 grievances (against the 245 in 2021) from 7 subsidiaries/districts/plants, of which 43%, i.e. 61 cases[1147], were resolved. Most of the grievances came from Nigeria, followed by Ghana, Italy, Congo, and mainly concerned: management of relations with the communities, which is the most recurring category, management of environmental aspects, land management, employment development, and economic diversification[1148].

The grievance mechanism has several positive outcomes for the company. First, it allows Eni to have a direct relation with the communities that are necessarily engaged in its activities and to solve issues caused by its own activities. For the company, responsible business management is also about responding to the needs expressed by local communities, contributing to their medium- and long-term well-being[1149]. Moreover, thanks to the complaints received, the company has the possibility to have a clear view of the situation of its subsidiaries' activities, having an additional proof of the human rights issues that can arise in different parts of the globe. In this way, Eni can take advantage of the complaints, identifying preventing measures that implement its HRDD strategies, in order to avoid the recur of the same or similar violations.

V.3 "Eni for" Sustainability Report

"Eni for" is the voluntary sustainability report that illustrates Eni's contribution to a just transition. It is, in fact, based on the three pillars of Eni's business model, Carbon neutrality by 2050, Operational excellence and Alliances for development. In order to deeply analyze each years' commitments and achievements, the Report is always divided into three volumes. Eni for-A Just Transition[1150], is the one focused on the technological and energy transition that the company is trying to develop. Then, there's Eni for-Sustainability Performance[1151], which is dedicated to Eni's non-financial performance,

[1146] Eni for 2022, Human Rights, Ibidem, p. 83.
[1147] Ibidem, p. 84.
[1148] Ibidem.
[1149] Eni, Stakeholder Management System and Grievance Mechanism, available at https://www.eni.com/en-IT/just-transition/stakeholders-relationship/complaint-management.html.
[1150] Eni for-A Just Transition, the last available is the one from 2022, available at https://www.eni.com/assets/documents/eng/just-transition/2022/eni-for-2022-just-transition-eng.pdf#page=29.
[1151] Eni for-Sustainability Performance, the last available is the one from 2022, available at https://www.eni.com/assets/documents/eng/just-transition/2022/eni-for-2022-sustainability-performance-eng.pdf.

including the analysis of its governance and its business ethics. The last volume is Eni for-Human Rights[1152], which the company adopts every year since 2018 and it specifically illustrates the company's commitment to the respect for human rights, providing transparent information on Eni's approach, challenges and performance on the matter. Eni for, differently from the Consolidated Disclosure of Non-Financial Information (NFI), delves into the stories, concrete cases and testimonies of people Eni shares its journey with[1153].

The last human rights report was published in May 2023 and it refers to the precedent year, thus being Eni for 2022-Human Rights. The report's structure mirrors the United Nations' Guiding Principles (UNGPs), and it is based on the dignity of every human being, and the wellbeing of people and communities everywhere Eni works. The Introduction of the Report provides an overview of Eni's activities and the relevant challenges and opportunities in terms of respect for human rights, also taking into consideration the evolution of the business and human rights scenario[1154]. Then, the document analyses the three main components of Eni's approach; first, the company's commitment to respect for human rights is analyzed, including the internal policies and rules, the role of the Corporate Governance, and the importance of the training initiatives[1155]. Second, the focus moves on to the description of Eni's human rights due diligence, together with an analysis of the impact assessment processes. Every information on due diligence is provided with specific reference to Eni's human rights salient issues that the company had to deal with in the last years. The last part is dedicated to the methodology and the process applied by Eni to provide access to remedial measures in the event of impacts resulting from or associated to its activities[1156].

Several achievements are described in Eni for 2022-Human Rights. For example, the company said that in 2022 the Agri-hub[1157] project has been finally tested. This project aims at converting locally produced raw materials into industrial oil and valuable vegetable proteins for animal feed and biofertilizers[1158], guaranteeing local farmers access to market to the products intended for oil extraction by ensuring their collection at a fair price and creating an agrihubs network. In 2022, the first cargo of vegetable oil produced in Kenya not competing with the food production chain, from waste and raw materials produced on degraded land, was delivered to Eni's biorefining plant in Gela,

[1152] Eni for-Human Rights, the last available is the one from 2022, available at https://www.eni.com/assets/documents/eng/just-transition/2022/eni-for-2022-human-rights-eng.pdf.
[1153] Eni for 2022- A just Transition, Ibidem, p. 3.
[1154] Eni for 2022-Human Rights, Ibidem.
[1155] Ibidem.
[1156] Ibidem.
[1157] Eni, New strategies to decarbonize transport, 2023, available at https://www.eni.com/en-IT/sustainable-mobility/biofuels-vegetable-oils.html.

[1158] New strategies to decarbonize transport, Ibidem.

with substantial positive impacts on employment and local development and announced that this model will be replicated in other countries[1159]. Moreover, several initiatives which paid particular attention to promote access to energy and education in the countries of operation are described, including the projects in Côte d'Ivoire, Mozambique, Nigeria, and Ghana to facilitate access to clean cooking. In Côte d'Ivoire, for example, the company said more than 20,000 cooking stoves were distributed in just six months, reaching more than 100,000 beneficiaries[1160]. Or, in Nigeria, the company said it improved access to water through the commissioning of 22 water wells powered with photovoltaic systems, while promoting the right to education in Congo, Ghana, Iraq, Mexico, Mozambique, and Egypt, where it opened the Zohr Applied Technology School to significantly increase the number of youths with upgraded technical and professional skills in the energy and technology fields[1161].

Reporting is an essential element of the human rights monitoring cycle and a fundamental part of a field presence's human rights work and strategy. They constitute a primary tool for the company, but also for all the possible stakeholders, to record and analyse information, present findings of monitoring and fact-finding activities, express concern about a human rights problem, engage in dialogue and advocate with authorities, and propose recommendations for corrective action. Reporting what has happened in a country or region or a specific human rights incident is, therefore, a crucial step for the development of HRDD strategies to address the situation[1162]. Moreover, it gives the company credibility, as the results are demonstrated and made publicly accessible. Lastly, all Eni's reports are prepared in accordance with the "Sustainability Reporting Standards" of the Global Reporting Initiative (GRI Standards) according to principles of balance, comparability, accuracy, timeliness, reliability and clarity. In this way, other MNCs can take inspiration from the activities done by Eni available on the reports and emulate them in implementing their business models. As it can be deduced by these reports, CSR measures adopted by a multinational corporation of this dimension can concretely make a change in the protection of human rights.

V.3.1 Consolidated Disclosure Declaration of Non-financial information

Eni's Consolidated Disclosure of Non-Financial Information (NFI) is the report that the company has to annually draft in accordance with Legislative Decree 254/2016[1163], concerning the following topics: environment, social, people, human rights and anti-corruption. Also in this case, the disclosure

[1159] Eni for 2022-Human Rights, Ibidem.
[1160] Ibidem.
[1161] Ibidem.
[1162] UN Human Rights, Manual on Human Rights Monitoring, Human Rights Reporting, 2011, p. 4.
[1163] Chapter IV.2.

in this report is defined in accordance with the "Sustainability Reporting Standards" of the GRI, in order to make the information reported reliable, clear and comparable. The last NFI that the company has published is the one that refers to 2022 and it contains detailed information on corporate policies, management and organizational models, an in-depth analysis of ESG risks, the strategy on the topics covered, the most important initiatives of the year, the main performances with related comments and the 2022 materiality analysis[1164].

For what concerns human rights, the NFI reports that in 2022, the Sustainability and Scenarios Committee[1165] investigated the activities for the year, including the risk-based management model adopted by Eni and the Slavery and Human Trafficking Statement. For instance, Eni continued its mission for what concerns human rights training, adding specific e-learning courses with the aim of creating a common and shared language and culture throughout the Company and to improve the understanding of the possible impacts of the business on human rights, including in-depth discussions on topics of interest on the individual activities/professional families[1166]. This resulted in 2,622 people trained for the so-called "Human Rights program" and in 100% of the procurement professional area trained on human rights[1167]. Moreover, the NFI reports that the total of new projects financed or started by the company have been assessed through the human rights risk-based model and that 100% of new suppliers have been assessed according to social criteria[1168].

Comparing the NFI and the Eni for Human Rights reports, differences are immediately noticeable. Both report about non-financial information, but in different ways. As it was previously mentioned, Eni for Human Rights describes the information that it reports on the basis of testimonies and real cases that the company has dealt with during the year, while the NFI is mainly based on data collected by the company[1169]. Therefore, they basically report the same information but in two different ways: the NFI is more immediate, improvements and achievements can be understood only by reading the numbers reported in the charts contained in the report; Eni for Human Rights, instead, is less immediate, but it gives the reader the possibility to understand how goals have been reached and the real impacts that company's activities have had on peoples' lives.

[1164] Eni, Annual Report 2022, p. 152, available at https://report.eni.com/annual-report-2022/en/servicepages/downloads/files/NFI-Eni-22.pdf.
[1165] Which is the Committee that makes proposals and acts as consultants for Eni's Board of Directors on ESG and Human Rights.
[1166] Eni, Annual Report 2022, Ibidem, p. 186.
[1167] Eni Annual Report 2022, online version, available at https://report.eni.com/annual-report-2022/en/#nfi.
[1168] Ibidem.
[1169] Eni for 2022-A Just Transition, Ibidem, p. 3.

V.4 Collaboration with international bodies

Eni's commitment to respect and promote the protection of human rights is also proven by its constant and lengthy collaboration with different international bodies, including UN specialized agencies, civil society organizations, funds and programs, national and regional development cooperation organizations, financial institutions and private sector representatives[1170]. These partnerships are meant to improve the dignity of the person – such as those signed with FAO, UNDP and UNIDO – but also to reach multiple goals ranging from undertaking joint actions to improving its understanding of cutting-edge topics, from contributing to the debate on Business and Human Rights to exchanging lessons learned and best practices. Some of these collaborations will now be described.

It has already been mentioned that in 2001, Eni was the first Italian company to join the Global Compact, and its Communication on Progress has qualified as Advanced Level since 2009 and confirmed as Lead Company in 2020[1171]. In addition, Eni participates in the international working groups of the Global Compact on issues relating to labour, human rights and anti-corruption, being also part of the LEAD initiative within Global Compact, the global movement of sustainable companies that take shared responsibility to shape a sustainable future[1172].

Another relevant example is the stable cooperation that Eni has entertained with the International Labour Organization (ILO), and the International Training Centre of the International Labour Organization (ITCILO)[1173]. Thanks to this collaboration, Eni has developed a number of initiatives on the subject of international labour standards and equal opportunities, including the online seminars previously mentioned. Moreover, it has carried out studies on international regulatory frameworks, including the ratification status of ILO Fundamental Conventions in all the Countries in which Eni actually operates. Furthermore, in 2018, Eni contributed to the drafting of a booklet published by the International Training Centre of the ILO aimed at mapping the state of ratification of ILO Fundamental Conventions and other selected ILO Conventions of interest to HR across the Countries where the company operates[1174].

Another important alliance is the one between Eni and the UN Development Programme, established with the specific aim of improving the energy efficiency of a secondary school in Turkestan, Kazakhstan. This project was commissioned in May 2022, when Eni decided to make this "green" investment, providing heat and power in this educational institution[1175]. UNDP Deputy Resident

[1170] Ibidem, p. 106.
[1171] Eni for 2022-Human Rights, Ibidem, p. 90.
[1172] Ibidem.
[1173] Ibidem.
[1174] Ibidem.
[1175] Eni for 2022-A Just Transition, Ibidem, p. 107.

Representative in Kazakhstan Sukhrob Khojimatov[1176], stated that this type of investments by private entities are essential to achieve the 2030 Agenda for Sustainable Development and meet the ambitious target of carbon neutrality by 2060[1177]. For this reason, partnerships with the private sector to encourage new investments in the green economy represent an important value for developing countries like Kazakhstan, which can be an accelerator for knowledge-based economic transformation, a forward-looking perspective on how to support green sectors and promote the knowledge economy with new skills and technologies[1178].

One last example could be the 11 water schemes in Borno and Yobe States, North-East Nigeria, commissioned by Eni, through its Nigerian subsidiaries Nigerian Agip Exploration (NAE) and Agip Energy & Natural Resources (AENR), and the Food and Agriculture Organization of the United Nations (FAO)[1179] in 2022. The integrated water schemes provide water for domestic consumption and micro- irrigation purposes and they were constructed under the framework of the 'Access to Water' initiative implemented by FAO and Eni[1180]. This public-private partnership leverages the skills and know-how of the public and private sectors to improve access to water for the communities affected by the humanitarian crisis in the North East[1181].

These are just few examples of the several collaborations that Eni entertains with international bodies. The Map below gives a clear representation of Eni's current relations established at different national and local levels, entertained both for the realization of specific projects or for being stable and last over time.

[1176] UNDP Deputy Resident Representative for Kazakhstan, appointed in July 2022.
[1177] Ibidem.
[1178] Ibidem.
[1179] Eni, in collaboration with NNPC, and FAO commission 11 solar-powered water schemes in northeast Nigeria, 2022, available at https://www.eni.com/en-IT/media/press-release/2022/03/eni-in-collaboration-with-nnpc-and-fao-commission-11-solar-powered-water-schemes-in-north-east-nigeria.html.
[1180] Ibidem.
[1181] Ibidem.

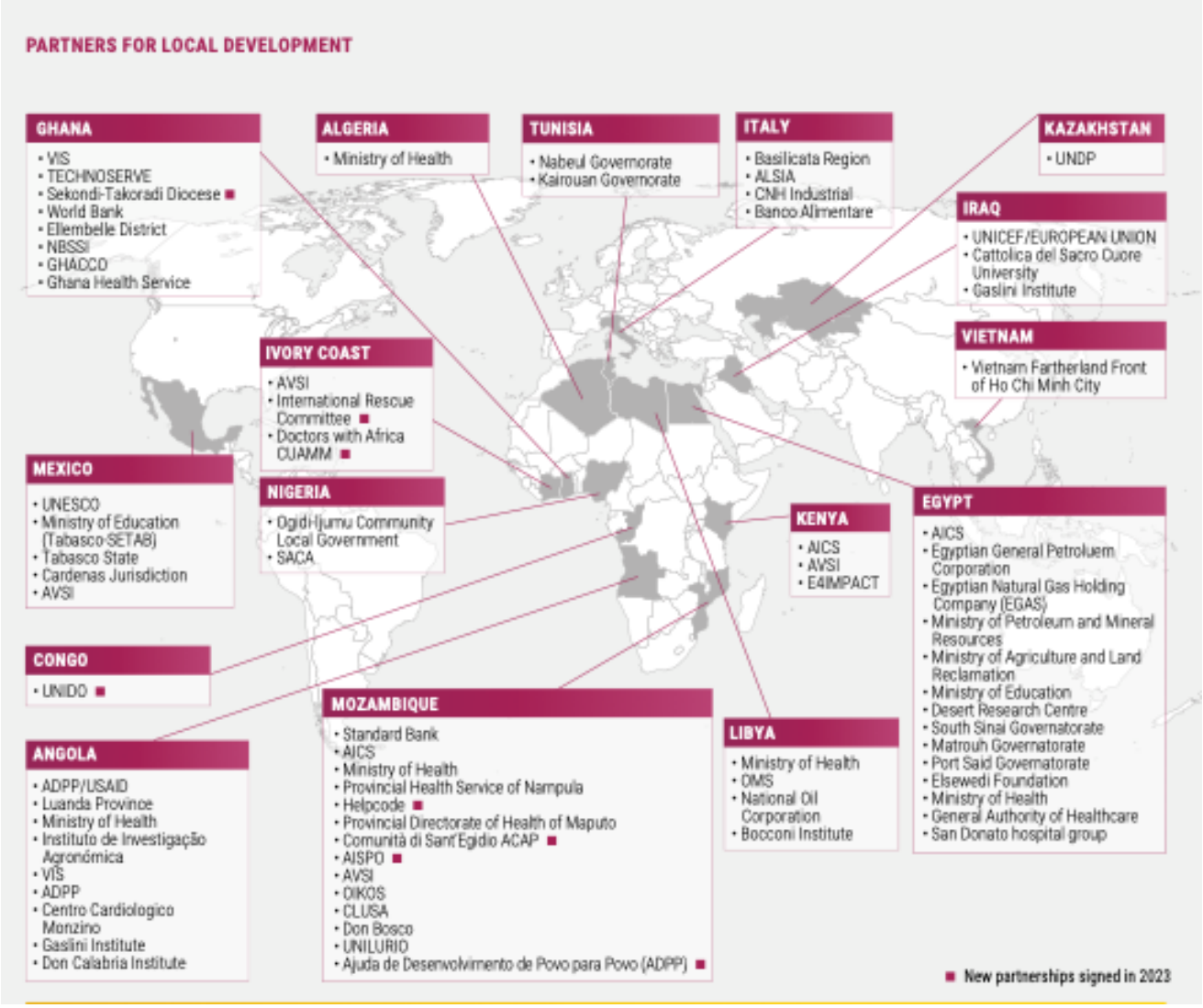


Table 4.[1182]

In conclusion, with the aim of fostering sustainable socio-economic growth in the Countries where it operates, Eni relies on strategic partnerships which leverage resources and form an integral part of the third pillar of the business model: Alliances for Development. These collaborations create several positive incomes, both for the company and for the communities, starting from job creation and know-how transfer, multiplying the impacts of the initiatives launched by Eni in these Countries and accelerating the progress towards achieving the objectives of the 2030 Agenda[1183].

[1182] Table 4, Eni for 2022-A Just Transition, Ibidem, p. 106.
[1183] Ibidem.

Conclusions

This work delved into the intricate interplay between Corporate Social Responsibility (CSR) and International Human Rights Law, discussing the complex legal landscape in which multinational corporations operate on a global scale. Through an in-depth analysis of the universal, regional and national legal frameworks and jurisprudential developments, this study highlighted the evolving role of business entities in respecting and promoting human rights within their operations and activities.

As globalization continues to shape economic activities across borders, the responsibilities of corporations extend beyond their immediate financial interests. The international evolving legal framework signals, in fact, a departure from the traditional state-centric model of international law, emphasizing the shared responsibility of states, businesses, and civil society in safeguarding human rights. While international initiatives, such as the United Nations Guiding Principles on Business and Human Rights or the UN Global Compact, offer a valuable roadmap for corporate behavior, the issue of enforceability remains a persistent concern. The lack of international legal subjectivity of MNCs and the consequent lack of binding international treaties specifically governing corporate conduct, necessitated innovative approaches that involve regional and domestic legal systems, soft law mechanisms, and multi-stakeholder initiatives, in order to regulate and avoid the negative impacts of companies' activities.

Despite the weaknesses of international regulation, Corporations are always more pushed to voluntary integrate human rights considerations into their business models, stand to benefit not only in terms of reputation and risk mitigation but also in building resilient, sustainable, and inclusive business models. This voluntary approach to CSR reflects a growing recognition that corporations can contribute positively to human rights advancement while pursuing profitability.

However, the study also illuminated the need for greater coherence and convergence between CSR initiatives and human rights obligations. The voluntary nature of many international CSR instruments usually results in inconsistencies, lack of specificity, or selective engagement with human rights issues. To bridge this gap, there is a growing call for harmonizing standards, enhancing transparency, and promoting accountability mechanisms that hold corporations liable for human rights violations in their global operations.

With this specific aim, the European Union is continuously developing and implementing its approach to CSR since 2001. Important directives have been adopted in the last decade, with the aim of imposing specific duties on its member states and, consequently, on European MNCs, including the NFRD and the CSRD. Once the proposal on the Corporate Sustainability Due Diligence Directive will be approved, member states will be obliged to comply with it, adopting national instruments to

impose to their MNCs the implementation of risk prevention and mitigation measures concerning corporate activities.

Due to the always higher stakeholders' demand, also national jurisdictions are always more involved in the development of legal frameworks concerning CSR and human rights. In this work, it has been analyzed the Italian approach to this concept, which was born as merely voluntary and its evolving into a compulsory one, also thanks to the European Union initiatives.

As the world is experiencing an increasingly complex array of economic, social, and environmental challenges, the combination between CSR and International Human Rights Law will continue to evolve. The final part of this work aimed at demonstrating which achievements can be concretely reached with the integration of CSR into corporations' business models. Paying particular attention to the communities in which it operates, Eni has developed a complex framework of initiatives, based on training its employees, raising their awareness on responsible business conducts, prevention and mitigation of negative impacts on human rights, transparency and sustainable reporting. Thanks also to the collaboration of the company with international bodies, several projects have been realized around the globe, providing access to clean water, jobs and protection for the indigenous communities. Eni's business model is just an example of the achievements that multinational corporations can fulfill, integrating CSR into their everyday activities.

Policymakers, legal scholars, businesses, and civil society must collaborate to strengthen the legal and regulatory frameworks that underpin responsible corporate behavior. The greatest results could be, obviously, achieved with the recognition of the international legal status of multinational corporations, because only in this way they could be bound to respect international obligations and, consequently, be considered accountable at the international level for their violations. For now, enhancing awareness among stakeholders about the potential legal consequences of human rights abuses is vital in driving meaningful change. Moreover, regional organizations and national jurisdictions must continue their work in adopting instruments to regulate in a compulsory way corporate activities and conducts, in order to move on from the typical voluntary CSR character.

In essence, this thesis underscores that Corporate Social Responsibility is not merely a moral obligation but also a legal imperative under International Human Rights Law. By integrating human rights principles into their operations, corporations can play a pivotal role in advancing global human rights goals while fostering sustainable development. As the global legal landscape adapts to new realities, the pursuit of a just and equitable world requires a collaborative effort to align corporate conduct with the imperatives of human dignity and social progress.

Bibliography

A. RASCHE, G. Kell, The United Nations Global Compact: Achievements, Trends and Challenges, Cambridge University Press, 2010.

A. CASSESE, International Law in a Divided World, Clarendon, 1986.

A. CASSESE, International Law, Oxford University Press, 2005.

A. CLAPHMAN, Human Rights Obligations of Non-State Actors, Oxford University Press, 2006.

A. DEL VECCHIO, Giurisdizione internazionale e globalizzazione. I tribunali internazionali tra globalizzazione e localismi, Milano, 2003.

A. GATTO, Multinational Enterprises and Human Rights: Obligations under EU Law and International Law, Elgar, 2011.

A. PETERS, Beyond Human Rights: the Legal Status of the Individual in International Law, Cambridge University Press, 2016.

A. SLAUGHTER, International Relations, Principal Theories, Oxford University Press, 2011.

A. TREBILCOCK, Introductory note to 2022 Amendments to the ILO Declaration on Fundamental Principles and Rights at Work, Cambridge University Press, 2023.

A.C. CUTLER, Private Power and Global Authority: Transnational Marchant Law in the Global Political Economy, Cambridge University Press, 2003.

C. AURELI, M.G. BALDARELLI, M. DEL BALDO, Corporate Social Responsibility in Italy: Current and Future Developments, in Current Global Practices of Corporate Social Responsibility, Springer Nature Switzerland, 2021.

C. COUMANS, Minding the "governance gaps": Re-thinking conceptualizations of host state "weak governance" and re-focussing on home state governance to prevent and remedy harm by multinational mining companies and their subsidiaries, The Extractive Industries and Society, 2019.

C. MACCHI, Business, Human Rights and the Environment: the evolving agenda, Springer, 2022.

C. RYNGAERT, Non-State Actor Dynamics in International Law: from Law-Takers to Law Makers, Routledge, 2016.

C. SCHREUER, The Warning of the Sovereign State: Towards a New Paradigm for International Law, European Journal of International Law, 1993.

C. VOEGTLIN, N.M. PLESS, Global Governance: CSR and the Role of the UN Global Compact, Springer Science, 2014.

C.F. FOLEY, J.R. HINES Jr., D. WESSEL, Global Goliaths: Multinational Corporations in the 21st Century Economy, Brookings Institution Press, 2021.

D. AUGENSTEIN, *C. MACCHI*, The Role of Human Rights and Environmental Due Diligence Legislation in Protecting Women Migrant Workers in Global Food Supply Chains, Oxfam Germany, 2021.

D. CARREAU, F. MARRELLA, Droit international, Pedone, 2012.

D. DE FELICE, A. GRAF, The Potential of National Action Plans to Implement Human Rights Norms: An Early Assessment with Respect to the UN Guiding Principles on Business and Human Rights, Oxford University Press, 2015,

D. KUBAL, M. Baker, K. Coleman, Doing the right thing: How today's leading companies are becoming more ethical, Performance Improvement, 2006.

E. DE BRABANDERE, Human Rights and Transnational Corporations: The Limits of Direct Corporate Responsibility, Human Rights and International Legal Discourse, 2010.

E. MORGERA, Corporate Accountability in International Environmental Law, Oxford, 2009.

F. FRANCIONI, Imprese Multinazionali, Protezione Diplomatica e Responsabilità Internazionale, Milano, 1979.

G. ABI-SAAB, Cours Général de Droit International Public, Recueil des Cours, 1987.

G. MORGAN, P.H. KRISTENSEN, The contested space of Multinationals: varieties of institutionalism, varieties of capitalism, Sage Publications, 2006.

G. VAN CALSTER, European Private International Law, Commercial Litigation in the EU, Hart, 2016.

H. LAUTERPACH, International Law and Human Rights, Archon Books, 1968.

I. BROWNLIE, Principles of Public International Law, Oxford University Press, 1999.

J. BUHMANN, J. JONSSON, M. FISKER, Do no harm and do more good too: connecting the SDGs with business and human rights and political CSR theory, Emerald Publishing Limited, 2019, p. 390.

J. KLABBERS, International Law, Cambridge University Press, 2020.

J. KLABBERS, The individual in international law, Cambridge University Press, 2013.

J. MCCAHERY, S. PICCIOTTO, C. SCOTT, Corporate Control and Accountability, Oxford, 1993.

J. SIMPSON, J.R. TAYLOR, Corporate governance ethics and CSR, Kogan Page Publishers, 2013.

J.A. ANDREWS, Controversial subjects of contemporary international law. An examination of the new entities of international law and their treaty-making capacity, International Affairs, 1974.

J.P. CHARKHAM, Keeping good company. A study of corporate governance in five countries, Oxford University Press, 1995.

K. NOWROT, Reconceptualising International Legal Personality of Influential Non-State Actors: towards a Rebuttable Presumption of Normative Responsibilities, in J. Fleurs, International Legal Personality, Ashgate, 2010.

K.P. SAUVANT, Multinational enterprises and the global investment regime: toward balancing rights and responsibilities, Handbook of International Investment Law and Policy, 2020.

L. SEGERLUND, Making Corporate Social Responsibility a Global Concern: Norm Construction in Globalizing World, Ashgate Publishing, 2010.

L. SWEPSTON, International Labour Conference: ILO Declaration on Fundamental Principles and Rights at Work and Annex, Cambridge University Press, 1998.

M. BEDJAOUI, International Law: Achievements and Prospects, Martinus Nijhoff Publishers, 1991.

M. COMINETTI, P. SEELE, Hard soft law or doft hard law? A content analysis of CSR guidelines typologized along hybrid legal status, Springer, 2016.

M. DI MAURO, Organizzazioni e differenze, Pratiche strumenti e percorsi formativi, Milano, 2010.

M. FASCIGLIONE, Luci ed ombre del rapporto di fine mandato del Rappresentante speciale delle Nazioni unite su diritti umani e imprese, in Diritti umani e diritto internazionale, 2009, p. 172.

M. NOORTMANN, A. REINISCH, C. RYNGAERT, Non-State Actors in International Law, Bloomsbury Publishing, 2015.

M. WAGNER, Non-State Actors, Oxford University Press, 2009.

M.R. MAURO, Diritto Internazionale dell'economia Teoria e Prassi delle Relazioni economiche internazionali, Edizioni Scientifiche Italiane, 2019.

M.T. KAMMINGA, S. ZIA-ZAFIRI, Liability of Multinational Corporations Under International Law, Springer Netherlands, 2021.

N.R. TUTTLE, Human Rights Council Resolutions 26/9 and 26/22: Towards Corporate Accountability?, American Society of International Law, 2015.

P. LOWE, Transnational & Multinational Corporations in the Global Economy: Globalisation and the Impacts of TNCs & MNCs for A Level & IB Geography, Independently Published, 2020.

P. PUSTORINO, Tutela internazionale dei diritti umani, Cacucci Editore, 2022.

R. HIGGINS, Problems and Process. International Law and How We Use It, Oxford University Press, 1995.

T. BAUMGARTNER, *T.R. BURNS*, The Structuring of International Economic Relations, International Studies Quarterly, 1975.

T. MUCHLINSKI, Multinational Enterprises and the Law, 2007, Oxford University Press.

Case Law

a) International Case Law

Abrill Alosilla and others v. Peru, Merits, Reparations, and Costs, Judgment, Inter-American Court of Human Rights, No. 223, 2011.

Al Jadeed S.A.L. and Ms Khayat, Special Tribunal for Lebanon, N. STL-14-05, 2014.

Campesino Leaders of Bajo Aguán, Honduras, Inter-American Commission of Human Rights, Precautionary Measure No. 50/14, 2014.

Comingersoll S.A. v Portugal, European Court of Human Rights, 35382/97, 2000.

Dombo Beheer B.V v The Netherlands, ECHR, 1993;

I.G. Farben Trial, International Military Tribunal, Case No. 37, 14 August 1947- 29 July 1948, in Law Reports of the Trials of War Criminals, vol. X, p. 1 ss.

Texaco Overseas Petroleum Company and California Asiatic Oil Company v. Government of Lybian Arab Republic, International Arbitral Tribunal, sole Arbitrator R. J. Dupuy, Awards on the Merits, Ginevra, 19 January 1977.

Oao Neftyanaya Kompaniya Yukos v. Russia, European Court of Human Rights, 14902/04, 2014.

Silvester's Horeca Service v Belgium, App. No. 47650/99, ECHR, 2004.

Sovtransavto Holding v Ukraine, ECHR 2002, VII 95.

Stran Greek Refineries and Stratis Andreadis v Greece, ECHR, 1994.

Suarez Peralta v. Ecuador, Preliminary Objections, Judgment, Inter-American Court of Human Rights, No. 261, 2013.

Sunday Times v The United Kingdom, ECHR, 1979.

Uniòn Alimentaria Sanders SA v Spain, ECHR, 1989.

VGT Verein gegen Tierfabriken v Switzerland, ECHR, 2001, VI 243.

b) National Case Law

Former Employees of Bralima v. Heineken and Bralima, Dutch National Contact Point, 2015.

Filártiga v Peña-Irala, United States Court of Appeal for the Second Circuit, 1980, 630 F2d 876.

Kiobel v Royal Dutch Petroleum, Supreme Court of the United States, 2010, 621 F 3d 111.

Sosa v Alvarez Machain, Supreme Court of the United States, 2004, 331 F3d 604.

Legal Journals Articles

A. BERTHOIN ANTAL, A. SOBCZAK, Corporate Social Responsibility in France, A Mix of National Traditions and International Influences, Business and Society, 2007.

A. ELALFY, K.M. DARWISH, O. WEBER, Corporations and sustainable development goals communication on social media: Corporate social responsibility or just another buzzword?, Sustainable Development, 2020.

A. LATAPI, L. JOHANNSDOTTIR, B. DAVIDSDOTTIR, A literature review of the history and evolution of corporate social responsibility, International Journal of Corporate Social Responsibility, 2019.

A. ROBERT, Technology, progress and economic growth, European Management Journal, 1996.

A. SAHIN, How to Incorporate Corporate Social Responsibility into DNA of the Companies?, European Journal of Marketing and Economics, 2022.

A. SPRENGER, Commentary: Second Revised Draft offers hope for a UN binding treaty on business and human rights, Business and Human Rights Resource Centre, 2020.

A. VENTURELLI, F. CAPUTO, R. LEOPIZZI, S. PIZZI, The state of art of corporate social disclosure before the introduction of non-financial reporting directive: A cross country analysis. Social Responsibility Journal, 2018.

A. VENTURELLI, F. CAPUTO, S. COSMA, R. LEOPIZZI, S. PIZZI, Directive 2014/95/EU: Are Italian Companies Already Compliant?, Sustainability, 2017.

A.G. ERRO, J.A.C. SANCHEZ, Joining the UN Global Compact in Spain: an institutional approach, Revista de Contabilidad, 2012.

A.W. HARZING, Strategy and structure of multinational companies, International human resource management, 2004.

B. WEDER, D. ROHNER, L. GARICANO, Global Economic Consequences of the War in Ukraine: Sanctions, Supply Chains and Sustainability, Centre for Economic Policy Research, 2022.

B.O. GIUPPONI, Disentangling human rights and investors' rights in international adjudication: the legacy of the Yukos Cases, Willamette Journal of International Law and Dispute Resolution, 2017.

C. COSLIN, M. RENARD, Analysis: Major changes introduced by the Second Revised Draft, Busines and Human Rights Resource Centre, 2020.

C. COXSON, The 1998 ILO Declaration on Fundamental Principles and Rights at Work: Promoting Labour Law Reforms Through the ILO as an alternative to imposing coercive trade sanctions, Penn State International Law Review, 1999.

C. DANIEL, J. WILDE-RAMSING, K. GENOVESE, *V. SANDJOJO*, Remedy remains rare: an analysis of 15 years of NCP cases and their contributions to improve access to remedy for victims of corporate misconduct, OECD Watch, 2015.

C. DEEGAN, Introduction: The legitimizing effect of social and environmental disclosures–a theoretical foundation. Audit Account Journal, 2002.

C. LOPEZ, Legal Liability for business and human rights abuses under the revised draft of a treaty on business and human rights, Business and Human Rights Resource Centre, 2019.

C. STAHN, Liberals vs Romantics: Challenges of an Emerging Corporate International Criminal Law, Journal of International Law, 2018.

C. VOEGTLIN, N.M. PLESS, Global Governance: CSR and the Role of the UN Global Compact, Journal of Business Ethichs, 2014.

C.A. HARTWELL, T.M. DEYINNEY, The demands of populism on business: Introducing corporate political responsibility, International Business Review, 2022.

C.G. CORVESE, La sostenibilità ambientale e sociale delle società nella proposta di Corporate Sustainability Due Diligence Directive (dalla «insostenibile leggerezza» dello scopo sociale alla «obbligatoria sostenibilità» della due diligence), Banca Impresa Società, 2022.

D. CASSEL, Progress in the Newest UN Draft Treaty on Business and Human Rights, Business and Human Rights Resource Centre, 2020.

D. GRAMA, A. DUVAL, A. VAN BAAR, L. ROORDA, Third Revised Draft Treaty on Business and Human Rights: Comments and Recommendations, Asser Institute, 2021.

D. JAMALI, A stakeholder approach to corporate social responsibility: a fresh perspective into theory and practice, Journal of Business Ethics, 2008.

D. LEVASHOVA, The accountability and corporate social responsibility of multinational corporations for transgressions in host states through international investment law, Utrecht Law Review, 2018.

D. SCHEFFER, C. KAEB, The Five Levels of CSR Compliance: The Resiliency of Corporate Liability under the Alien Tort Statute and the Case for a Counterattack Strategy in Compliance Theory, Berkeley Journal of International Law, 2011.

D. VOTAW, Genius Becomes Rare: A comment on the Doctrine of Social Responsibility Pt. I, SAGE Journals, 1973.

D. WEISSBRODT, Businesss and Human Rights, University of Cincinnati Law Review, 2005.

D.C. BROADSTOCK, et al., The role of ESG performance during times of financial crisis: Evidence from COVID-19 in China, Finance research letters, 2021.

D.E. VACAFLORES, et al., Does FDI really affect employment in host countries? Subsidiary level evidence, The Journal of Developing Areas, 2017.

*D.J. PLAINE***,** The OECD Guidelines for Multinational Enterprises**,** The International Lawyer, 1977.

E. DE WET, Governance through Promotion and Persuasion: the 1998 ILO Declaration on Fundamental Principles and Rights at Work, German Law Journal, 2019.

E. DI STEFANO, G. GIOVANNETTI, M. MANCINI, E. MARVASI, G. VANNELLI, Reshoring and plant closures in Covid-19 times: Evidence from Italian MNEs, International Economies 172, 2022.

E. GIULIANI, G.D. SANTANGELO, F. WETTSTEIN, Human rights and international business research: reflections on emerging market multinationals, Management and Organization Review, 2016.

E.M. DODD, For Whom are Corporate Managers Trustees? Harvard Law Review, 1932.

F. CAPUTO, R. LEOPIZZI, S. PIZZI, V. MILONE, The Non-Financial Reporting Harmonization in Europe: Evolutionary Pathways Related to the Transposition of the Directive 95/2014/EU within the Italian Context, Sustainability, 2019.

F. CUOMO, S. GAIA, C. GIRARDONE, S. PISERA', The effects of the EU non-financial reporting directive on corporate social responsibility, The European Journal of Finance, 2022.

F. DORSSEMONT, Corporate social responsibility, what's in a name? A critical appraisal of the Green Paper, Transfer: European Review of Labour and Research, 2004.

F. MAON, A. LINDGREEN, V. SWAEN, Designing and Implementing Corporate Social Responsibility: an integrative Framework grounded in theory and practice, Journal of Business Etchics, 2009.

F. MAUPAIN, Revitalization Not Retreat: The Real Potential of the 1998 ILO Declaration for the Universal Protection of Workers' Rights, The European Journal of International Law, 2005.

G. CALLIES, Transnational Corporations Revisited, Indiana Journal of Global Legal Studies, 2011.

G. DEMUIJNCK, B. FASTERLING, The Corporate Social License to Operate, Journal of Business Ethics, 2016.

G. KELL, The Global Compact: Origins, Operations, Progress, Challenges, Journal of Corporate Citizenship, 2003.

G. NICOLO', G. ZAMPONE, G. SANNINO, S. DE IORIO, Sustainable corporate governance and non-financial disclosure in Europe: does the gender diversity matter?, Journal of Applied Accounting, 2022.

H.C. RIVERA, Some remarks on the third sessions of the Business and Human Rights Treaty Process and the 'Zero Draft', Brazilian Journal of International Law, 2018.

I. BANTEKAS, Corporate Social Responsibility in International Law, Boston University International Law Journal, 2004.

J. AIRBRASS, Exploring Corporate Social Responsibility Policy in the European Union: A Discursive Institutionalist Analysis, Journal of Common Market Studies, 2011.

J. BIALEK, Evaluating the Zero Draft on a UN Treaty on Business and Human Rights: What Does it Regulate and how Likely is its Adoption by States, Goettingen Journal of International Law, 2019.

J. BONNITCHA, R. McCorquodale, The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights, the European Journal of International Law, 2017.

J. CANTEGREIL, The Audacity of the Texaco/Calasiatic Award: René-Jean Dupuy and the Internationalization of Foreign Investment Law, European Journal of International Law, 2011.

J. CHEN, Corporate Accountability: Definition, Examples, Importance, International Journal of Economics and Management Sciences, 2022.

J. MURRAY, A New Phase in the Regulation of Multinational Enterprises: The Role of the OECD, Industrial Law Journal, 2001.

J. RUGGIE, The Corporate Responsibility to Respect Human Rights, Harvard Law School Forum on Corporate Governance, 2010.

J. WOUTERS, A. CHANE', Multinational Corporations in International Law, Working Paper No. 129, 2013.

J. WOUTERS, B. DE MEESTER, The Role of International Law in Protecting Public Goods, Regional and Global Chalenges, Leuven Interdisciplinary Research Group on International Agreements and Development, Working Paper No. 1, 2003.

J.A. AREVALO, D. ARAVIND, Strategic outcomes in voluntary CSR: Reporting economic and reputational benefits in principle-based initiatives, Journal of Business Ethics, 2017.

J.A. SONNENFELD, S. TIAN, F. SOKOLOWSKI et. Al., Business Retreats and Sanctions Are Crippling the Russian Economy, Measures of Current Economic Activity and Economic Outlook Point to Devastating Impact on Russia, SSRN, 2022.

J.E. BORDELEAU-CASS, The 'Accountability Gap': Holding Corporations Liable for International Crimes, Global Justice Journal, 2019.

J.G. RUGGIE, T. NELSON, Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges, Corporate Social Responsibility Initiative Working Paper No. 66, Harvard University, 2015.

J.J. JANNEY, G. DESS, V. FORLANI, Glass Houses? Market Reactions to Firms Joining the UN Global Compact, Journal of Business Ethics, 2009.

J.L. CAMPBELL, Why would corporate behave in socially responsible ways? An institutional theory of corporate social responsibility, Academy of Management Review, 2007.

J.L. ČERNIČ, Corporate Responsibility for Human Rights: A Critical Analysis of the OECD Guidelines for Multinational enterprises, Hanse Law Review, 2008.

J.P. CALDERON MEZA, ICC Personal Jurisdiction on Corporations for Criminal Liability and/or Civil Liability for Reparations, Harvard International Law Journal, 2021.

K. BUHMANN, Analysing OECD National Contact Point Statements for Guidance on Human Rights Due Diligence: Method, Findings and Outlook, Nordic Journal of Human Rights, 2018.

K. BUHMANN, Future perspectives: doing good but avoiding SDG-washing: creating relevant societal value without causing harm, Copenhagen Business School Research, 2018.

K. MAHLSTEIN, C. MCDANIEL, S. SCHROPP, M. TSIGAS, Estimating the economic effects of sanctions on Russia: An Allied trade embargo, The World Economy, 2022.

K.SAHLIN-ANDERSON, Corporate social responsibility: a trend and a movement, but of what and for what?, Corporate Governance: The international journal of business in society, 2006.

K. SEITZ, No more sideshow: Report on the eighth session of the UN open-ended intergovernmental working group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights, Global Policy Forum, 2022.

K. STEHL, L. NG, M. FEEHILY, S. AUSTIN, EU Corporate Sustainability Reporting Directive—What Do Companies Need to Know, Harvard Law School Forum on Corporate Governance, 2022.

K.A. REINERT, O.T. REINERT, G. DEBEBE, The new OECD Guidelines for Multinational Enterprises: better but not enough, Development in Practice, 2016.

K.J. HOPT, Corporate Purpose and Stakeholder Value - Historical, Economic and Comparative Law Remarks on the Current Debate, Legislative Options and Enforcement Problems, Max Planck Institute for Comparative and International Private Law and ECGI, 2023.

K.S. ISAAC, A. IBIDUNNI, O.J. KEHINDE, D. UFUA, K.B. ELIZABETH, D. OYO-ITA, C.M. MATHIAS, The role of multinational corporations in global economic practice: literature review, Journal of Management Information and Decision Sciences, 2020.

K.T. WANG, D. LI, Market reactions to the first-time disclosure of corporate social responsibility reports: Evidence from China, Journal of Business Ethics, 2016.

L. A. TRAVIS, Novartis and the U.N. Global Compact Initiative, Vanderbilt Journal on Transnational Law, 2003.

L. BERGKAMPF, Corporate Governance and Social Responsibility: A new Sustainability Paradigm?, European Energy and Environmental Law Review, 2002.

L. DAVARNEJAD, In the Shadow of Soft Law: The Handling of Corporate Social Responsibility Disputes under the OECD Guidelines for Multinational Enterprises, Journal of Dispute Resolution, Article 6, 2011.

L. DESHKO, Application of Legal Entities to the European Court of Human Rights: a Significant Disadvantage as the Condition of Admissibility, Croatian International Relations Review, 2018.

L. SACCONI, Responsabilità sociale come governance allargata d'impresa: un'interpretazione basata sulla teoria del contratto sociale e della reputazione, Etica, Diritto ed Economia, 2004.

L.C. GREEN, The Changing Structure of International Law, Center Discussion Paper, 1966.

M. BLASCO, M. ZOLNER, Corporate Social Responsibility in Mexico and France, Exploring the Role of Normative Institutions, Business and Society, 2010.

M. BORDIGNON, The Italian National Action Plan on Business and Human Rights, Nova Centre on Business, Human Rights and the Environment, 2020.

M. FRIEDMAN, A Friedman doctrine – The Social Responsibility of Business is to increase its Profits, The New York Times Magazine, 1970.

M. KHUDAYKULOVA, H. YUANGYONG, A. KHUDAYKULOV, Economic Consequences and Implications of the Ukraine-Russia War, International Journal of Management Science and Business Administration, 2022.

M. LA TORRE, S. SABELFELD, M. BLOMKVIST, L. TARQUINIO, J. DUMAY, Harmonising non-financial reporting regulation in Europe: Practical forces and projections for future research. Meditari Accounting Resolutions, 2018.

M. MILANOVIC, From Compromise to Principle: Clarifying the Concept of State Jurisdiction in Human Rights Treaties, Human Rights Law Review, 2008.

M. PAZIENZA, M. DA JONG, D.SCHOENMAKER, Clarifying the Concept of Corporate Sustainability and Providing Convergence for Its Definition, Sustainability, 2022.

M. PENTIKAINEN, Changing international 'subjectivity'and rights and obligations under international law–status of corporations, Utrecht Law Review 8.1, 2012.

M. SAGEDER, B. FELDBAUER-DURSTMULLER, Management control in multinational companies: a systematic literature review, Review of Managerial Science, 2019.

M. SHOJI, Global accountability of transnational corporations: the UN Global Compact as a global norm, Journal of East Asia of International Law, 2015.

M. ZENCKIEWICZ, A. SMOLENSKA, Operationalizing the UN Guiding Principles on Business and Human Rights. Polish and Italian Steps to adopt National Action Plans, SSRN, 2017.

M.A. HITT, R.M. HOLMES Jr., J. ARREGLE, The (COVID-19) pandemic and the new world (dis)order, Journal of World Business, 2021.

M.J. ROE, H. SPAMANN, J.M. FRIED, C.C.Y. WANG, The European Commission's Sustainable Corporate Governance Report: A Critique, Yale Journal on Regulation Bulletin, 2020.

M.K. ADDO, The Reality of the United Nations Guiding Principles on Business and Human Rights, Human Rights Law Review, 2014.

N. CHOUCRI, Corporate Strategy Towards Sustainability, in W. Lang, Sustainable Development and International Law, London, 1995.

N.F. SHAYAN, N. MOHABBATI-KALEJAHI, S. ALAYI, M.A. ZAHED, Sustainable Development Goals (SDGs) as a Framework for Corporate Social Responsibility (CSR), Sustainability, 2022.

O. BOIRAL, D. TALBOT, M.C. BROTHERTON, Measuring sustainability risks: A rational myth? Business Strategy and the Environment, 2020.

P. ALSTON, "Core Labour Standards" and the Transformation of the International Labour Rights Regime, European Journal of International Law, 2004.

P. HOWSON, Due diligence: The critical stage in mergers and acquisitions, Gower Publishing, 2003.

P. MALNCZUK, M. AKEHURST, Akehurt's Modern Introduction to International Law, Psychology Press, 1997.

P.A. DAVIDDSON, Legal Enforcement of Corporate Social Responsibility Within the EU, Columbia Journal of European Law, 2002.

R. BREWSTER, Enabling ESG Accountability: focusing on the corporate enterprise, Wisconsin Law Review, 2022.

R. COOK, Contemporary Practices of the United States Relating to International Law: International Human Rights: Second Circuit Panel Finds ATS Does not apply to corporations, American Journal of International Law, 2011.

R. HAMMAMI, Y. FREIN, A.B. HADJ-ALOUANE, Supply chain design in the delocalization context: Relevant features and new modeling tendencies, International Journal of Production Economics, 2008.

S. BIJLMAKERS, M. FOOTER, N. HACHEZ, The EU's engagement with the main Business and Human Rights instruments, Fostering Human Rights among European Policies, 2015.

S. CAMOLETTO, L. CORAZZA, S. PIZZI, E. SANTINI, Corporate Social Responsibility due diligence among European companies: The results of an interventionist research project with accountability and political implications, Corporate Social Responsibility and Environmental Management, 2022.

S. COONROD, The United Nations Code of Conduct for Transnational Corporations, Harvard International Law Journal, 1977.

S. DEVA, Global Compact: a critique of the UN's "Public-Private" Partnership for Promoting Corporate Citizenship, Syracuse Journal of International Law, 2007.

S. R. RATNER, Corporations and Human Rights: A Theory of Legal Responsibility, the Yale Law Journal, 2001.

S. SILVA, Corporate contributions to the Sustainable Development Goals: An empirical analysis informed by legitimacy theory, Journal of Cleaner Production, 2021.

S. WADDOCK, Learning from Experience: The United Nations Global Compact Learning Forum 2002, The Journal of Corporate Citizenship, 2003.

U. ANDERSSON, M. FORSGREN, Subsidiaries embeddeddnes and control in the multinational corporation, International Business Review, 1996.

V. MESEGUER-SANCHEZ, F.J. GALVEZ-SANCHEZ, G. LOPEZ-MARTINEZ, V. MOLINA-MORENO, Corporate Social Responsibility and Sustainability. A Bibliometric Analysis of Their Interrelations, Sustainability 2021.

V. VASTOLA, A. RUSSO, Exploring the effects of mergers and acquisitions on acquirers' sustainability orientation: Embedding, adding, or losing sustainability, Business Strategy and the Environment, 2021.

V.H. MUJISENBERG, H. S. REZAI, Corporations and the European Convention on Human Rights, Global Business & Development Law Journal, 2012.

W. VISSER, The Rise and Fall of CSR, Shapeshifting from CSR 1.0 to CSR 2.0, CSR International Paper Series No. 2, 2010.

W.G. RINGE, A.A. GOZLUGOL, The EU Sustainable Corporate Governance Initiative: Where are We and Where are We Headed?, Harvard Law School Forum on Corporate Governance, 2022.

W. KALECK, M. SAAGE-MAAß, Corporate Accountability for Human Rights Violations Amounting to International Crimes. The Status Quo and its Challenges, Journal of International Criminal Justice, 2010.

Sitography

Amnesty International Italia e Re:Common intervengono all'Assemblea generale degli azionisti di Eni, Re:Common, 2013, available at https://www.recommon.org/amnesty-international-italia-e-recommon-intervengono-allassemblea-generale-degli-azionisti-di-eni/.

Eni, Annual Report, 2022, https://www.eni.com/assets/documents/eng/reports/2022/Annual-Report-2022.pdf.
Eni, Code of Ethics, 2020, available at https://www.eni.com/assets/documents/eng/enirewind/who-we-are/Eni_Code_of_Ethics_2020.pdf.

Eni, Eni for 2022- Human Rights, 2022, available at https://www.eni.com/assets/documents/eng/just-transition/2022/eni-for-2022-human-rights-eng.pdf.

Eni, Eni's statement on Respect for Human Rights, 2018, available at https://www.eni.com/assets/documents/documents-en/Dichiarazione-Eni-DU-ENG.pdf.

Eni, Global Framework Agreement on International Relations and CSR, 2019, available at https://www.eni.com/assets/documents/global-framework-agreement_eng.pdf.

Eni, in collaboration with NNPC, and FAO commission 11 solar-powered water schemes in northeast Nigeria, 2022, available at https://www.eni.com/en-IT/media/press-release/2022/03/eni-in-collaboration-with-nnpc-and-fao-commission-11-solar-powered-water-schemes-in-north-east-nigeria.html.

Eni, IndustriALL, CIGL, CISL, UIL, Global Framework Agreement on Industrial Relations and Corporate Social Responsibility, 2019, available at https://www.eni.com/assets/documents/global-framework-agreement_eng.pdf.

Eni, New strategies to decarbonize transport, 2023, available at https://www.eni.com/en-IT/sustainable-mobility/biofuels-vegetable-oils.html.

Eni, Slavery and Human Trafficking Statement, 2022, available at https://www.eni.com/assets/documents/eng/just-transition/2022/Slavery-and-Human-Trafficking-Statement-2022.pdf.

Eni, Stakeholder Management System and Grievance Mechanism, available at https://www.eni.com/en-IT/just-transition/stakeholders-relationship/complaint-management.html.

Eni's Commitment to Respect Human Rights, available at https://www.eni.com/en-IT/just-transition/respect-for-human-rights.html.

EU Corporate Due Diligence Directive must be strengthened and prevent trafficking: UN expert, Statement by the UN Special Rapporteur on trafficking in persons, 2023, available at https://www.ohchr.org/en/statements/2023/04/eu-corporate-due-diligence-directive-must-be-strengthened-and-prevent.

European Commission, Due diligence explained, 2021, available at https://single-market-economy.ec.europa.eu/sectors/raw-materials/due-diligence-ready/due-diligence-explained_en#:~:text=A%20technical%20description%20of%20due,10).

Interview to Gennaro Mallardo, Eni's Head of Eni Model 231 and Corporate Liability, Corporate Social Responsibility, Anti-Corruption & AML Compliance, Eni e la Zero Tolerance Policy contro la violenza e le molestie sul lavoro, 2022, available at https://www.linkedin.com/pulse/eni-e-la-zero-tolerance-policy-contro-violenza-le-sul-mallardo/?trackingId=tPk9v1JERCyLCK9q0mKKxQ%3D%3D.

K. Annan, Secretary-General's remarks at meeting with President Chirac and business executives on the Global Compact, Paris, 2004, available at www.un.org/apps/ sg/sgstats.asp?nid=754.

Ministry of Foreign Affairs of Denmark and U.N.D.P., Implementing the UN Global Compact: a Booklet for Inspiration, 2005, available at http://www.unglobalcompact.org/docs/news_events/8. l/dk_book_e.pdf.

United Nations Global Compact, The ten Principles of the UN Global Compact, 2010, available at https://unglobalcompact.org/what-is-gc/mission/principles, New York.

Documents and Resolutions

Council of the European Union, EU Annual Report on Human Rights and Democracy in the World 2019, Brussel, 2020.

European Parliament and Council, Directive as regards corporate sustainability reporting, Brussels, 14 December 2022, Directive (EU) 2022/2464.

Director-General for Justice and Consumers, Proposal for Corporate Sustainability Due Diligence Directive, 2022/0051(COD), 2022.

ECOSOC Resolution, 1913 (LVII), New York, 1974.

EU Commission, Green Paper Promoting a European framework for Corporate Social Responsibility, Brussels, 2001.

EU Council and High Representative of the European Union for Foreign Affairs and Security Policy, Action Plan on Human Rights and Democracy 2015-2020, Brussels, 2015.

European Commission, A renewed EU strategy 2011-14 for Corporate Social Responsibility, Brussels, 2011.

European Commission, Communication, Corporate Social Responsibility: A business contribution to Sustainable Development, 2002.

European Commission, Corporate Social Responsibility: a new definition, a new agenda for action, European Commission Memo, MEMO/11/730 from October 2011.

European Commission, Green Paper, Promoting a European Framework for Corporate Social Responsibility, Brussels, 2001.

European Commission, Growth, competitiveness, employment, The challenges and ways forward into the 21st century: White paper, 1993.

European Commission, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Brussels, 2022.

European Commission, Renewed EU strategy 2011-14 for Corporate Social Responsibility, COM(2011)681.

European Parliament and Council, Corporate Sustainability Reporting Directive, Directive (EU) 2022/2464, 14 December 2022.

European Parliament and Council, Non- financial reporting Directive, Directive 2013/34/EU, 2013.

European Parliament and European Council, Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

European Parliament, Post Covid-19 value chains: options for reshoring production back to Europe in a globalized economy, Policy Department, Directorate-General for External Policies, March 2021.

European Parliament, Resolution on Corporate liability for serious human rights abuses in third countries, (2015/2315(INI)), Brussels, 2016.

European Parliament, Resolution on Corporate Liability for serious human rights abuses in third countries, Brussels, 2016.

Human Rights Council, Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the SRSG on the issue of human rights and transnational corporations and other business enterprises, 2008.

Human Rights Council, Report on the third session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, A/HRC/37/67, 24 January 2018.

International Organization of Employers, Declaration on Fundamental Principles and Rights at Work: a Guide for employers, Geneva, 1999.

Joint Communication to the European Parliament and the Council, Action Plan on Human Rights and Democracy (2015-2019) Keeping human rights at the heart of the EU agenda, Brussels, 2015.

Joint Communication to the European Parliament and the Council, EU Action Plan on Human Rights and Democracy 2020-2024, Brussels, 2020.

Loi n° 77-769 du 12 juillet 1977 relative au bilan social de l'entreprise.

Loi no. 2017/399 du 27 mars 2017 relative au devoir de vigilance, J.O. 2017, Texte 1 sur 99.

Italian Minister of Foreign Affaires and International Cooperation, National Action Plan on Business and Human Rights, Rome, 2016.

Ministero del Lavoro e delle Politiche Sociali, Progetto CSR-SC, Il contributo italiano alla campagna di diffusione della CSR in Europa, Venezia, 2003, p. 12.

United Nations press release, Kofi Annan Enlist Corporations, Civil Society to Tackle Globalization Challenges, 2000.

Publications Office of the European Union, Action Plan on Human Rights and Democracy, Luxembourg, 2015.

European Parliament and Council, Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

International Court of Justice, Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, ICJ Reports 1949.

UN Secretary General, Report of the Secretary General on the adoption of the Statute of the ICTY, 1994, S/1993/25704.

Special Representative of the Secretary-General, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, March 2011, A/HRC/17/31.

Special Representative of the Secretary-General, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporation and other business enterprises, Human Rights Policies and Management Practices: Results from questionnaire surveys of Governments and Fortune Global 500 firms, February 2007, A/HRC/4/35/Add.3.

Report on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Brussels, 2023.

Report on the Third Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business enterprises With Respect to Human Rights, UN Doc A/HRC/37/67, 24 January 2018.

UN Commission on Human Rights, Human Rights and transnational corporations and other business enterprises, Resolution 2005/69, UN Doc. E/CN.4/RES/2005/69.

UN Commission on Transnational Corporations, Proposed text of the Draft Code of Conduct on Transnational Corporations, UN Doc. E/1990/94, 1990.

UN Doc. E/1988/39, February 1988.

UN Doc. E/1990/94, June 1990.

UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UNHCR, Sub-Commission on the Promotion and Protection of Human Rights, UN Doc E/CN.4/Sub2/2003/12/Rev.2, 2003.

UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Resolution 53/144, 1998.

UN Human Rights Council, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, New York, 2014, A/HRC/RES/26/9

UN Human Rights Council, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, UN Doc A/HRC/8/5, 7 April 2008.

UN Human Rights Council, UN Guiding Principles on Business and Human Rights, New York and Geneva, 2011.

UN Human Rights Council, UN Guiding Principles on Business and Human Rights, New York and Geneva, 2011, Res. 17/4.

UN Report of the Group of Eminent People on TNCs, 1974.

UNCHR, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011, UN Doc HR/PUB/11/04.

UNCTAD, Impact of the Covid-19 Pandemic on Global FDI and Global Value Chains: Updated Analysis, Geneva, 2020.

UNCTAD, World Investment Report, Geneva, 1993.

UNCTAD, World Investment Report, Geneva, 2017.

United Nations General Assembly, Resolution 55/25, Convention against Transnational Organized Crime, 15 November 2000.

United Nations General Assembly, Resolution 56/76, U.N. Doc. A/RES/56/76, 2002.

United Nations General Assembly, Resolution 60/215, U.N. Doc. A/RES/60/215, 2006.

United Nations General Assembly, Resolution: Principles relating to the status of national institutions, UN Doc. A/RES/48/134, 20 December 1993, Annex.

United Nations Commission on Human Rights, UN Guiding Principles on Business and Human Rights, New York and Geneva, June 2011, UN Doc. HR/PUB/11/04.

United Nations General Assembly, Report on the first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, with the mandate of elaborating an international legally binding instrument, UN Doc. A/HRC/31/50, February 2016.

United Nations General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, Resolution 70/1 of 2015.

United Nations Human Rights Council, Resolution 26/22, Human rights and transnational corporations and other business enterprises, 15 July 2014.

United Nations, Economic and Social Council, The impact of multinational corporations on the development process and on international relations, July 1972, UN.Doc. 1721(LIII) in E/5209.

United Nations, Modalities-Paper del Working Group on the UN Code of Conduct on Transnational Corporations, UN Doc. E/C10/AC.2/9, December 1978.

UN Doc. E/C.10/1992/9, February 1992.

Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23.

D.Lgs. 231/2001, 8th June 2001.

D. Lgs. 254/2016, 30th December 2016.

Treaties and Conventions

Agreement for the Prosecution and Punishment of Major War Criminal of the European Axis and Charter of the International Military Tribunal, London, 1945.

Alien Tort Statute, 28 USC §1350, 1789.

Charter of the International Military Tribunal for the Far East, Tokyo, 1946.

Draft Statute for the International Criminal Court, 1998, UN Doc A/Conf.183/2/Add. 1.

European Convention on Human Rights, Council of Europe, 1953.

ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, Geneva, 1977.

ILO, Declaration on Fundamental Principles and Rights at Work and Its Follow-Up, Geneva, 1998.

International Labour Organization, Convention 105, Abolition of Forced Labour Convention, Geneva, 1957.

International Labour Organization, Convention 135, Workers Representatives Convention, Geneva, 1971.

International Labour Organization, Convention 29, Forced Labour Convention, Geneva, 1930.

OECD Guidelines for Multinational Enterprises, Recommendations for Responsible business conduct in a global context, 2011.

Organization for Economic Co-Operation and Development, The OECD Declaration on International Investment and Multinational Enterprises: Promoting Responsible Government and Responsible Business, 1976.