

**A CERTIFICATION SYSTEM FOR HUMAN RIGHTS PROTECTION:
PUTTING INDICATORS INTO USE**

MARIANA PEREIRA FIADEIRO MESQUITA NUNES

SUPERVISOR: DR. ANNA-SARA LIND , UPPSALA UNIVERSITY

EUROPEAN MASTER'S PROGRAMME IN HUMAN RIGHTS AND DEMOCRATISATION

2011-2012

Abstract

The current human rights system is ineffective and highly politicised. The gap between formal existence of rights and material implementation constrains the capability of rights' enjoyment. Moreover, the weakening of public authority and the emergent demands for new mechanisms of corporate accountability call for new forms of governance and alternative mechanisms for human rights protection. This thesis defends that human rights protection, notably labour rights, can be enhanced through a voluntary certification system that attaches economic incentives to compliance. A range of public and private mechanisms for advancing human rights is analysed. Such mechanisms have mainly: (a) targeted abuses through systems of economic incentives and sanctions, (b) made possible the comparison among human rights situations, or (c) developed voluntary approaches to compliance. The thesis proposes a certification system for human rights that would add an economic spur for both private and public entities to protect human rights, through the granting of certificates built upon robust indicators (to measure/attest the level of protection), linked to different types of economic benefits. Such system would combine several features found in the studied mechanisms, while simultaneously improving them, thus guaranteeing more legitimacy, accountability, objectivity, transparency and effectiveness. It concludes that private systems do not preclude the maintenance of human rights critical authority.

Key words: human rights; economic incentives; certification; labour rights; indicators; capabilities.

Table of Acronyms

ACP	African, Caribbean and Pacific Group of States
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CoE	Council of Europe
CSR	Corporate social responsibility
ECHR	European Convention on Human Rights (European Convention for the Protection of Human Rights and Fundamental Freedoms)
ECOSOC	United Nations Economic and Social Council
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
EPA's	Economic Partnership Agreements
ESC	European Social Charter
EU	European Union
FLO	Fairtrade Labelling Organisations International
FSC	Forest Stewardship Council
GA	United Nations General Assembly
GC	General Comment
GDP	Gross Domestic Product
GSP	Generalised System of Preferences
GSP+	Generalised System of Preferences Plus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
HDI	Human Development Index
HRC	Human Rights Council
NGOs	Non-Governmental Organisations
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of the European Union/ Official Journal of the European Communities
OMC	Open Method of Co-ordination

SAI	Social Accountability International
SC	United Nations Security Council
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNDG	United Nations Development Group
UNEP	United Nations Environment Programme
UPR	Universal Periodic Review
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organisation

a “we” who believe in human rights and a “they” who do not

Beitz, Charles R. "Human Rights as a Common Concern", p. 273 in *American Political Science Review*, Vol. 95, No. 2, 2001

Contents

Abstract	i
Table of Acronyms.....	ii
Contents.....	v
1. Introduction - The need for an alternative solution for human rights protection	1
1.1. Background literature and praxis	3
1.2. The thesis claim.....	5
1.3. Contribution to the scientific debate	5
1.4. Structure	6
1.5. Methods, materials and methodological challenges.....	8
2. The theoretical <i>rationale</i> : international law theory and its link with a certification system	9
3. Overview of existing relevant mechanisms.....	14
3.1. The United Nations	15
3.1.1. Security Council sanctions	16
3.1.2. The Universal Periodic Review.....	18
3.2. The Council of Europe: The European Social Charter.....	20
3.3. The European Union	22
3.3.1. Economic Partnership Agreements	23
3.3.2. The Generalised System of Preferences Plus	25
3.4. The private sector and human rights	29
3.4.1. The private sector in general	29
3.4.2. NGOs: the need for legitimacy.....	31
3.4.3. Corporations as human rights duty-holders.....	36
3.4.3.1. The legal <i>rationale</i> for Corporate Social Responsibility.....	37
3.4.3.2. Corporate codes of conduct.....	41
4. The essential role of Indicators	43
4.1. Indicators for monitoring and assessment	43
4.2. The use of indicators	45
4.2.1. A measure of economic, social and cultural rights.....	46
4.2.1.1. Measuring labour rights.....	48
4.2.2. A measure of good governance	50
4.2.3. A measure of welfare and development	53

5.	The relevance of Economic, Social and Cultural Rights.....	55
5.1.	Labour rights in particular	56
5.1.1.	International labour standards	59
6.	The pertinence of a human rights certification system.....	62
6.1.	The “group metaphor”	62
6.2.	Overview of accreditation and certification systems.....	62
6.2.1.	The Forest Stewardship Council	68
6.2.2.	The Fairtrade Labelling Organizations International	71
6.2.3.	The Social Accountability International.....	72
7.	A Certification System for Human Rights Protection: a proposal	74
7.1.	Background	74
7.2.	Overarching objective	74
7.3.	Key design aspects of the system	75
7.4.	Structure of the system	77
7.5.	Potentially interested actors	81
7.6.	Speculations on the system	84
8.	Conclusions	86
	References	94

1. Introduction - The need for an alternative solution for human rights protection

This thesis develops the alternative idea to seek compliance with human rights through a system of certification. The thesis poses one main question: why creating a system of human rights certificates?

More than sixty years have passed since the United Nations (UN) General Assembly (GA) adopted the Universal Declaration of Human Rights¹. Despite all the efforts and measures adopted to address and solve human rights issues, governments, companies, and the international community in general have been unsuccessful to make significant strides in eradicating poverty, hunger, poor labour conditions and social inequalities.

Thus, there is room to seek renewed and alternative incentives for human rights compliance.

In fact, under the Vienna Convention on the Law of Treaties² (particularly Article 26 referring to the principle of “*pacta sunt servanda*” and Article 27 referring to the application of treaties in the internal sphere of a State) international human rights law is considered hard law.³ In that sense, it is applicable and legally enforceable.

However, it is not sufficient to have “hard law” since the rights always entail some degree of application. And since the legal provisions are not “self-applicable” the right will always require political choices and political will. Therefore, it is not enough to think about legal provisions as a “finished product” and it is important to think about how to control their effective implementation.⁴

¹ Adopted by the UN GA Resolution 217 A (III), 10-12-1948.

² The Vienna Convention on the Law of Treaties (VCLT) was drafted by the UN International Law Commission, approved on 23-05-1969 (Treaty Series Vol. 1155) and came into force on 27-01-1980.

³ Regarding the effective implementation of international human rights treaties, only under some national constitutions they have *direct applicability* and do not have to be internalised through national legislation. See Carozza, 2003, pp. 62-63; Keller and Sweet, 2008, p. 20.

⁴ O'Neill, 2005, pp. 427-439; also about the “*famed gap between law on the books and law in action*”, Trubek and Trubek, 2005, p. 361.

The gap between rhetoric (discourses and legal provisions) and reality (implementation)⁵ suggests that the political and diplomatic dimension of the current international human rights system, more concretely the politicization of international organisations,⁶ is creating real barriers to its success.⁷ The limitations of the international human rights system are pushing back the tangibility of compliance and demonstrate that there is an actual need to explore different paths for human rights protection.

It has been defended that the global institutional order's design is unjust and is "*harming the global poor by foreseeably subjecting them to avoidable severe poverty*".⁸ Even if it is considered that such a strong statement may be excessive, the fact is that the current system is not addressing sufficiently human rights violations. Thus, the *rationale* for this thesis is to put forward an alternative way for human rights compliance, in response to the inaction or unlawful action to which the international community in general has been passively attending.

The alternative proposed in this thesis tries to make a connection between human rights and economic benefits, in the sense that in order to create a stronger willingness on public and private sectors for human rights compliance economic advantages can be attached to human rights' promotion policies.

As it will be demonstrated, **the relationship between *economics, welfare and development* is relevant enough to justify the system that will be proposed.** Usually, human rights and economics are not put together due to their different natures and core principles.⁹ In other words, the inherent foundations of human rights and economics are antithetical, namely: the absoluteness and non-negotiability of human rights, and the way in which, in principle, everything can be for sale under an economical perspective.

Therefore, the acceptance and recognition of a political and/or legal conception of human rights as an economic value can be challenging and even morally questionable

⁵ O'Neill, 2005, p. 436.

⁶ Zürn, Binder, and Echer-Ehrhardt, 2012, pp. 73-78 and 94; Franck, 1984, pp. 811-819 and 824-826.

⁷ Monshipouri and Welch, 2001, pp. 370-371, 410.

⁸ Pogge, 2005, pp. 55-57.

⁹ Seymour and Pincus, 2008, pp. 387-391.

for some.¹⁰ However, in a context of economic globalisation, there is a special need for the extension of the economic perspective to human rights. This special need is explained by the fact that the liberalisation of goods, services and labour market increased by the economic globalisation is deeply linked with the new human rights challenges, such as the freedom of setting up a business anywhere in the world and the universal nature of labour standards.

Some suggest that human rights and trade should as much as possible relate to each other. Actually, as pointed out by Rudra, it is growingly consensual¹¹ that trade is the most effective path to economic growth and therefore could be used as a tool to improve the social conditions in developing countries.¹² Therefore, a **combined perspective** linking human rights theory (encompassing the notions of development and welfare) and economics could be mutually beneficial.^{13,14}

1.1. Background literature and praxis

Accordingly, it is important to recognise that the path offered in this thesis – linking human rights to economic incentives – has already been surveyed in the literature and *praxis*. Indeed, the connection between trade, business and human rights has never been so strong.¹⁵

¹⁰ Making a parallel with the so-called “*carbon market*” (international CO2 emissions-trading market), it should be remembered that, initially, long discussions took place around the “carbon market”, especially concerning the commercialisation of carbon quotes, since, in very broad terms, for countries which were *carbon buyers* it could mean the maintenance of environmental unfriendly policies. As ideas and values change over time, it is now generally accepted that the participant countries in the carbon market have increased their levels of environmental protection. See Sandor, Bettelheim and Swingland, 2002, pp. 1610-1618.

¹¹ OECD, 1996, p. 112; Kryvoi, 2008, p. 213.

¹² Rudra, 2011, p. 62; Winters, 2006, pp. 347 and 356.

¹³ Klasen, 2002, pp. 345-373.

¹⁴ Regarding, for instance, gender equality, the exclusion of women of the labour market or their under-education brings constraints for productivity as they might represent half of the population. Additionally, a good planning of development projects which includes analysis of economic, social and political elements as well as minimum standards of public participation, have usually the best cost-effective results. See Seymour and Pincus, 2008, p. 402.

¹⁵ Kryvoi, 2008, pp. 222-225; Winters, 2006, pp. 347 and 356.

As an example, the **social conditionality** clause is an economic incentive arrangement (included, for instance in the Economic Partnership Agreements, “EPA’s”¹⁶) with the aim of sustainable development, good governance and human rights compliance, allowing the withdrawal of privileges in the event that a country (beneficiary of the incentive) violates human rights and democratic principles.¹⁷ By means of the inclusion of a social conditionality clause in trade agreements, developed countries have somehow dropped a non-interventionist approach formerly used to avoid allegations of political interference and politicized motivations in trade.¹⁸

Moreover, some scholars have seen trade as an effective way to foster progress in developing countries through the provision of special tariffs. Special trade conditions make goods from those countries more attractive, thus enabling poor countries to increase their export rates.¹⁹ These special conditions are often attached to human rights compliance, as it will be demonstrated through the analysis of specific mechanisms.

In addition, the Generalised System of Preferences Plus (GSP+), created by the European Union (EU), has shown that economic incentives can be given to certain developing countries which are willing to change national policies towards the human rights and environmental protection.²⁰ It seems indisputable that, in that system, there is an economic evaluation, or at least economic conceptualization, of human rights, by linking these with trade, as detailed below.²¹ Moreover, the EPA’s signed between the EU and African, Caribbean and Pacific Group of States (ACP), which have included the mentioned conditionality clauses, also have attached issues concerning human rights, development and sustainability, going far beyond mere trade matters. This analysis of the EPA’s and the GSP scheme will be made further in **Sections 3.3.1.** and **3.3.2.**, respectively.

¹⁶ Bartels, 2005, p. 25; Rudra, 2011, p. 64.

¹⁷ Bartels, 2008, p. 1-2.

¹⁸ Rudra, 2011, p. 63.

¹⁹ Kryvoi, 2008, pp. 222-223.

²⁰ Rudra, 2011, pp. 62-63.

²¹ Kryvoi, 2008, pp. 209-210.

1.2. The thesis claim

In sum, **this thesis argues that it could be possible to bring economic incentives and human rights together through a system of certificates, voluntary and built upon robust indicators, by using the granting of certificates as an economic spur.**

Two brief notes. First, the idea behind the economic evaluation of human rights does not aim to create a “human rights market”. Both ethically and theoretically that would be indefensible. Instead, a certification system seems more realistic. Second, it must be clarified that the system does not aim “naming and shaming” countries or companies for their unwillingness to comply with human rights obligations. The voluntary aspect of the regime plays an essential role in this regard: the goal is not forcing or pressuring any entity to participate, but convince States and companies that it is economically beneficial to have a human rights certificate.

In order to justify the thesis claim, the following three sub-questions will be answered: 1) is the certification useful? There are several mechanisms to assess and advance the human rights’ situation, but all present problems, such as politicisation and non-reciprocity. The proposed system tries to overcome the limitations found in the studied mechanisms, by combining some of their features, while improving them, thus guaranteeing more legitimacy, accountability, transparency and effectiveness; 2), who could be interested in such a system? Due to the different benefits pointed through the thesis, States, international organisations, Non-Governmental Organisations (NGOs) and companies may be interested in the proposed system; 3), which configuration would it adopt? The system proposed would be non-governmental, voluntary and based in robust indicators set upon human rights instruments.

1.3. Contribution to the scientific debate

The thesis advances the scientific debate in three main aspects: (a) the study of the (practical and legal) pertinence of a certification system of human rights and its application for both State and non-State actors; (b) the discussion of a human rights mechanism that, for its voluntary nature, will keep the critical and non-negotiable function of human rights, but deprive human rights’ compliance of any type of external

imposition bringing consent through a system of economic incentives; (c) analyse the potential contribution of indicators in this mission.

1.4. Structure

The thesis begins with an introduction to the underlying theoretical rationale, reflecting on international law theory and its link to a certification system, as well as giving a concrete example of the difficulties of the current human rights protection system based on the European Convention on Human Rights.

The subject will be presented in **Section 3** by putting recent trends in context and discussing important mechanisms for the certification system. Such mechanisms have, in the author's perspective, mainly: (a) targeted human rights abuses through systems of economic incentives and sanctions, (b) adopted an "*à la carte*" approach, or (c) made comparison among human rights situations possible by evaluating human rights indicators - as a certification system would.

This requires examination of four different spheres of governance. First, the United Nations framework, notably the Security Council economic sanctions and the Universal Periodic Review (UPR). Second, the Council of Europe. Third, two European examples will be given: the EPA's and the GSP+, both having attached social conditionality clauses with important economic consequences in cases of non-compliance with the principles stipulated in the schemes.

Finally, the fourth sphere will regard the private sector, where three essential aspects will be studied: 1) the shift in the role and capacity of the sovereign State to address human rights violations in a globalisation context; 2) the growing role of NGOs as "political" actors and their accreditation as partners of international organisations in decision-making processes; and 3) the relevance of corporate social responsibility as a tool for credibility and, consequently, for economic comparative advantages. The corporate sector, traditionally apart from (or not committed to) human rights' issues, is being demanded (by international organisations, consumers and stakeholders) to take responsibility for the social aspects of corporate activities. Gradually, corporate social

responsibility (CSR) is seen as a core instrument of corporations. CSR can be achieved by self-regulation (e.g. codes of conduct) and internal auditing mechanisms or through third-party auditing and certification systems.

As quantitative and qualitative references that describe and measure good governance, development and human rights in a certain context, the analysed mechanisms rely on the use of indicators for their practical functioning. Thus, the role of indicators in monitoring and assessing human rights' compliance (concretely labour rights), development, welfare and good governance will be examined in **Section 4**.

In **Section 5**, focus will be brought to economic, social and cultural rights, especially labour rights. In order to evaluate the effectiveness of the thesis proposal in regard to the assessment of human rights compliance, at least some of the rights enshrined in the core human rights instruments must be analysed. Due to practical and methodological reasons, the thesis will only focus in *labour rights*. To create a real possibility of application of such a system to private actors, labour rights have a particular interest when applied to the private sector. In effect, such goal would be more difficult to accomplish with reference to other rights, such as the right to a fair trial or not to be subjected to arbitrary arrest. Thus, the emphasis on labour rights is the most adequate to answer to the thesis puzzle.

Section 6 will introduce certification and accreditation systems and analyse three of the most relevant: The Forest Stewardship Council, the Fairtrade Labelling Organizations International and the Social Accountability International. The analysis will reflect upon their achievements and limitations. This section will help in considering the general consequences and predictable shortcomings of a human rights' certification system and its design.

Based on the elements brought by the previous chapters, **Section 7** analyses in length the hypothesis framed in this paper by *proposing* a certification system of human rights. The proposal will encompass the main objectives of the system, its potential uses, design issues (to provide legitimacy, accuracy and accountability to the system) and advantages for the participants. A key aspect of the system will be discussed in detail:

its voluntarist nature. Finally, the limitations and possible critiques to the system will be highlighted.

Section 8 concludes and points out future issues for research.

1.5. Methods, materials and methodological challenges

The research is addressed from a multi-disciplinary perspective, by analysing the ethical and legal dimensions of the proposed system, suggesting the particular political and economic potential uses of human rights certificates.

The construction of the system requires a study of current indicators for economic, social and cultural rights and a critical analysis of their use. It will also require an analysis of current mechanisms of human rights assessment, monitoring and protection, as well as existing certification/accreditation systems. In order to understand in which way the economic approach of such a system can be a plus in its way of function and its appeal, good governance, trade benefits and special custom tariffs' regimes in use for human rights compliance will be examined.

The difficulty in creating a human rights certification system is to build a system which advances existing certification schemes. In fact, nowadays, several systems of certification encompass social aspects.²² Nevertheless, in most of them as it will be demonstrated, there is no specialization or express focus on human rights and the social aspects are simply additional and complementary to the main objectives of the certification, whether this is environmental, technical or else. In addition, they are addressees of criticism regarding their accessibility and transparency.

As this thesis has a strong practical nature, in addition to primary sources of law, information available in relevant European and international institutions and NGOs will be studied and used.

²² O'Rourke, 2003, p. 18; Pattberg, 2005, pp. 182-183.

2. The theoretical *rationale*: international law theory and its link with a certification system

The universal outspread of human rights is still “*embryonic*”.²³ With due exceptions, the effective appeal for victims of human rights violations in most countries is almost inexistent or far from first-rate results. This situation raises worries about the *doctrine of international human rights* and also the *interference of political entities and international organisations* when imposing “foreign” values upon a certain country. As pointed out by Beitz, “*the picture of a “we” who believe in human rights and a “they” who do not*” can be actually false since victims and perpetrators are among the “*they*”.²⁴ Moreover, the countries differences and traditions have influence on the way human rights are applied as well as on the way obligations are respected.²⁵

For a better practical perspective of this last statement regarding the current human rights situation, the European Convention on Human Rights (ECHR)²⁶ system will be briefly examined.

No doubts exist nowadays that the ECHR and the European Court of Human Rights (ECtHR)^{27,28} have improved the human rights situation in Europe and, in particular, have created a feeling of justice and accountability of States’ acts and policies. Nevertheless, the effective implementation of the ECHR in all members of the Council of Europe (CoE) has proved a hard task.²⁹

Two issues have been identified as the main problems for the effectiveness of the Court’s work. The first one is the large amount of applications filled every year and the consequent delay on the decisions (questioning the legitimacy of the Court to address

²³ Beitz, 2001, p. 269.

²⁴ *Ibidem*, p. 273.

²⁵ Carozza, 2003, pp. 55 and 63.

²⁶ The ECHR was drafted by the CoE (CETS no 5), open for signature on 04-11-1950 and entered into force on 03-09-1953.

²⁷ The ECtHR is the judicial body within the ECHR system, and has now more powers to operate than when the Convention entered into force. The ECHR has are more rights added to it, there is a stronger link between individuals and the ECtHR regime, and a vast production of case-law that defines what States owe to their own citizens under the Convention, what could be read as a sign of good health and efficacy.

²⁸ Keller, and Sweet, 2008, pp. 3-4.

²⁹ *Ibidem*, p. 678.

cases related to Article 6, for example). The second one is the fact that not all European countries are at the same stage or level of protection regarding human rights.^{30,31} These differences among countries also reflect the different status that the ECHR may have in national constitutional law (dualist or monist system dilemma).^{32,33} Even when comparing similar models, the design of the incorporation acts has consequences on the legal force and effective application of the ECHR. It is precisely to avoid this dependence on political traditions and on different constitutional models³⁴ that the creation of a complementary, or even alternative, system is so important.

The certification system is not balanced towards either the universalist or the relativist doctrines of human rights. However, its *rationale* rests in the (still existent) lack of consensus among human rights experts and scholars concerning these opposite doctrines.

Indeed, the fact that human rights might not be neutral, since there is a possible conflict with practices endorsed by conventional moralities or intrinsic cultures, is one of the most relevant obstacles to the effectiveness and worldwide applicability of the international human rights law.³⁵ Moreover, these hurdles might constrain the justification of external *interference* aiming to change an aspect of the society's internal life. Indeed, such interference might be object of critics as being too *paternalistic*.³⁶ If human rights are only a moral claim, the standard notion of human rights is only concerned with the distinction between “*absolute righteousness and absolute evil*”

³⁰ Keller, and Sweet, 2008, pp. 12-13.

³¹ Some countries find it impossible to meet Article 6 (e.g. Italy) due to the chronic length of the judicial system, while others fail to provide minimal protection for core human rights protected under Article 3 (e.g. Georgia, Russia, Turkey).

³² Keller and Sweet, 2008, pp. 46-47, 127-128 and 531-533.

³³ In fact, it is interesting to note that in countries who have, for historical/political reasons, to prove their willingness and commitment to international law values, the time period between signature and ratification of the ECHR and its Protocols is shorter and most of the Protocols have been signed (e.g. Germany and Poland), while in other countries with a stronger constitutional tradition and deep-rooted human rights values (e.g. Ireland and France) the ECHR was received with much more scepticism and disinterest. As dualism implies the choice to incorporate or not to incorporate, the importance of incorporation will *depend heavily on a State's domestic tradition* of rights protection.

³⁴ Keller and Sweet, 2008, pp. 32-158 and 532-599.

³⁵ Beitz, 2001, pp. 271-272.

³⁶ *Ibidem*, p. 273.

rather than why the acts are wrong.³⁷ As Gordon stated, “*I wonder if, when we embrace a certain conception of human rights, we don’t sometimes find ourselves intoxicated by the righteousness of the cause, at the cost of moral discourse, rather than by the service of it.*”³⁸ Human rights are often used to justify military actions (e.g. Gulf War in which an estimated 100,000 Iraqis were killed) and economic blockages which can have terrible social consequences such as extreme poverty. In that sense, it is urgent to understand and assess properly their content and uses.³⁹

Moreover, as Koskenniemi⁴⁰ argues, to prevent international law from losing its independence vis-à-vis international politics and pure morality, the legal mind fights a battle on two fronts: first, it attempts to ensure the normativity of the law by creating distance between it and State behaviour. Otherwise, that law would become apologist, a mere factual description; second, they endeavour to ensure law’s concreteness by distancing it from natural morality. Otherwise, that law would become utopian.

In fact, for an international legal argument to be valid, one has to demonstrate that law is both normative and concrete at the same time. That is, that international law binds States regardless of that State’s behaviour or preferences but that its content can be verified by reference to actual States’ behaviour, will or interests.

In the same path of Koskenniemi, this thesis aims to debunk the idea that human rights obligations need to be enforced in every single country regardless of their consent or adherence to human rights treaties since that would resemble a “*post-colonial*” imposition of ideals (*i.e.* the western human rights).⁴¹ The growing resistance to neoliberal policies and Western dominance is putting more emphasis on the politicization of the international human rights world and international organisations.⁴²

³⁷ Gordon, 1998, pp. 699, 764 and 785.

³⁸ *Ibidem*, p. 791.

³⁹ *Ibidem*, p. 789.

⁴⁰ Koskenniemi, 2005, pp. 1-68.

⁴¹ Koskenniemi, *idem*.

⁴² Zürn, Binder, and Echer-Ehrhardt, 2012, pp. 80–81.

To deploy the foregoing argument with specific human rights literature, Beitz⁴³ dissects the philosophical grounds of human rights and says that yes, human rights are parochial (western type of parochialism). Then there are two alternatives, 1) reducing human rights to their basic core (e.g. right to life) so that we can claim that these human rights are accepted by everyone. Nonetheless, the problem of this non-controversial alternative is that human rights will be reduced to a mere description of what goes on in the world and they will use all their normative value. 2) The second option is to accept that our current account of universal human rights is not universally accepted, but that it provides a critical perspective to judge other countries' behaviour towards their citizens.

Following this idea, **an ideal human rights mechanism will keep the critical function of human rights, but deprive human rights' compliance of any type of external imposition.**⁴⁴ Through this, States will *voluntarily* adhere to the system and be open to both criticism and praise. Therefore, a system of certificates will keep the critical non-negotiable content of human rights and the voluntarist foundations of public international law. The *added advantage* will be that of bringing consent closer to non-negotiable human rights through a system of economic incentives.

Despite the increase in the number of international human rights instruments, States' ratification does not necessarily mean compliance. The so-called "*regulatory ritualism*"⁴⁵ whereby some States consistently ratify human rights conventions that they think will make them make them "look good" is a practice that does not imply compliance or implementation. Consent and actions must, together, be followed by States or otherwise no obligation to protect and promote human rights can be effectively fulfilled.⁴⁶

Actually, some authors, as Sen and Nussbaum, claim that it is not enough to stop at treaty ratification and proclaim there is a human right to "x". The State has to provide the conditions so that individuals have the *capability* of enjoying those human rights.⁴⁷

⁴³ Beitz, 2001, pp. 269-282.

⁴⁴ *Ibidem*, pp. 269-282.

⁴⁵ Braithwaite, Makkai and Braithwaite, 2007, pp. 217-333.

⁴⁶ Monshipouri and Welch, 2001, p. 375.

⁴⁷ Nussbaum, 2008, pp. 598-614.

A given person can have nominal rights (e.g. political participation) without having those rights in the sense of capability (e.g. they do not have transportation to go voting are forbidden to leave the house to vote) because the rights' enjoyment lacks "*affirmative material and institutional support*".⁴⁸

The use of the capabilities theory of Sen and Nussbaum this thesis has two goals. First, it embodies a critic to the formalistic and limited view that human rights' value is their enshrinement in legal instruments, as above already explained. Second, it critiques the use of certain **indicators** such as the economic growth or Gross Domestic Product (GDP) *per capita* to measure the enjoyment of rights. According to this critic, these indicators are unable to evaluate the real "*person's ability to do valuable acts or reach valuable states of being*"⁴⁹, such as the basic and elementary "*functionings*" of being well nourished or adequate health conditions⁵⁰, as it will be further analysed in **Section 4** regarding the Indicators.

⁴⁸ Nussbaum, 2008, p. 602.

⁴⁹ Sen, 1993, p. 30 (emphasis added).

⁵⁰ Sen, 1993, p. 31.

3. Overview of existing relevant mechanisms

When proposing a system for human rights compliance, it is necessary to look closely into the existing mechanisms and methods which have been settled in the same root-spirit or created for the same purpose. Moreover, it is important to examine the ones which are relevant, comparable or connected with this subject. For methodological reasons, and due to the fact that the purpose of the present thesis is to create a system able to be used by both private and public actors, the analysis will comprise both the private/non-governmental and the public spheres.

The UN, the CoE and the EU have created mechanisms to address human rights violations that somehow have a connection with the proposed system of certificates. These mechanisms will be studied below. They can be distinguished in three different ways: 1) economic-related instruments (the Security Council economic sanctions, the EPA's and the GSP+), 2) human rights instruments which have a "voluntarist" approach (the European Social Charter), 3) assessment reports of human rights situation (e.g. the UPR).

Regarding inter-state relations, an increasing number of social clauses have been included in trade regimes to address human rights conditions in developing countries. In addition, the attribution of specially reduced customs and import taxes for those who comply with the internationally accepted human rights standards, as in the GSP+, has been used as a tool for human rights compliance and development.⁵¹

Moreover, the EPA's include not only economic and financial aspects but also competition, government procurement, intellectual property, social dimensions and trade facilitation.⁵² In such agreements and schemes, when a party fails to comply with human rights, development or environmental issues, it can lose the conferred economic benefits or be subject to economic sanctions.⁵³

⁵¹ Rudra, 2011, pp. 62-63.

⁵² Ruse-Khan, 2010, p. 141.

⁵³ Kryvoi, 2008, p. 245.

A certification system, as it will be demonstrated, could be a step forward in this trend, since compliance certificates can be used to grant economic advantages⁵⁴ thus creating the needed stimulus for human rights protection, without having the non-reciprocal and politicised nature of the current systems.

In a context of globalisation of activities susceptible of involving human rights' violations, sovereign States are gradually "*unable to enforce their own labour and environmental laws or the international conventions*"⁵⁵ and a shift in their dominium has occurred. Moreover, the role of private actors is more relevant than ever. In fact, with globalisation it is hard to have mandatory mechanisms in place and enforceable and corporate social responsibility has a rising importance in human rights protection. The integration of social and environmental objectives into economic activities is now also in the private actor's sphere.

Although States are the main human rights duty-holders, all actors capable of performing actions with human rights repercussions must be held accountable to respect fundamental rights and principles. When such sharing of responsibility has been attained, it will be possible to design a fairer institutional system.⁵⁶ **Sections 3.4.3. and 3.4.3.1.** explain that **corporate social responsibility is legally and factually justified.** Indeed, the participation of the different actors in human rights world and the fact that States are not always the perpetrators of human rights violations **requires that the designing of alternatives to the existing mechanisms target both private and public players.**⁵⁷

3.1. The United Nations

Concerning the United Nations (UN), two main relevant mechanisms shall be examined: the **Security Council (SC) authorisations for the application of sanctions** and the **Universal Periodic Review (UPR).**

⁵⁴ O'Rourke, 2006, pp. 906 and 911.

⁵⁵ Courville, 2003, p. 271.

⁵⁶ Clapham, 1993, pp. 95-96.

⁵⁷ Ratner, 2001, pp. 449 and 469-470.

Both systems are of interest for this thesis. The UPR embodies a global assessment of the human rights situation in all UN member States and it is an important way to rank States and compare them. In that sense, it is comparable with a certification system of human rights which final objective is to create a tool of verification and comparison of the situation of human rights in concrete entities. The SC economic sanctions are the acknowledgement of the role of economics and its impact in States' behaviour.

Additionally, the following analysis of the UN economic sanctions will show that their use (contrarily to economic incentives) may not be effective for failing to produce the envisaged effect on State's behaviour.⁵⁸ This shortcoming suggests that the effectiveness of a human rights system can perhaps be better achieved through economic incentives (as it would happen the proposed certification system) than through sanctions.

3.1.1. Security Council sanctions

The UN Charter⁵⁹ empowers the GA to make recommendations concerning peace and security (Articles 11, Chapter IV), and the Security Council to make binding decisions (Article 25, Chapter V and Article 39, Chapter VII) recommending or imposing for instance *economic sanctions* (Article 41 Chapter VII of the Charter) against states⁶⁰ or, on certain occasions, insurgent groups.⁶¹

The SC economic sanctions are enforcement measures applied on a certain country to maintain or restore international peace and security such as commercial embargoes trade barriers, import duties, and import or export quotas. The SC economic sanctions aim to influence the conduct of certain actors in the targeted country which do not comply with accepted norms of international law without the need for military

⁵⁸ Bartels, 2008, p. 13.

⁵⁹ Charter of the UN, 1 UNTS XVI, signed on 26-06-1945, at the conclusion of the UN Conference on International Organisation, in force since 24-10-1945.

⁶⁰ Rhodesia was the first country to have economic sanctions applied by the UN SC Resolution S/RES/232, adopted in its 1349th meeting on 16-12-1966.

⁶¹ O'Connell, 2002, pp. 64-65.

aggression, as they are supposed to have a smaller overall-harm compared to such measures.⁶²

Concerning the Security Council sanctions, some difficulties have been addressed, especially regarding the **proportionality** principle, which has attached the obligation of the Security Council to approve measures necessary and adequate to address the issue under evaluation.⁶³ In fact, the Security Council does not always exhaust the measures outlined in Article 40 of the Charter before imposing extreme measures. For instance, the economic sanctions allowed by virtue of Chapter VII of the Charter for the restoration or the maintenance of peace and security, can have huge adverse consequences and be much more aggressive for the whole population of the targeted country (because they affect and target them) than for the country/government itself.⁶⁴ This “perverse” side effect⁶⁵ calls attention for the ineffectiveness of these imposed measures. Without surprise, economic sanctions against States like Haiti and Sierra Leone have subjected them to severe economic dislocation and enclosure.⁶⁶ The same occurred with the economic sanctions imposed to Iraq, which have badly harmed the Iraqi population.⁶⁷ In practical terms, the economic sanctions are unlike to achieve their primary goal. Furthermore, the real capacity of the United Nations to avoid and speedily solve or stop gross human rights crisis or violations through economic sanctions has been questioned by many scholars and authors.⁶⁸

The economic effectiveness of the sanctions lies in the volume of pecuniary damage inflicted, since they embody trade and commercial targeted penalties, as explained by Gordon.⁶⁹ In fact, the basic objective of economic sanctions is “*applying political and economic pressure upon the governing elite of the country to persuade them to conform*

⁶² Gordon, 1999, pp. 124-142.

⁶³ Geiss, 2005, pp. 170, 174 and 181.

⁶⁴ Monshipouri and Welch, 2001, pp. 377-376; Accordingly, Gordon, 1998, p. 699.

⁶⁵ On the devastating side-effects of sanctions on the Haitian population, see Reisman, 1995, pp. 350-351, describing how “[t]he rest of the population was - without exaggeration - starving to death”.

⁶⁶ Geiss, 2005, pp. 174-177.

⁶⁷ Bartels, 2008, p. 13; Monshipouri and Welch, 2001, p. 375.

⁶⁸ Bartels, 2008, p. 14; Galtung, 1967, p. 411; Gordon, 1999, pp. 140-142.

⁶⁹ Gordon, 1999, p. 133.

to international law”⁷⁰. Even from a utilitarian perspective it is very difficult to defend the economic effectiveness of economic sanctions, since this measure entails brutal human damages⁷¹, most times proportional to its political objectives.⁷²

3.1.2. The Universal Periodic Review

The Universal Periodic Review (UPR) is a general assessment of the human rights situation within UN member-States. Despite the publication of comprehensive assessment reports by notable NGOs^{73,74,75} the UPR is understood as the broadest human rights review, since it covers the most relevant human rights areas and all UN member-States. Therefore, this thesis will only focus in the Universal Periodic Review (UPR).

The UN created the UPR in 2006 through the UN General Assembly Resolution 60/251⁷⁶, which also established the Human Rights Council (HRC). The UPR comprises a review of the human rights records of the 192 UN Member States once every four years. The UPR is a **State-driven** process, as each State shall declare the actions taken to improve the human rights situations in the country and to fulfil their human rights obligations.⁷⁷

The main relevance of the UPR scheme for the thesis is its global impact and the application of indicators, since it enables comparison between scrutinized entities. Actually, to improve the human rights situation in every country the UPR involves

⁷⁰ CESCR General Comment No. 8, E/C.12/1997/8, 12-12-1997, page. 2.

⁷¹ Reisman, 1995, pp. 350-360.

⁷² Gordon, 1999, pp. 124, 133, 134 and 141-142.

⁷³ Raustiala, 1997, pp. 554-555.

⁷⁴ In fact, several NGOs, such as Amnesty International (AI), Human Rights Watch (HRW), among others, have monitored States' behaviour and approved periodic *reports* to *assess human rights situation*, to pressure States and raise public awareness. This is often seen as an informal “*political delegation of epistemic authority*” through which some noticeable NGOs (embodied with the title of “*epistemic authorities*”) have the function of monitoring compliance with human rights standards since they are expected to be less politicized than rule-setting institutions. Zürn, Binder, and Echer-Ehrhardt, 2012, p. 91.

⁷⁵ For example, the HRW' 22nd annual World Report 2012, available at the HRW' website, summarizes human rights conditions in 2011 in about 90 countries and territories worldwide.

⁷⁶ A/RES/60/251 of 03-04-2006 approved on the 72nd GA plenary meeting, 15-03-2006.

⁷⁷ Resolution A/RES/60/251, paragraph 5 (e).

assessing States' human rights records and addressing human rights violations wherever they occur. For this purpose, the UPR system uses *indicators* of compliance.^{78,79}

Despite its positive aspects, the UPR scheme can also be addressee of critics, notably for its formality rather than substance, politicization, lack of enforcement and mere diplomatic nature. According to the Human Rights Council Resolution 5/1, the UPR will assess the extent to which States respect human rights obligations set out in the UN Charter, the Universal Declaration of Human Rights; human rights treaties ratified by the State concerned), voluntary pledges and commitments made by the State (e.g. national human rights policies and/or programmes implemented) and, applicable international humanitarian law. Therefore, if a State is not party to a specific human rights treaty, the rights enshrined in such treaty will not be subject to UPR scrutiny. This formal (in opposition to substantial) nature of the UPR is an indication that the mechanism is unable to evaluate (with a sufficient broad impact) the actual human rights situation.

The UPR was created as a response to the Commission on Human Rights' politicization⁸⁰ and selectivity.⁸¹ However, the UPR has been a target of criticism for being politically manipulated and non-transparent.⁸² Reading, for example, the UPR on China (in particular the Report of the Working Group, containing the comments of other States on China⁸³), it is easy to figure out that political blocs or allies (which have been somehow the same for at least 60 years⁸⁴), still protect each other and miss the necessary impartiality, transparency and commitment to the UPR process. In fact, due to the

⁷⁸ For instance, the UPR, according to the HRC Decision 6/102 (Annex) section I(B) and I(C), approved on its 20th meeting, 27-09-2007, will measure the *scope of international obligations* identified in the "*basis of review*", as stated in the HRC Resolution 5/1 (Annex), section I(A), approved on the 9th meeting, 18-06-2007.

⁷⁹ The documents on which the UPR reviews are based are: information provided by the State under review, "national reports", information contained in reports of independent human rights experts and groups, known as "Special Procedures", human rights treaty bodies and other UN entities, and information from other stakeholders including NGOs and national human rights institutions.

⁸⁰ About the Commission politicization and "double standards", see Franck, 1984, pp. 825-826.

⁸¹ A/59/2005/Add.1, Report of the Secretary-General "*In Larger Freedom, Towards Development, Security and Human Rights for All*", adopted on the 59th session of the GA, 23-05-2005, paragraph 2.

⁸² Sweeney, and Saito, 2009, p. 204.

⁸³ HRC Report of the Working Group on the UPR on China, A/HRC/11/25, 05-10-2009.

⁸⁴ Franck, 1984, pp. 811- 819.

existing politization of the mechanism, the positive comments usually outweighed the negative ones (with exception of, e.g., Sri Lanka).

Additionally, the corresponding recommendations are often too broad and monitoring their implementation is thus problematic.⁸⁵ The alignment of certain political blocs obviously constrains an effective and universal implementation and application of the human rights international laws and principles. As a result, it overshadows the main purpose of assessing the human rights situation of all UN member States. Indeed, the UN system works in accordance with the member's perceived self-interest and the resolutions and decisions adopted are "*no more than an expression of the political will of a multitude of sovereign states*".⁸⁶

Finally, the fact that States send Ministers of Foreign Affairs to the UPR session (e.g. Bahrain, Indonesia, Algeria) in place of the Ministers of Health or Justice, for example, reveals that the UPR is a mere "diplomatic" exercise instead of a national committed process for assessment and enhancement of the human rights situation.⁸⁷

Thus, the issues above pointed are constraining the real impact and interest of the UPR and show that there is still room for important changes.

3.2. The Council of Europe: The European Social Charter

The most important aspect of the 1961 European Social Charter (ESC)⁸⁸ for this thesis is **its voluntary basis of adherence** (so-called *à la carte* human rights rights).⁸⁹ Its relevance can be explained by the fact that it encompasses a great margin of the State-parties to decide how can the instrument be adapted to suit their interests (similar to the reservations and declarations of several States to the ECHR and other human rights instruments).

⁸⁵ Sweeney, and Saito, 2009, p. 213.

⁸⁶ Franck, 1984, p. 831.

⁸⁷ Sweeney, and Saito, 2009, p. 209.

⁸⁸ Adopted by the CoE on 18-10-1961 (CETS No. 35), in force since 26-02-1965 (revised in 1996).

⁸⁹ In addition, the ESC is also of relevance due to the thesis specific focus on labour rights (see Section 5.1.1.).

For the ratification of the Charter, a state must commit to 6 out of 9 “*hardcore* articles”.⁹⁰ The ratification of the ESC means that the state party is formally committed to implement its provisions and reporting to the CoE the application of the norms enshrined on the Charter. Through the ratification of Article D a state party accepts to participate in the collective complaints procedure (quasi-judicial process).⁹¹

France’s high profile (ratifying all the Articles of the Charter and of the Revised Charter and the Additional Protocol on collective complaints) is quite different from the one of Germany, United Kingdom (which still have not ratified the Revised Charter nor signed the Additional Protocol on collective complaints) and Russia (which did not accepted the collective complaints procedure).

This *à la carte* or selective ratification has been object of large criticism regarding the ESC as it entails the consequence of having a too broad scope of application and therefore being unsuitable to an effective human rights agreement.⁹² It has, however, the positive aspect of creating more willingness and quicker acceptance upon States to accede to the Charter.

However, as it was stressed in the thesis, ratification does not mean compliance and many European countries which have ratified considerable amount of Articles are lacking compliance and negligent in information and reporting (e.g. Slovakia).⁹³ A close monitoring system and real consequences for non-compliance are thus needed. Additionally, the scope of the ESC is also addressee of criticism. For example, as defended by Mikkola, although the ESC broadly covers economic, social and cultural rights, the protection of certain vulnerable groups (e.g. unemployed people and ethnic minorities) is not specially covered.⁹⁴

⁹⁰ Namely: employment, right to organize, right to negotiate, protection of children and young persons, right to social security, right to social assistance and medical aid, protection of family, rights of migrant workers and equal opportunities for men and women at work.

⁹¹ Mikkola, 2010, pp. 65-66.

⁹² *Ibidem*, pp. 66-67.

⁹³ *Ibidem*, pp. 65-71.

⁹⁴ *Ibidem*, pp. 5, 6, 14 and 15.

3.3. The European Union

Despite the relevance of the UPR and the UN economic sanctions and the ESC voluntarist approach to understand the proposed human rights certification system, the EU policy, within the public sector, is perhaps the closest to the claim of this thesis. As it will be shown, the EU policy assumes a clear tendency to link economic and trade aspects to human rights.

In spite of some earlier attempts to include social conditionality in development aid agreements⁹⁵, the 1990 EEC-Argentina co-operation agreement⁹⁶ was the first trade agreement which expressly included a conditional human rights clause. After that, the Lomé VI Convention revised in 1995⁹⁷ (precedent of the Cotonou Agreement⁹⁸ which entered into force on April 2003) included the suspension of trade conventions when violations of “*human rights, democratic principles or rule of law*” occur.^{99,100}

Over the past years, the EU has introduced *conditionality human rights clauses* to its trade agreements and trade relations. Despite the positive aspect of introducing social aspects into trade issues, the scope of application of these clauses is not enough wide-ranging. The conditionality clauses used by the EU on its trade relations and economic agreements should be used in all EU international agreements (including sectorial agreements, such as a fisheries agreement) since it would be more legally consistent to have the same patterns in the EU external human rights policy.¹⁰¹

⁹⁵ After the massacre of 1977, the EU withdrew the development aid to Uganda and first applied the *conditionality policy*, according to Council Declaration on the situation in Uganda, adopted 21-06-1977, in Bull. EC 6-1977, paragraph 2.2.59 (known as the “*Uganda Guidelines*”), as cited by Bartels, 2005, p. 25; see also Rudra, 2011, p. 64.

⁹⁶ Article 1 of the Framework Agreement for Trade and Economic Cooperation between the EU and the Argentine Republic, Council Decision of 08-10-1990 (90/530/EEC), Official Journal of the European Communities (OJ) 26-10-1990 (L 295/67).

⁹⁷ The Fourth Lomé Convention was revised by the Mauritius Agreement signed on 04-11-1995 which entered into force on 01-06-1998, OJ 29-05-1998 (L 156/3).

⁹⁸ Partnership Agreement celebrated between the members of the African, Caribbean and Pacific Group of States (ACP) and the European Community and its Member States, signed in Cotonou on 23-06-2000, OJ 15-12-2000 (L 317).

⁹⁹ Article 5 of the Revised Fourth Lomé Convention; Rudra, 2011, p. 64.

¹⁰⁰ In 1995 the European Commission issued a Communication, formalizing a policy of including respect for democratic principles and human rights in all agreements between the Community and third countries. See Commission Communication COM (95) 216 final, 23-05-1995.

¹⁰¹ Bartels, 2008, pp. 18 and 20.

3.3.1. Economic Partnership Agreements

The Economic Partnership Agreements (EPA's) are one of the mechanisms by which the EU have closely link trade and human rights.

Europe has negotiated with several African, Caribbean and Pacific (ACP) countries Economic Partnership Agreements, which were important to maintain the preferential treatment for the market access. The EPA's can be broadly described as a scheme that aims to create a free trade area between the European Union and the ACP Group of States. The EPA's encompass sustainable development and social aspects in their purposes, pursuing the EU Lisbon Treaty objectives.¹⁰² This is the most distinctive feature of the EPA's and what makes them different from most of the trade agreements.

In October 2008, the CEPA (EU and CARIFORUM- a group of Caribbean countries), a comprehensive EPA, was signed.¹⁰³ For the European Commission, CEPA is a “*new kind of free-trade agreement*”, chaired by the principle of sustainable development.¹⁰⁴ Also the Cotonou Agreement (in second paragraph of Article I) had poverty eradication and sustainable *development* as a main treaty objective, which was maintained in the CEPA. CEPA's preamble demonstrates that sustainable development has an **integrated approach**, since it encompasses trade and economic interests with human rights, democracy and environment.¹⁰⁵ The CEPA is deeply linked with the Cotonou Agreement and they are meant to be complementary and mutually reinforced.¹⁰⁶ In both agreements, the concept of development plays a crucial role.

As enshrined in the 1989 Declaration on the Right to Development¹⁰⁷, the notion of *development* must go beyond the simple concept of economic growth and be extended

¹⁰² Consolidated version of the EU Treaty of Lisbon, Official Journal of the European Union (OJ) 30-03-2010 (C 83/15), in its Preamble, in Article 3 (ex-Article 2 Treaty of the European Union, TEU) (5) and in Article 21, which maintains sustainable development (as it was in the former TEU), poverty eradication, and protection of human rights as a EU objective.

¹⁰³ EPA between the CARIFORUM States and the European Community and Member States, CEPA, signed in Bridgetown (Barbados) on 15-10-2008, OJ 15-10-2008 (L289/I/3).

¹⁰⁴ Ruse-Khan, 2010, pp. 140-141 and 159.

¹⁰⁵ CEPA, in Article 3 (2) (a) requires the contracting parties to “*fully take into account the human, cultural, economic, social, health and environmental best interests of their respective population and of future generations*”.

¹⁰⁶ Ruse-Khan, 2010, pp. 168-169.

¹⁰⁷ Adopted by GA Resolution 41/128 (A/RES/41/128) on 04-12-1986, in its 97th plenary meeting.

to other societal aspects that promote human well-being and welfare.¹⁰⁸ Development in this way should always function as a treaty or agreement objective, in the sense that the parties to economic agreements accept that **the economic advantages of the instrument are attached to the principle of development** - as it seemed to happen with CEPA.¹⁰⁹

However, States are the addressees of the principles attached to the treaties or agreements, like the EPA's. In fact, the implementation of the provisions of any treaty is dependent on the States correct interpretation. This interpretation should be, according to the VCLT (Art. 31 (1)), done "*in light of the object and purpose*" of the treaty. Thus, if the treaty has sustainable development, good governance or other relevant principle as guiding principle, States must ensure to follow the right interpretation path and integrate the treaty in light of its general objective. Though, this is not always the case.¹¹⁰ Since the principle of integration (in accordance with what has been said) is not a binding norm, States retain *discretion* on the way and methods used to give effect to the treaties' guiding principles, such as the principle of good governance or development.

The problem is that when those principles are solely the treaties' general objective and differ from the treaty-specific objective, the application of the **principle of *lex specialis*** may prevent the significant use the general objective. In fact, the concretisation of a broad principle may entail some difficulties and serve as an excuse for incorrect interpretations of it or non-compliance. Therefore, this general goal, focused on social or development aspects, should be introduced in any treaty provisions, making part of the specificities of the instrument in order to be as binding as any other provisions.¹¹¹

Hence, although the EPA's encompass a commitment to certain values that go beyond trade, constraints related to treaty interpretation impede them from being considered a

¹⁰⁸ Ruse-Khan, 2010, p. 151.

¹⁰⁹ *Ibidem*, pp. 159-167.

¹¹⁰ See, e.g., the ICJ Advisory Opinion in "*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*", of 09-07-2004, paragraph 94, p. 174, where the Court explicitly refers to the rules expressed in Article 31 VCLT as "*customary international law*" and that "*a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms*".

¹¹¹ Ruse-Khan, 2010, pp. 164-167.

human rights instrument. **The attachment of human rights issues to trade would be far more effective if it were made in a truly committed way.**

In addition to the interpretation issue, the question of the lack of reciprocity (the unilateral nature of the EPA's)¹¹² and the consequent non-correspondence to the EU of the conditions settled in the EPA's, is pointed as one of the most important limitations of the EPA's.¹¹³

3.3.2. The Generalised System of Preferences Plus

As discussed above, there has been an attempt to expressly offer *economic advantages* to those States which respect human rights. The EU has also taken steps in this direction. One of the most important examples of that trend is the Generalised System of Preferences Plus (GSP+). The system is regulated by the Regulation (EC) No. 732/2008¹¹⁴ (hereinafter GSP Regulation) of the Council of the European Union (also, Council), until a legislative procedure for the new GSP scheme¹¹⁵ is completed.

Through this scheme, the EU provides to developing countries special economic incentives for sustainable development and *good governance*. In order to become a beneficiary country and to qualify for the GSP+ certain international conventions ensuring sustainable development and good governance must be observed (27 conventions in all, particularly human rights, environmental, core labour rights and anti-corruption conventions).¹¹⁶ To be considered that the country observes the conventions, it must have ratified and effectively implemented them. Besides, the beneficiary country must meet the criteria and specific indicators in order to be considered vulnerable.

Several aspects of the scheme are relevant for this paper: 1) the fact that **it links economic incentives to human rights and environmental protection**; 2) **the idea of attaching economic advantages to human rights commitment**; 3) **the idea of**

¹¹² Ochieng, 2007, p. 367.

¹¹³ Borrmann, Busse and Neuhaus, 2005, p. 169.

¹¹⁴ Council Regulation of 22-07-2008, OJ 06-08-2008 (L 211/1).

¹¹⁵ The period of application of the Regulation (EC) No. 732/2008 was extended until 31-12-2013 in accordance with Regulation (EU) No. 512/2011 of the European Parliament and the Council of 11-05-2011, OJ 31-5-2011 (L 145/28).

¹¹⁶ All the Conventions are listed in the Annex III of GSP Regulation.

creating a cluster of States (the beneficiaries of the system) that share the same benefits for having met the same indicators.

The GSP scheme, in theory, as it provides non-reciprocal trade preferences and duty-free access to products under the GSP, creates an incentive to traders to import products from developing countries and, through this, it helps the later countries to be more competitive in the international market.¹¹⁷

However, the GSP+ has been addressee of criticism. Indeed, it can be argued that the social conditionality imposed to the developing countries in the GSP+ is an “*inappropriate application of normative Western values*”¹¹⁸ since it only measures the beneficiary compliance with human rights standards and sustainable development as defined in the required conventions.¹¹⁹ Even if it is considered that those conventions¹²⁰ have a multilateral nature, some authors¹²¹ argue that the **unilateral nature of the GSP+** does not allow any negotiation of terms therefore imposing a serious burden for the countries which are in need of financial aid and rely on these trade preferences.

The application of EU values to “*external agreements based on economic trade without a cross-cultural consensus on the goals and values to be implemented seems paternalistic*.”¹²² The social conditionality falls, therefore, into two categories: “*the carrot*”, as it is an incentive and reward for states which comply with the norms prescribed in the system; and “*the stick*” as there are sanctions for non-compliance against beneficiary states.

In fact, Article 15(2) of the GSP Regulation provides for withdrawing of States which do not implement and incorporate the 27 Conventions and Article 15 (1) provides for withdrawing when a breach of the Conventions occur or when the state fails to cooperate with the GSP administration.¹²³ The withdraw proceeding has been seen as

¹¹⁷ Preambular paragraph 2 of the GSP Regulation; Accordingly Rudra, 2011, pp. 62.

¹¹⁸ Rudra, 2011, p. 63.

¹¹⁹ Bartels, 2008, p. 19.

¹²⁰ Annex III of GSP Regulation.

¹²¹ Rudra, 2011, pp. 63-64; Humbert, 2008, pp. 15-16.

¹²² Rudra, 2011, p. 71.

¹²³ *Ibidem*, p. 66.

political conditionality and therefore a form of governance from the EU upon the beneficiary. It has been object of critics, such as the alleged application of “double standards”¹²⁴ and the inconsistencies. Additionally, it has been also defended that the people impacted with the removal of trade benefits are not the violators of the GSP rules but the ones who mostly depend on the scheme such as thousands of garment workers.¹²⁵

Human rights impact assessment and a systematic review and monitoring of the measures or sanctions imposed should therefore take place.¹²⁶ Moreover, it might also be considered paradoxical to require such human rights and environmental standards to particularly vulnerable countries, when the achievement of that would implicate huge costs for the candidates to the GSP+.¹²⁷ As well-pointed out by Kryvoi, “*the GSP of the European Union as a matter of fact depends on a number of additional factors, such as the economic importance of a target country, geopolitical considerations, regional context, and the level of cooperation between the country and the sanctioner*”.¹²⁸

Regarding the Conventions included in the GSP requirements (as corresponding to the EU values and principles), it should be criticized the fact that for example the “*Apartheid Convention*”¹²⁹ included in the scheme has not been signed for the majority of the EU Member States, while the UN Migration Convention was not included in the GSP list of conventions.¹³⁰ Thus, this is contradictory with the spirit of the GSP since the imposed requirements and the values underlying the conventions (i.e. good governance and sustainable development) seem to be forgotten by the EU itself. **The Conventions which have not been signed, ratified and implemented by all EU**

¹²⁴ In the case of Pakistan, for example, which has not been investigated under the GSP Regulation nor withdrawn from the scheme, notwithstanding the well-documented gross violations of core labour rights (with a high degree of government involvement) and a formal petition to the European Commission filled in 1995 by several trade unions requiring an official investigation. On the Pakistan case, see Kryvoi, 2008, pp. 236-241.

¹²⁵ Bartels, 2008, p. 17; Rudra, 2011, p. 67.

¹²⁶ Bartels, 2008, pp. 18-19.

¹²⁷ Rudra, 2011, p. 63.

¹²⁸ About the economic and political predispositions of the GSP withdrawing procedures, see Kryvoi, 2008, p. 241.

¹²⁹ The Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the GA on 30-11-1973, in force since 18-07-1976.

¹³⁰ Rudra, 2011, p. 69.

Member States should not be included in the GSP system. Otherwise, it would be a discriminatory and unfair imposition of the EU against the beneficiary countries.¹³¹ The fact that the European Union is imposing, on States in order for them to have access to the GSP, the requirement of ratification and effective implementation of certain Conventions shall obviously mean that the EU members also comply with this requirement. It seems somehow hypocrite to defend or promote a different solution.

The unilateral nature of the scheme implies a certain supremacy and power of the EU upon the candidates and the beneficiaries of the GSP. Due to that fact, the system has also been targeted for allegedly being a “*veiled protection*” of the EU against the threat of the economic growth in developing countries, as a way of controlling and influence national affairs of the developing countries and also as an intentional quick opening of the developing markets to the European strong corporations.¹³² Additionally, many specialists defend that unilateral trade preferences with conditionality clauses have done little to stimulate developing countries’ trade.¹³³

Contrarily to the criticism developed against the scheme, its effective implementation can be applauded, although it is necessary to identify the real relationship between the effects of exports and the global economic situation (and implications of the preferences) in the beneficiary countries, especially in small economies.¹³⁴ Trade preferences may increase exportations as happen with Mauritius for instance, even though the effects of those preferences in the economic situation of the country have not met the expectations of the GSP scheme.¹³⁵

The relationship of the scheme with human rights is, nevertheless, relevant¹³⁶ and many of the participant countries have ratified and implemented the required conventions.¹³⁷

¹³¹ Accordingly, Rudra, 2011, p. 73.

¹³² Rudra, 2011, pp. 71-72.

¹³³ McQueen, 2007, pp. 205 and 210.

¹³⁴ *Ibidem*, pp. 217-218.

¹³⁵ *Ibidem*, pp. 211 and 217.

¹³⁶ For example, Myanmar was withdrawn from the list of GSP countries in 1997 (Council Regulation No. 552/97 (EC) of 24-03-2012, OJ 27-03-1997 - L 085) based on article 9 of Regulation (EC) No. 3218/94 and article 9 of Regulation (EC) No. 1256/96, which provided that preferences could be withdrawn in circumstances of practice of any form of forced labour, as defined by ILO Conventions No. 29 and 105.

On account of this mechanism, for example, the European Commission had initiated an investigation on the effective implementation of certain human rights conventions in Sri Lanka in 2008, followed by the withdrawing of the mentioned country from the GSP. This measure had important consequences for Sri Lanka since the benefits of the system will no longer (during the suspension period) be enjoyed by Sri Lanka (the beneficiary country). In fact, in 2008, EU imports from Sri Lanka under GSP+ totalled EUR 1.24 billion.¹³⁸ This example can show the effective implementation and also the interest of the system. The economic losses and reputational damages are real consequences of the withdraw procedure for the sanctioned country.¹³⁹

But the example also raises the question whether, although the GSP withdrawing procedure is not assumed as an “economic sanction”, the effective consequences it entails are not ultimately similar to severe Security Council economic sanctions.

3.4. The private sector and human rights

The human rights system proposed in this thesis is not detached from a context. It is connected with important changes that have been occurring in the human rights world, especially the inclusion of private actors into it, as well as the adoption of new forms of human rights protection expressly connected with this new actors’ embracement. Thus, the need to briefly review the role of non-state actors in human rights protection.

3.4.1. The private sector in general

The expansion of the importance and role of private organisations in the international law world has raised questions regarding the traditional conceptions of sovereignty and position of the “*private sector in global governance*”.¹⁴⁰ The current sovereign State seems “*too small*” to deal with the globalisation and transnational realities and “*too big*” to cope in an effective way with subnational issues.¹⁴¹ These limitations call for a

¹³⁷ Bartels, 2008, p. 13.

¹³⁸ European Commission’s website, 15-02-2010.

¹³⁹ Kryvoi, 2008, p. 242.

¹⁴⁰ Raustiala, 1997, p. 572.

¹⁴¹ *Ibidem*, p. 572.

change in the global governance framework and for a smaller relevance of the sovereign State.¹⁴²

Even though the character of the on-going transformation in international law is not clear, a “*new international structure*” was born with the upsurge of powerful private actors in international affairs.¹⁴³ This does not necessarily mean the end of the concept of the State sovereignty or its primacy, rather denotes the *effective expansion* - through new procedural means of participation – of the international law to the relevant stakeholders, especially NGOs and corporations.¹⁴⁴ This growing activity and participation suggests that an emerging transformation of the international legal and political system is happening, with a “*decline in the importance of the sovereign state and the state system*” and a simultaneous intensification of governance by the civil society.¹⁴⁵ Although the creation of international law remains on sovereign States, this current change is done through the empowerment of the private organisations which role is strengthening the regulatory powers of the State.¹⁴⁶

In the case of NGOs is crucial to have a more expanded role and powers. As Van den Bossche said, “*Effective involvement in - and influence over - the policy-making, policy-implementation, compliance-monitoring, and dispute-settlement activities of international organizations is a chief objective - if not the raison d'être - of international NGO*”.¹⁴⁷

From the point of view of the public opinion (consequently, the donor's) and to ensure legitimacy to act within intergovernmental organisations, it is important for NGOs to be considered transparent and reliable. In the for-profit sector consumer choices and opinions may be able to provide the necessary feedback. In the non-profit there are no

¹⁴² Regarding the UN, for instance, some have even defended that it should “*have a tripartite General Assembly in which states, corporations, and the people would have each have a chamber of equal power*”. See Raustiala, 1997, p. 573.

¹⁴³ Raustiala, 1997, p. 585.

¹⁴⁴ *Ibidem*, pp. 585-586.

¹⁴⁵ *Ibidem*, p. 539.

¹⁴⁶ *Ibidem*, p. 539.

¹⁴⁷ Van den Bossche, 2008, pp. 718-719.

analogous mechanisms and beneficiaries can neither vote against corrupt NGOs nor punish unreliable organisations by ceasing to do business with them.¹⁴⁸

In addition, as it will be further developed, the role of corporations and the need for their inclusion in the cluster of human rights duty-bearers has grown immensely. In terms of legal responsibility of non-State actors (such as corporations), the ECtHR and the Inter-American Court of Human Rights (IACtHR), for example, have in several occasions found breaches in human rights provisions committed by private actors.¹⁴⁹

3.4.2. NGOs: the need for legitimacy

Having NGOs participating in decision-making processes concerning human rights is positive from several perspectives. Hence, a system for the protection of human rights should include NGOs as key actors.

From a State's perspective, the incorporation of NGOs (and also private interests) in States deliberations may have benefits. Four reasons can be identified for that purpose. First, since those entities often have more expertise and information than the government, the participation of private actors produces political advantages to rule-makers.¹⁵⁰ Second, due to the increasing transparency the inclusion of private actors entails, States are more aware about the situation in other States and, therefore, are more prepared in inter-State negotiations.¹⁵¹ Third, political concerns should also be a good reason to include NGOs (especially "powerful" ones) since their relevant status within the country may help others giving their agreement to the government's solution and position. Last but not least, in order to ensure the "hard wiring" of international commitments and avoid reinterpretations of previous positions or readjustments of policies due to economic or political constraints, the presence of NGOs in the

¹⁴⁸ Burger and Owens, 2010, p. 1264; Braun and Gearhart, 2004, p. 188.

¹⁴⁹ For example, ECtHR's decision (1985) on the case *X and Y v. The Netherlands*, stating that the Convention may require "the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves"; and IACtHR's decision on the case *Velásquez Rodríguez v. Honduras* (Judgment of 29-07-1988), where the Inter-American Court found the Honduran government responsible in a case of forced disappearance committed by individuals that *were not proven* to be associated with the State. Also, Ratner, 2001, pp. 469-470.

¹⁵⁰ Raustiala, 1997, p. 558.

¹⁵¹ *Ibidem*, p. 560.

negotiations might be pivotal in avoiding that the application and enforcement of international conventions change over time.¹⁵²

From the international organisations' perspective, the role of NGOs is very important, as it enhances decision-making quality, improves transparency and accountability of policy processes and enriches the outcomes by a diversity of experiences and views. In effect, the trend in the international law has been in the direction of empowering NGOs with more procedural guarantees and NGOs have responded to this call actively.^{153,154} In areas such as international environmental law, for example, NGOs were, since the 1970s, gradually included in several international treaties' provisions as observers and active participants¹⁵⁵, and in the role of partners of international organisations in their work (e.g. UNEP¹⁵⁶) to avoid duplication of efforts and more co-operation between different entities.¹⁵⁷

In fact, more and more NGOs aspire to and already take part in the works of international organisations.¹⁵⁸ For that reason, there are some legal arrangements for NGO **accreditation** by several international organizations (e.g. United Nations Economic and Social Council, ECOSOC, International Labour Organisation, ILO, World Trade Organisation, WTO), which include detailed procedures for decisions of accreditation and review of accreditation decisions (as happens within the ECOSOC).¹⁵⁹ These legal arrangements (present in the constituent treaty and in secondary rules) aim

¹⁵² Raustiala, 1997, pp. 563-565.

¹⁵³ *Ibidem*, p. 549.

¹⁵⁴ Regarding international environmental law, for instance, some private actors have become "stakeholders" of the law: the regulated parties (usually private companies) and the different beneficiaries of the regulation (often represented by NGOs). See Raustiala, 1997, p. 557.

¹⁵⁵ E.g. the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 1973 and the International Tropical Timber Agreement (ITTA) of 1983. CITES was approved on 03-03-1973 by the International Union for Conservation of Nature and it entered into force on 01-07-1975; ITTA was approved on 18-11-1983 by the International Tropical Timber Organization sponsored by the UN Conference on Trade and Development (UNCTAD) and entered into force on 01-04-1985.

¹⁵⁶ According with the Article 12 of CITES, the Executive Director of the UNEP may be assisted by inter-governmental and non-governmental bodies technically qualified in the protection of wild fauna and flora.

¹⁵⁷ Raustiala, 1997, pp. 545-548.

¹⁵⁸ Van den Bossche, 2008, p. 718.

¹⁵⁹ Van den Bossche, 2005, p. 21.

to **legitimate** the role of NGOs in the international organisations' deliberations and decision-making processes.¹⁶⁰

Regarding the UN, for example, Article 71 of the UN Charter states that the **ECOSOC**¹⁶¹, in matters of its competence, is responsible to make legal arrangements for consultation with NGOs which work is relevant, can contribute to the UN mission and purposes of the Charter and which meet some other formal requirements.¹⁶²

The **ILO**, under its Constitution¹⁶³, also has legal arrangements for NGO participation and cooperation.^{164,165} The tripartite structure of this UN specialized agency (workers, employer's organisations and governments participate as partners) sets the stage for the NGOs participation in ILO meetings.¹⁶⁶

The NGO presence in the **WTO** is empowered by virtue of Article V:2 of the 1994 Marrakesh Agreement establishing the WTO¹⁶⁷ and ruled by the WTO Guidelines for arrangements on relationships with NGOs¹⁶⁸ developed by the General Council. It is suggested the engagement with non-profit NGOs in the development of its projects (non-profit apparently being the only criteria set by the WTO).¹⁶⁹

Despite the possibility of NGOs to make short statements and position papers, the margin of work and involvement of the NGOs is very limited and the attendance to working meetings is denied.¹⁷⁰ The 1996 Guidelines do not provide accreditation

¹⁶⁰ Van den Bossche, 2005, pp. 4-5; Raustiala, 1997, p. 551.

¹⁶¹ ECOSOC Resolution E/1996/31, adopted on 25-07-1996.

¹⁶² Resolution E/1996/31 grants NGOs "consultative status" which can be "*general consultative status; special consultative status, and inclusion on the Roster*", depending on the specificity of the NGO work. See Van den Bossche, 2005, pp. 6 and 15-16.

¹⁶³ Approved on 01-04-1919 by the Labour Commission set up by the Peace Conference, in force since 28-06-1919.

¹⁶⁴ Article 12(3) of the ILO Constitution affords consultative role to recognised NGOs that should meet accreditation criteria (such as being represented in a large number of countries), which can be 1) the limited number of NGOs with a relevant interest in ILO's activities, 2) the Special List of NGOs which share ILO's values, and 3) NGOs who might participate in specific meeting for having a particular interest on it.

¹⁶⁵ Van den Bossche, 2005, p. 17.

¹⁶⁶ *Ibidem*, pp. 9-10.

¹⁶⁷ The Marrakesh Agreement was signed on 15-05-1994, in force since 01-01-1995.

¹⁶⁸ The 1996 Guidelines WT/L/162 adopted on 18-07-1996.

¹⁶⁹ Van den Bossche, 2005, p. 19.

¹⁷⁰ *Ibidem*, pp. 13-14.

requirements or criteria for the NGOs selection so the choice between the several applicant organisations is difficult.¹⁷¹ Moreover, the proceedings of the WTO dispute settlement, one of the most relevant and successful functions of the organisation and very important for NGOs, is confidential. Furthermore, many *amicus curiae* written briefs, which are submitted to the panels or the WTO Appellate Body by NGOs have not been considered or accepted in most disputes.¹⁷²

Actually, with increased NGO participation, the legitimacy of the WTO, now often seen as undemocratic and non-transparent, would be increased. This would also compensate the fact that NGOs do not have the possibility to be heard in all WTO member States due to internal political constraints.¹⁷³

Nonetheless, the following critics are addressed when evaluating a greater NGO involvement in the WTO: a) they might be representing special trade interests and not acting in defence of the general public; b) many NGOs of industrialized countries are well-financed and organized what can cause imbalance in negotiations and decision-making processes when compared to developing country members and thus marginalize them; c) the presence of NGOs within the WTO may create even more difficulties to the consensus requirement which is necessary in decision-making, as they might oppose some trade-offs that are made in order to find a compromise.¹⁷⁴

These critics could be generally applicable to the participation of NGOs in other venues. In sum, although NGOs have been growingly working together with governments, corporations and international organisations, questions about the maintenance of their independence, critical capacity and autonomy have been raised.¹⁷⁵

The closer the relationship between NGOs, governments¹⁷⁶ and companies is, the more important is to create mechanisms to continuously shape and scrutinize their

¹⁷¹ Van den Bossche, 2008, pp. 745-746.

¹⁷² *Ibidem*, pp. 736-739.

¹⁷³ *Ibidem*, p. 720.

¹⁷⁴ *Ibidem*, p. 721.

¹⁷⁵ Baur and Schmitz, 2012, pp. 9-10.

¹⁷⁶ Braun and Gearhart, 2004, p. 189.

organisational mission, their non-profit goals, and their independent performance.¹⁷⁷ Actually, business-NGOs partnerships have a real risk of co-optation of NGOs by corporate interests.¹⁷⁸ Moreover, NGOs reports might have serious donor or political constraints and are therefore often looked with scepticism.¹⁷⁹ The (private or public) donor demands and funding pressure are pointed as the main obstacles against the independence and accuracy as they might jeopardize the impartiality required to those entities when developing their job.¹⁸⁰

From the international organisations perspective, strict accreditation and review rules provide them with legal authority and also symbolize openness to external scrutiny, important from the political and social view point. Despite that, limitations and deficiencies of current accreditation proceedings (no review mechanism of the accreditation decision in most of the international organisations, no strong criteria in the accreditation requirements) still exist and should be corrected.¹⁸¹

Equally, from a NGO perspective, proper legal arrangements for NGO accreditation enable their participation and work with important international organisations, which access would otherwise be hindered. Additionally, it is a unique way for transparency and legitimacy.

In conclusion, even though the political role of NGOs, especially international NGOs, has increased, there are still limitations to their intervention in decision-making.

Contrarily, the voluntary approach proposed in this thesis would address these obstacles and bring cooperation and openness to the necessary scrutiny in three ways. First, NGOs may use certification system for themselves, as a way of accreditation. The NGO sector is undergoing a crisis of transparency, accountability and credibility.¹⁸² The question of *who will watch the watchdogs* is pertinent and important to the proposed

¹⁷⁷ Baur and Schmitz, 2012, p. 14.

¹⁷⁸ *Ibidem*, pp. 11 and 15-16. Co-optation can be defined as “*the ability of a corporation to bring the interests of a challenging group into alignment with its own goals.*”

¹⁷⁹ Burger and Owens, 2010, pp. 1263-1264 and 1266.

¹⁸⁰ *Ibidem*, pp. 1268-1269.

¹⁸¹ Van den Bossche, 2005, pp. 22-25.

¹⁸² Burger and Owens, 2010, p. 1263.

system. Second, NGOs will be able to participate in a system which encompasses rigid accountability and accreditation procedures and mechanisms. Third, a human rights certificate that could be used by international organisations as a requirement for NGO accreditation could help solving part of the limitations of the current systems.

3.4.3. Corporations as human rights duty-holders

Due to the relevant role of corporations as actors of international relations and law, many scholars defend that the contemporary definition of human rights must impose duties on entities that can pose threats to human dignity other than States.¹⁸³ In fact, the gradual shift in the global economy has given a new role to transnational corporations and to that extent a new weight in the human rights world.¹⁸⁴

Many examples of corporations' alleged involvement, by omission or commission, in human rights abuses can be given: Nokia-Siemens' alleged provision of the Iranian government with tracking technology¹⁸⁵, Enron's complicity with human rights violations in the Indian state of Maharashtra, diamonds purchase by several companies in Sierra Leone or Angola, clothing production with poor labour conditions in Latin America and Asia (e.g. GAP).^{186,187}

In the context of globalisation and development of worldwide production and consumer markets, the role of the civil society, NGOs in particular, has been also quite relevant in creating public awareness and demanding the need of corporate human rights responsibility.¹⁸⁸ The awareness of the public and consumers to issues connecting corporations and human rights abuses, thanks to new publicity methods, which drove

¹⁸³ Ratner, 2001, p. 449.

¹⁸⁴ *Ibidem*, pp. 459-460.

¹⁸⁵ The Guardian, 24-08-2020.

¹⁸⁶ Ratner, 2001, pp. 526-530.

¹⁸⁷ For example, as referred in Stokes, 1988, pp. 1052-1053 and Ratner, 2001, p.477, the executives of I.G.Farbenindustrie pharmaceutical cartel were brought to justice in the US Military Tribunal Nuremberg (case *The USA vs. Carl Krauch*, et al.) in 1947, accused of war crimes, for its corporate interests and connection with the Nazi regime.

¹⁸⁸ McBarnet, 2005, pp. 67-68.

several protest movements, became, consequently, a reason for companies concerns. The result is “*a new de facto accountability, that goes beyond that required by law*”.¹⁸⁹

Actually, the more important for the company is its brand and the image of the **public opinion**, the more vulnerable the company is to adverse publicity¹⁹⁰. Therefore this fact was and still is a driver of corporate social responsibility and emergent trends such as “*concerned consumption*” or “*ethical banking*” (or investment), as a response to the “*market forces*”. Concepts like “*reputation risk and management*” are being used persistently in the business discourse and make part of a new “*ethics industry*” which is based on the premise that companies’ reputation is a competitive advantage and a corporate asset with an increasing value.¹⁹¹ In fact, “[*b*]usiness benefit financially by adopting a broader ethical approach. Business ethics become good business strategy.”¹⁹²

These entities have become, therefore, new human rights’ duty-holders.¹⁹³

3.4.3.1. The legal *rationale* for Corporate Social Responsibility

A more traditional international legal perspective might perceive corporate duties and responsibility for human rights abuses as doctrinally prohibited, asserting that only States or individuals (in serious situations and primarily through criminal responsibility¹⁹⁴) are human rights duty-holders.

However, in addition to practical constraints of the States to control the actions of their citizens and corporations beyond borders, to rely on States’ responsibility alone poses the problem of **identifying what kind of human rights abuses committed by private actors does the State have to prevent and remedy**.¹⁹⁵ If a certain entity, such as a corporation, has to be responsible for human rights violations and if that entity cannot

¹⁸⁹ McBarnet, 2005, pp. 67-68.

¹⁹⁰ *Ibidem*, p. 68.

¹⁹¹ *Ibidem*, pp. 70-72.

¹⁹² *Ibidem*, p. 72.

¹⁹³ Ratner, 2001, pp. 469-470; Clapham, 1993, pp. 95-96.

¹⁹⁴ Ratner, 2001, p. 461.

¹⁹⁵ *Ibidem*, pp. 465 and 471.

be the perpetrator of such violations, it has to be the responsibility of the State to respond to those unlawful acts. However, the existence of responsibility depends on those violations *being previously in the legal sphere* of the perpetrator. If corporations are not, legally, duty-holders, they cannot be required to behave in a certain way and human rights violations cannot be considered committed by virtue of corporations' activities. This is an *important argument* in favour of corporate social responsibility.

Therefore, the responsibility of private companies for unlawful human rights acts has been gradually recognised.¹⁹⁶ Indeed, there is already relevant case-law regarding human rights abuses by transnational corporations. A noticeable example is Shell's complicity with human rights and environmental abuses in the Ogoni region in Nigeria¹⁹⁷. Another more recent example is the case of contractors who provided interrogation and translation services at Abu Ghraib prison in Iraq, accused of committing cruel and humiliating treatment during interrogations and having conspired with US officials in such unlawful acts.¹⁹⁸ Nevertheless, *environmental law and polluter responsibility* have taken further the liability of corporations for their abuses.¹⁹⁹

Likewise, soft law statements have brought direct duties on private companies. The 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy of the ILO, the 2000 OECD Guidelines²⁰⁰ and other guidelines regarding the role of corporations on the human rights protection have been issued.²⁰¹

¹⁹⁶ Steiner, Alston and Goodman, 2008, pp. 1385-1414.

¹⁹⁷ *Kiobel, et al. vs. Royal Dutch Petroleum Co et al.* lawsuit, brought in 2002 to the US District Court in New York. The applicants alleged that the defendants aided and abetted, or were complicit in, violations of the law of nations by the Nigerian government. It was after appealed to the US Court of Appeals for the Second Circuit (Docket Nos. 06-4800-cv, 06-4876-cv, 2008, decided on 17-09-2010) that held that corporations are not subject to suit under the Alien Tort Statute ("ATS"). The U.S. Supreme Court is still examining the case; Regarding this case, see the Associated Press, 08-06-2009; Keitner, 2010, pp. 1-5; The New York Times, 24-02-2012.

¹⁹⁸ Case *Saleh v. Titan* brought against private contractors CACI and the former Titan Corporation (now L-3 Services) (Application No. 05cv01165) and appealed to the US Court of Appeals for the Southern District of California Circuit on 10-02-2009.

¹⁹⁹ *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008), decided by the U.S. Supreme Court, which awarded a compensation for punitive damages to the victims of the Exxon Valdez oil spill in 1989; Ratner, 2001, pp. 478-480.

²⁰⁰ Ratner, 2001, pp. 486-487.

²⁰¹ *Ibidem*, p. 510.

The United Nations have also recognized the relevance of corporations in human rights compliance and enhanced partnerships with the private sector. Several UN initiatives can be highlighted: the 2003 “Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights”²⁰², the 2000 “United Nations Global Compact”²⁰³ and the UN Special Representative of the United Nations Secretary-General on Business & Human Rights, Ruggie, and in particular its work “Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework”, seeking “*to impose on companies, directly under international law, the same range of human rights duties that States have accepted for themselves under treaties they have ratified: “to promote, secure the fulfilment of, respect, ensure respect of and protect human rights”*”.²⁰⁴ Additionally, regarding the specific case of the UN economic sanctions, corporations are required to cooperate with the UN in their implementation and have the duty to respect them (e.g. sanctions imposed to Iraq after the Gulf War posed strict requirements on corporations).^{205,206}

In what concerns legal responsibility, it should be noted that there are some barriers to transposing primary rules (e.g. provisions of the ICCPR, ICESCR, etc.) to corporations. First, this is so because many of these rules are not within the scope of corporate activities. The simple extension of State’s duties to enterprises would ignore the differences of nature between corporations and States. Regarding secondary rules the barriers are less obvious and many of the principles connected with secondary obligations can be applied to corporations.²⁰⁷

With regard to the relationship of a corporation with the affected *populations*, there is a fundamental difference between States and enterprises, since governmental jurisdiction is determined on a territorial basis and States have duties towards all people in their

²⁰² Adopted by the UN Commission on Human Rights, on its 55th session, on 13-08-2003.

²⁰³ The initiative was launched in July 2000 and the item entitled “*Towards Global Partnerships*” was introduced at its 55th session and adopted by the GA Resolution A/RES/55/215, 06-03-2001.

²⁰⁴ Approved by the UN HRC, A/HRC/17/31, 21-03-2011, p. 3.

²⁰⁵ UNSC Resolution 986 (S/RES/986), adopted on 14-04-1995 at paragraph 1.

²⁰⁶ Ratner, 2001, pp. 483-484.

²⁰⁷ Ratner, 2001, pp. 492-496; Stohl and Stohl, 2010, pp. 51-65.

territory. Contrarily to States, when determining the corporation duties it is necessary to analyse the specific link and ties with the human rights-holders. The closer the proximity of the enterprise to individuals is, the stronger are its duties towards the population (beyond employment relationships).²⁰⁸ For certain absolute rights and in certain circumstances, however, corporations should have, like states, “*equal duties toward*” all the population. This is the case, for instance, of the right against slavery and forced labour.²⁰⁹ Furthermore, the ties that connect the government and corporations are extremely relevant to determine the corporations’ human rights obligations and, likewise, the closer those ties are the greater obligations the corporation has.²¹⁰

Despite the legal limitations, international law encompasses the notion of complicity and conspiracy (for instance, Article III of the 1948 Genocide Convention, Article 7 International Criminal Tribunal for the Former Yugoslavia Statute and Principle VII²¹¹ of the Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal) and when corporations are (directly and substantially) complicit with governments they should be hold responsible. Therefore, a corporation will be held responsible under international law if a certain business materially gives contribution to a human rights abuse by the government, with knowledge of it (e.g. loan corporate military equipment to governmental units suspected of human rights violations).²¹²

In sum, this thesis highlights the importance of corporations’ insertion in the human rights protection system. From a legal perspective, corporations’ responsibility for human rights violations is justified. From a human rights perspective, having corporations as partners in the promotion of human rights (and not as opponents) would help in addressing human rights problems in a more efficient and effective manner. From a corporate perspective, a human rights strategy is able to create economic benefits, as demonstrated by the need to develop CSR principles after some human rights’ scandals.

²⁰⁸ Ratner, 2001, pp. 506-508.

²⁰⁹ *Ibidem*, pp. 511-512.

²¹⁰ *Ibidem*, p. 497.

²¹¹ UN International Law Commission, A/CN.4/22, 12-04-1950.

²¹² Ratner, 2001, pp. 500-502.

This underlines the fact that the “voluntarist” approach to human rights can work, as CSR has even arisen spontaneously. This has been made through self-regulation mechanisms or through external auditing or certification.

3.4.3.2. Corporate codes of conduct

To respond to public claims against corporations concerning human rights violations, private enterprises have initiated self-regulation ways to deal with the matter, defining voluntary commitments through *codes of conduct*.

These codes of conduct typically encompass a narrow range of human rights such as forced and child labour, conditions of employment and the right to unionize and they might be “*purely a public relations exercise*” for corporations.²¹³ Despite being useful in addressing and monitoring human rights violations, the impact of those instruments regarding the corporate behaviour is certainly unclear and the degree of commitment and seriousness varies from different company and industry. As defended by some scholars, a binding code of conduct, with enforcement mechanisms, could be an option to overcome the uncertainty of soft law instruments.^{214,215}

The certification system proposed in this thesis could help in addressing this uncertainty since the standards for certification would be the same for all the participants.

As McBarnet explained by citing Friedman, for some authors “*the social responsibility of business is to increase its profits*”²¹⁶ and the reason for the introduction of codes of conduct in many companies was the negative publicity towards them²¹⁷. In this case, **the voluntary approach to human rights (defended in this thesis) has arisen spontaneously**. However, **most of the companies do not have any mechanism to implement and monitor** those codes of conduct.²¹⁸

²¹³ Ratner, 2001, pp. 531-532.

²¹⁴ *Ibidem*, p. 538

²¹⁵ Steiner, Alston and Goodman, 2008, p. 1396.

²¹⁶ McBarnet, 2005, p. 64.

²¹⁷ *Ibidem*, p. 66.

²¹⁸ *Ibidem*, p. 74.

The corporate discourse and good corporate citizenship is able to have important repercussions on the social practice.²¹⁹ Nevertheless the so-called “*brand boomerang*”²²⁰ has limits, has defended by Klein²²¹ and McBarnet²²² and therefore it is important to construct a strong regulation mechanism to ensure that corporate social responsibility is not only motivated for image reasons.

These issues, discussed in **Sections 3.4.3.1** and **3.4.3.2.**, raise some questions regarding the shift from the old to the new accountability and the new “*altruism*” of some companies, the ethical judgement needed when implemented codes of conduct and the philosophical point behind the practical actions taken by corporations.²²³

The denying of the conflict of interest between profits and principles hides the real choice that often exists when pursuing both.²²⁴ For that reason, a system where both economic incentives and human rights share the stage would diminish the weight of such a choice.

²¹⁹ McBarnet, 2005, p.78.

²²⁰ Klein, 2000, pp. 375-395.

²²¹ As cited by McBarnet, 2005, pp. 70 and 76: “*Klein, Naomi, No Logo, pp. 422, 424, 437*”.

²²² McBarnet, 2005, p. 76.

²²³ *Ibidem*, pp. 73-74 and 75.

²²⁴ *Ibidem*, pp. 74 and 77.

4. The essential role of Indicators

The analysis of indicators serves this thesis for three main reasons. First, their quantitative and qualitative features allow a reliable assessment of human rights situation and therefore should be introduced in the standards of a certification system. In this sense, indicators mediate the granting or removal of certificates. Second, this assessment allows the comparison and ranking of the participants of the system and is thus essential for the awarding of economic benefits. Third, the fact that they are used to measure more than the formal existence of rights, allows the measurement of the rights' effective enjoyment, good governance and welfare, matching the “*capabilities approach*” defended in **Section 2**.

4.1. Indicators for monitoring and assessment

In recent years, indicators (“*outcome*”, “*process*” and “*structural*” indicators) have been recognized as an important tool to monitoring and assess human rights compliance.²²⁵

For the subsequent analysis, indicators will be perceived as following: “*quantitative or qualitative statements that can be used to describe human rights in situations and contexts and to measure changes or trends over a period of time*”.²²⁶ One key feature of indicators is the possibility to evaluate performances in reference to defined standards and, consequently, *compare* and *rank* the particular units under analysis, whether they are countries, organisations or companies. Indicators make this possible through a simplification process that streamlines “raw” data and transforms it into measurable results relevant for a specific purpose.²²⁷ Thus, the use of indicators, as quantitative and qualitative approaches, can facilitate the treatment of information, documentation, reporting and, consequently, the work of entities committed to promote human rights.

However, indicators and the subsequent statistics are not a lonely tool and they do not reflect, *per se*, the human rights situation within a country. Yet, they can help identifying broader issues and also calling attention for specific problems beyond the

²²⁵ OECD, 2008 b), p. 198.

²²⁶ Andreassen and Sano, 2004, p. 15.

²²⁷ Davis, Kingsbury and Merry, 2012, pp. 75-76 and 79-80.

generalities since they may provide a better knowledge of the concrete human rights' situation.²²⁸

As they are tools for evaluation and as they hold *scientific authority*, indicators are able to set criteria (e.g. rule of law, corruption, etc.).²²⁹ In general terms, indicators should be precise and explicit; founded on an acceptable methodology of data collection; available on a regular basis and suitable to the context; anchored in the normative content and the core attributes of the rights; designed to reflect the duty-holder's responsibility to *respect, protect* and *fulfil* human rights and; encompass cross-cutting principles such as non-discrimination, accountability, indivisibility and empowerment.²³⁰ They are supposed to match the so-called "*SMART criteria*" and therefore they should be "*Specific, Measurable, Attainable, Relevant, and Time-framed*".²³¹

The goals of a specific project should not be mistaken with objectives; since the first are long-term achievements while the later are aims in the course of the cycle of the project that will be realised through specific activities (outputs) such as documentation, lobbying and training. When designing a project and policy, the specific goals and the objectives of it must be defined *a priori*, otherwise it will be impossible to create and apply the respective indicators. Moreover, who defines the objectives should not define the evaluation' criteria and indicators. This is many times circumvented.²³²

As each right has its own characteristics, the corresponding indicators can be designed in accordance with those attributes, facilitating monitoring processes and accountability.²³³ In this regard, the General Comments (GC) of the UN Committee on Economic, Social and Cultural Rights (CESCR) are very helpful, framing *minimum core obligations* on inputs and defining the *relevant contents of a right*.²³⁴

²²⁸ OECD, 2008 b), p. 197.

²²⁹ Davis, Kingsbury and Merry, 2012, pp. 77 and 86.

²³⁰ OECD, 2008 a), pp. 162 and 163; OHCHR, HRI/MC/2008/3, 06-06-2008, p. 4.

²³¹ Andersen and Sano, 2006, pp. 14-15.

²³² Andreassen and Sano, 2004, pp. 10-17.

²³³ *Ibidem*, p. 19.

²³⁴ For example, as stated in CESCR GC No.18, E/C.12/GC/18, 06-02-2006, p. 9, the core obligations regarding the right to work include: "(a) *To ensure the right of access to employment, (...), permitting them to live a life of dignity;* (b) *To avoid any measure that results in discrimination and unequal*

Thus, indicators can be used as “*barometers*” of compliance and assessment, and are crucial to an *ex ante* and an *ex post* analysis of a human rights’ protection project. They are, nevertheless, dependent on political will in the sense that their implementation is still quite dependent on national statistics and data available at the national level. States co-operation is therefore very important.

4.2. The use of indicators

Indicators may be used for different purposes and adopt different forms. For instance, quantitative tools can be used by a Government to make changes into its public policies, while a NGO may want to use them for “naming and shaming” a Government for its unwillingness to comply with human rights commitments.²³⁵ An *indicator of conduct* may be the introduction of mandatory codes of conduct in public institutions or companies and an *indicator of result* may be the effective increase of the minimum wage.

In the human rights monitoring process, although one is interested in using **outcome indicators** to detect avoidable deprivations (the so-called “red flags”), the **input indicators** are also relevant to see “*whether people are enjoying the objects of the rights – the enjoyment aspect of rights – the primary focus is on monitoring whether governments (and possibly other duty bearers) are meeting their human rights obligations – the obligation aspect of rights*”.²³⁶ This should be done with the cover idea that international law binds States regardless of that State’s behaviour or preferences but that its content can be verified by reference to actual States’ behaviour or interests.

treatment in the private and public sectors (...); (c) To adopt and implement a national employment strategy and plan of action (...) that (...) should target disadvantaged and marginalized individuals and groups in particular and include indicators and benchmarks by which progress in relation to the right to work can be measured and periodically reviewed”.

²³⁵ OECD, 2008 b), p. 196.

²³⁶ *Ibidem*, p. 207.

Nowadays, two important sources for indicators are *socio-economic national statistics* (as a source which implies state's commitment and active effort) and *events-based data* on human rights disrespect (as a more realistic data source).²³⁷²³⁸

4.2.1. A measure of economic, social and cultural rights

In the specific case of economic, social and cultural rights there is an implicit recognition of the relativity of States' obligations according to their different levels of growth and development. Nevertheless, as it will be better developed in **Section 5**, the core content of the rights must be immediately realised without discrimination, to ensure that public measures are not leading to disparities in social and economic outcomes.

The simplest (and therefore limited) way to analyse if a country is complying with its obligations regarding economic, social and cultural rights in times of economic growth is through the comparison of a country *GDP per capita* over time with a given outcome social indicator. Nevertheless, this method has been criticised by several authors who show that in many countries there is no correlation between GDP per capita and social attainments.²³⁹

Actually, as pointed out by Nussbaum, Sen has been very critical in the usual emphasis on *economic growth* as the main indicator of the quality of life in a country, since it is limitative and insufficient.²⁴⁰ Moreover, there has been an increase of alternative development indexes, such as the UNDP's Human Development Index (HDI), launched in 1990, which aims to contest and displace GDP per capita as the single measure for development and follows the Sen's and Nussbaum's capabilities approach.²⁴¹ Although it has been criticised by Sen for being merely a "*crude measure*" and by others for being

²³⁷ OHCHR, HRI/MC/2008/3, 06-06-2008, pp. 8-9.

²³⁸ For the OECD, quantitative indicators "*should be amenable to disaggregation in terms of sex, age, and other vulnerable or marginalised population segments*". See OECD, 2008 a), p. 166.

²³⁹ OECD, 2008 b), p. 199.

²⁴⁰ Nussbaum, 2008, p. 598.

²⁴¹ Davis, Kingsbury and Merry, 2012, pp. 96-97.

poor indicator-based, the fact is that HDI encompasses social aspects and that is important in the trend against the limited scope of the GDP.²⁴²

To rely on economic growth alone as the sole indicator of quality of life is thus not sufficient.²⁴³ In this sense, the *capabilities approach* differs from the “*welfarist*” or utilitarian evaluation, since it defends that the achievement of certain standard of living and functionings is not enough and a human being should have the freedom and capability to enjoy her or his achievements.²⁴⁴ It is also different from a mere income-based analysis of poverty, since it is defended that income is always connected with the basic ends to which the income serve as mean, such as nutrition. This depends on the social and personal characteristics of a certain community, so the relationship between income and capabilities will vary according to the *space and social particularities*.²⁴⁵

Defending the idea that equality should be a fundamental political and legal value, the mere increasing of GDP per capita as the goal of development obstructs the assessment of *distributional inequalities* and the measurement of the *state of satisfaction* of the population.²⁴⁶

In addition, when trying to measure the effective *guarantees of non-discrimination* in economic, social and cultural rights, it is essential to look to the States’ public policies and also the **governments’ expenditure**. Regarding the latter, it is relevant to figure the distribution of resources having in mind the grounds of discrimination. Regarding public policies, one aspect that should be object of indicators would be the fiscal policies – both the amounts of money raised in taxation as well as the pattern of taxation.

This distributional analysis should include not only the effective allocation of resources (when comparing two different groups) but also resources that should be provided to an especially vulnerable group.^{247,248} Indeed, there is a relation between governments’

²⁴² Davis, Kingsbury and Merry, 2012, pp. 97-98.

²⁴³ Nussbaum, 2008, p. 598.

²⁴⁴ Sen, 1993, pp. 35 and 38-40.

²⁴⁵ *Ibidem*, pp. 40-42.

²⁴⁶ Nussbaum, 2008, p. 599.

²⁴⁷ OECD, 2008 b), pp. 201-202.

expenditure and the guarantee of core obligations, and it has been shown that **regressive spending patterns lead to non-compliance with minimum core obligations as a matter of priority**, requiring the analysis of those patterns to assess whether governments are making every effort to use all disposable resources.²⁴⁹ Moreover, the production of resources and their allocation is very connected with the concept of good governance. Therefore, good governance goes further than mere regulation and not only encompasses the influence of the behaviour of certain actors, but also the means and distribution of resources.²⁵⁰ In that sense, is likewise connected with government expenditure.

4.2.1.1. Measuring labour rights

In this Section, three examples of the use of indicators for the measurement of labour rights will be given, as labour rights are the focus of the thesis.

To measure the attainment of *full employment* (Article 1 paragraph 1 of the ESC), since 2000 the **European Committee of Social Rights (ECSR)** has been developing an indicator-based method, on a set of 25 statistical indicators of economic performance (e.g. GDP growth, inflation, job growth), employment (e.g. employment rate, part-time or fix-time employment), and unemployment (e.g. vulnerable groups, minorities and long-term unemployment), and labour policy (e.g. training, guidance, subsidised jobs).²⁵¹ In practical terms, a citizen interested in checking the labour rights situation of a certain country might use the ECSR conclusions. Through this set of indicators and the consequent conclusions, it is possible to *compare* States and *rate* them accordingly.

The **Office of the United Nations High Commissioner for Human Rights (OHCHR)** has also published in 2008 an important Report on Indicators for Promoting and

²⁴⁸ This distributional analysis can be made as proposed by the UNDP (UN Development Programme): “comparing the “public expenditure ratio” (government share of GNP) with the “social allocation ratio” (social services share of government spending) and “social priority ratio” (human priority share of social sector spending) – as well as any other tools for locating failures in public spending”. See OECD, 2008 b), p. 210.

²⁴⁹ OECD, 2008 b), p. 210.

²⁵⁰ Davis, Kingsbury and Merry, 2012, pp. 78-79.

²⁵¹ The Committee’s conclusions are published regularly. In relation to several European countries the Committee has reached the conclusion of non-conformity (e.g. Greece, Italy and Poland); Conclusions of the ECSR, 2010; Mikkola, 2010, pp. 141-145.

Monitoring the Implementation of Human Rights which contains specific indicators to assess several rights, including the right to work, within a country.²⁵²

In fact, in order to determine if a State is complying with its labour rights obligations, what has to be assessed is the level of employment, the availability and quality of employment (including fair income and matching of the job with personal abilities), equality and non-discrimination on employment and on the access to employment.

Despite the principle that “*labour is not a commodity*”, and therefore should not be regulated by market forces, in times of economic constraints many States and companies introduce **restrictive and “retrogressive measures”** to labour standards to face financial difficulties.²⁵³

The ECSR has to have a better role in monitoring and addressing European countries practices, especially retrogressive measures with implications in the employment level in times of financial crisis. For the Committee, *full employment* is an obligation of means (rather than result), so measures of full employment policy must include: labour intensive economic and fiscal policy, job creation, job mediation services, employment services and unemployment benefits.²⁵⁴

The **World Bank’s “Doing Business”** indicators aim to measure the quality of business laws and related institutions in 183 countries, such as the labour laws. They can be used for example to measure the time and costs to start a business or enforce a work contract.²⁵⁵

Despite its positive aspects (regulatory reforms in developing countries aiming to attract foreign investment), the *Doing Business Employing Workers* indicator which measures for example the “*maximum length of a single fixed-term contract (months)*”²⁵⁶ has been condemned by several organisations and workers representatives (e.g. ILO and

²⁵² OHCHR, HRI/MC/2008/3, 06-06-2008, p. 31.

²⁵³ Monshipouri and Welch, 2001, p. 384.

²⁵⁴ Nevertheless, the Committee’s conception of full employment might be constrained by the current job reality, having already been considered by the ECSR that full employment was attained in situations of brief periods between jobs. See Mikkola, 2010, pp. 138-141.

²⁵⁵ Davis, Kingsbury and Merry, 2012, pp. 88 and 90.

²⁵⁶ Indicators and country-rank of the Employing Workers index are available at Doing Business’ website.

International Trade Union Confederation) as it has been used by international corporations and financial institutions to put pressure on developing countries to stretch labour laws and remove workers protection to attract investment.²⁵⁷

This last example shows obviously a “perverse” effect of this type of indicators: powerful entities may prefer to invest in countries with lower workers protection and may compel countries especially dependent on external investment, which will likely loosen their labour laws. Therefore, efforts must be made so that the indicators’ production can rely in key labour standards and conventions. If economic benefits were attached to the mentioned regulatory reforms for developing countries and their companies they would be in compliance with key human rights standards.

4.2.2. A measure of good governance

In this Section, two examples will be given of a measure and tool of good governance using indicators: the Open Method of Co-ordination (OMC) and Transparency International reports.

The OMC, which main example is the European Employment Strategy (EES), was created as a mode of “*soft governance*” and can be seen as a common European strategy to help the so-called “*Social Europe*” policy. It has embodied and defined non-binding objectives, **indicators**²⁵⁸ and guidelines to generate changes in the European social policy, in particular in the employment policy.²⁵⁹ Besides that, the OMC also includes: assessment of performance through national reports and action plans, peer review of the plans with exchange of good practices and recommendations, and re-elaboration of the plans in accordance with the experience gained.^{260,261}

²⁵⁷ Davis, Kingsbury and Merry, 2012, pp. 93-95; Steiner, Alston and Goodman, 2008, p. 1388.

²⁵⁸ There are under the EES several indicators, such as employment rate, tax rate on low-wage earners, and annually the results are made available to show and compare, under the same *criteria and dimensions*, the relative position of member-States. The results of the EES are relevant, especially regarding the social policy changes that happened in some European countries by virtue of the common strategy.

²⁵⁹ Actually, *common answers* are specially needed in a context to common market, since the social policy in one each country may affect the currency and competitiveness and, therefore, affect other euro-countries.

²⁶⁰ Trubek and Trubek, 2005, pp. 348-351.

Nevertheless, it has been criticized as it does not provide any formal sanctions for the non-compliance with the guidelines and it is not justiciable.²⁶² In addition, some disagreement about the effective results and the real impact of the employment strategy remains, as some States still resistant because they think the EES does not fit their labour market.²⁶³ For some authors, the OMC impact is more rhetorical than substantial and it is hard to conclude that there was, or has been, a real shift from government to governance within the EU.²⁶⁴

The transposition and the implementation of hard European law within national States has been difficult and less heroic than in theory and the “*famed gap between law on the books and law in action*” has been pointed as one of the **arguments against the defenders of hard law as the only tool to promote human rights**.²⁶⁵

The second example is Transparency International, a NGO mainly focused in the combat against *corruption* annually publishing the Corruption Perceptions Index, recognized as a relevant and influent actor for its use of indicators in global governance.²⁶⁶

The relationship between indicators and good governance relies on the fact that indicators are based in specific standards, embodying “*a theoretical claim about the appropriate standards for evaluating actors’ conduct*” and, in that sense, they have a certain “*ideology*” (even if only implicitly) of what is good governance, good society or other particular aspect they are trying to reach, rank or measure.²⁶⁷ Moreover, the use of

²⁶¹ As the OMC is based in policy goals translated into guidelines to be taken into account by Member States, the definition of specific benchmarks and indicators to measure best practices are essential to monitor and evaluate. This is made in accordance with Article 156 of the Treaty on the Functioning of the European Union (TFEU), consolidated version, OJ, 30-03-2010, C 83/47, which requires expressly the “*cooperation between Member States*” and “*coordination of their action in all social policy fields*”, such as labour rights, through “*particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation*”, and it is also in accordance with Article 148 (2) TFEU referring to guidelines that Member-States “*shall take into account in their employment policies*”.

²⁶² Trubek and Trubek, 2005, pp. 343-345.

²⁶³ *Ibidem*, p.359.

²⁶⁴ Shore, 2006, pp. 719 and 720.

²⁶⁵ Trubek and Trubek, 2005, p.361.

²⁶⁶ Davis, Kingsbury and Merry, 2012, pp. 82-83.

²⁶⁷ *Ibidem*, p. 77.

indicators to rank and assess implies an expansion of the political conceptions of the ordinary “*governor*” since it will be no longer the sovereign State but another entity embodied of power to influence, set and measure human rights and governance standards.²⁶⁸

Contestation against the use of indicators or their scientific validity does exist, but the more relevant challenge is the “*embedded social and political theory*” of indicators. Due to this fact, local resistance to the application of indicators is still a reality.²⁶⁹ It is therefore essential that indicators emanate from an independent and impartial body, in a transparent manner, based on excellent sound methodology and expertise. The design of indicators should be as transparent, objective and participative as the policies or performances they want to measure.²⁷⁰ In this sense, indicators are not “*cosmetic devices*” but an important instrument to be used.²⁷¹

In addition, the use of indicators is considered an efficient tool for governance, since the reliance on indicators may reduce several resources (expertise, time and money) on the decision-making processes.²⁷²

Thus, a balance will be needed between relevant indicators to measure the core content of human rights and indicators contextually designed.²⁷³ The sustainability of a human rights policy and the use of indicators should be directly dependent on the knowledge of (and obviously on the respect for) the socio-cultural, legal, political and economic contexts of the place where they will be implemented or applied even though indicators should not lose their critical and non-negotiable approach.²⁷⁴

Despite the lack of binding force and uniform rules of both schemes, the “soft law” brought by the OMC and the Transparency International is able to bring a change by “*the informal sanction of shaming*”, by the “*diffusion*” of other models and good

²⁶⁸ Davis, Kingsbury and Merry, 2012, p. 79.

²⁶⁹ *Ibidem*, pp. 83-84 and 87.

²⁷⁰ UN-ECOSOC, Fundamental Principles of Official Statistics, adopted by the UN Statistical Commission, E/1994/29, paragraph 59, 11-15 April 1994. Davis, Kingsbury, and Merry, 2012, p. 84.

²⁷¹ Andersen and Sano, 2006, p. 38.

²⁷² Davis, Kingsbury and Merry, 2012, pp. 84-85.

²⁷³ OECD, 2008 a), p. 168.

²⁷⁴ Andreassen and Sano, 2004, p. 12.

practices through “*mimesis or discourse*” and also “*deliberation, learning, and networks*”.²⁷⁵

These features of both schemes assume particular relevance for this paper to prove that alternatives to the traditional forms of governance exist and are showing concrete results in target-entities behaviour.

4.2.3. A measure of welfare and development

Economists and human rights theorists tend to have different views of key concepts for both economics and human rights, such as the concept of *development* and *welfare*. According to human rights perspective, development is defined in terms of fulfilment of civil, political, economic, social and cultural rights, following a rights-based approach²⁷⁶, while under the economics perspective development is the “*people’s command over goods and services*”.²⁷⁷

Likewise, the core notion of *welfare*, for example, is different in both theories, as in the economics welfare theory, although measuring the general well-being of individuals, it does not encompass democratic society values (such as the freedom to choose), as it happens in human rights theory.²⁷⁸ Applied to *labour contexts*, this limitative way of conceiving welfare could mean for example that a measure requiring limited working hours for children would be seen as inefficient as it would reduce national competitiveness and the incomes of families with working children.²⁷⁹

Despite the differences in approach, human rights theory and economics share an important feature: a commitment to the individual’s autonomy and methodological approaches which use individual circumstances to analyse social

²⁷⁵ Trubek and Trubek, 2005, pp. 356-358.

²⁷⁶ For example, the first principle of the UN Common Understanding (on a Human Rights-Based Approach to Development Co-operation) adopted by the UN Development Group in 2003 states that “*All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments*”.

²⁷⁷ Seymour and Pincus, 2008, p. 387.

²⁷⁸ Standard economics definition - based on the “*Kaldor-Hicks*” efficiency criteria (which substituted the limited “*Pareto criterion*”) - conceives welfare choices from a utilitarianism perspective, in the sense that the best choice will be the one that “*leaves at least one person better-off*” and “*no one worse-off*”.

²⁷⁹ Seymour and Pincus, 2008, p. 391.

aspects. Notwithstanding that, since this individual conceptualization for economists is limited to property rights, there is a need to extend it to other human rights as well.²⁸⁰

In the path of the needed connection between economics and human rights, the notion of *development* assumes a particularly important role. The relationship between development (traditionally only associated with economic growth) and human rights has a variety of approaches. Three different approaches can be highlighted. First, it can be defended (as stated for example by the OECD²⁸¹) that human rights are an input to the development process and therefore human rights protection would create positive economic impacts. Second, it can be defended that human rights are a luxury that citizens of wealthy countries enjoy since they are an output of development. A third option is to defend the “*mutual reinforcement*” of the two later approaches, seeing poverty as a generator of conflict and human rights violations and economic benefits as a way to compensate human rights improvements.²⁸² This third option has been at the basis of some important political decisions regarding countries which do not comply with their human rights commitments.²⁸³

Indeed the notion of development has begun to change with the maintenance and even increasing of exploitation and social inequality in developing countries with good economic growth rates. **As discussed above in Section 4.2.3., to treat economic growth and development as synonymous is a mistake** and can lead to the emptying of the development concept. Moreover, statistics that relate equality and economic growth have proven to be fragile.²⁸⁴ Furthermore, the fact that the “*progressive realisation*” of economic, social and cultural rights is constrained by the “*available resources*”²⁸⁵ is an argument that carries a correlation between development outcomes and the rights fulfilment.²⁸⁶

²⁸⁰ Seymour and Pincus, 2008, pp. 388-389.

²⁸¹ OECD, 2006, pp. 17-19.

²⁸² Seymour and Pincus, 2008, pp. 392-393.

²⁸³ E.g., the Council Regulation (EC) No. 194/2008 of 25-02-2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar, OJ 10-03-2008 (L 66/1).

²⁸⁴ Seymour and Pincus, 2008, p. 394.

²⁸⁵ For instance, Article 2 of the ICESCR.

²⁸⁶ Seymour and Pincus, 2008, pp. 395-396.

5. The relevance of Economic, Social and Cultural Rights

After the 1993 Vienna World Conference the UN official position regarding human rights has been that they are interrelated, indivisible and interdependent and therefore they should be treated equally, on the same footing.^{287,288} Despite that, as economic social and cultural rights and civil and political rights require different immediate obligations, they may have different justiciability and, consequently, accountability.

In fact, considering the “*progressive realization*” of the economic, social and cultural rights and the fact that their realisation is dependent on the State “*maximum available resources*”, pursuant to Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁸⁹, the certification system proposed can accelerate the willingness of States to take targeted steps - as the economic spur is found.

Moreover, since rights’ realisation is dependent on available resources, there is an inherent danger of application of retrogressive measures in times of economic recession. Thus, again, if economic advantages are attached to the effective realisation of ESC rights, the economic limitations might no longer limit the effective implementation of rights.

As states in the General Comment 3 of the UN CESCR, there are minimum core obligations of States to ensure the satisfaction of, at the very least, “*minimum essential levels*” of access to essential needs.²⁹⁰ Those core obligations include the guarantee that the rights are exercised without discrimination, and to take concrete and targeted steps to protect society’s vulnerable members. There is, thus, an **intangible** baseline stage and

²⁸⁷ Vienna Declaration and Programme of Action, UN A(CONF.157/24 (part I), 13-10-1993, paragraph 5.

²⁸⁸ Alston, 2004, pp. 459-460.

²⁸⁹ The ICESCR and the International Covenant on Civil and Political Rights (ICCPR) were both adopted by GA Resolution 2200A (XXI) of 16-12-1966 (A/RES/21/2200), in force since 03-01-1976. They have a key difference: the “*progressive realisation*” of rights in accordance to the “*maximum available resources*” under Article 2 ICESCR. This difference is also noted, e.g., in the GC No. 3 (E/1991/23, 14-12-1990, paragraph 1), No. 12 (E/C.12/1999/5, 12-05-1999, paragraph 14), No. 14 (E/C.12/2000/4, 11-08-2000, paragraph 30) and No. 15 (E/C.12/2002/11, 20-01-2003, paragraph 17) of the CESCR.

²⁹⁰ CESCR GC No. 3, E/1991/23, 14-12-1990, paragraph 10.

a safeguard against the government's inaction when confronted with awful levels of deprivation due to economic constraints.^{291,292}

As is was already suggested regarding the phenomenon known as “*regulatory ritualism*”, the constant ratification of human rights conventions does not necessarily mean implementation and full enjoyment (and the capacity of enjoyment) of the rights protect under those conventions. In general, a correlation exists between the respect for human rights and the ratification of human rights treaties or instruments, but a certain cultural and political environment is required to guarantee effective rights' enjoyment and welfare (in the sense of well-being).

This justifies the assumption that in undemocratic states (where perhaps most human rights instruments were ratified) human dignity is less valued.²⁹³ So, when assessing the human rights situation within a certain country, indicators should be designed in order include such context analysis.

5.1. Labour rights in particular

When trying to predict the effectiveness of linking trade and human rights, in concrete labour standards, it is essential to understand the three main reasons why countries disrespect labour standards: (a) the economic reason, the fear that compliance will raise costs and hinder foreign investment; (b) the political reason the political purposes behind the violation of labour rights, e.g. the violation of freedom of association to refrain workers from associate themselves and be politically active, which is very common in authoritarian regimes and (c) the lack of resources, e.g. if the country is totally dependent on external influence and has no rule of law.²⁹⁴

An important observation can emanate from the above analysis of the GSP case. When the reason for non-compliance is political pressure, the effectiveness of relating trade

²⁹¹ OECD, 2008 b), p. 204.

²⁹² Additionally, also other relevant GC (No. 4, E/1992/23, 13-12-1991, paragraph 10; No. 12, E/C.12/1999/5, 12-05-1999, paragraphs 1 and 21; No. 15, E/C.12/2002/11, 20-01-2003, paragraph 17) provide the idea of minimum core obligations (regardless the state of development) which shall be achieved through State's *immediate steps*.

²⁹³ Mikkola, 2010, p. 4.

²⁹⁴ Kryvoi, 2008, p. 210.

and human rights is less obvious. It works better when economic pressures are at the basis of the violation, since the withdrawing procedure (a true sanction within the GSP system) from the system is able to cause effective changes in the behaviour of the beneficiary country.²⁹⁵ Thus, the less politicized the system is the better results will have the intrinsic operational features, in this case the economic incentives.

After the II World War, one of the cornerstones of welfare states was full employment. Active employment policies, labour intensive economic policies, among other measures, were introduced to achieve full employment. Nowadays, employment tendencies are quite different, and mobility in work²⁹⁶ is one of the most important characteristics of employment and is especially relevant in the EU employment policy.²⁹⁷

The economic recession, mainly after September 2008, and the expansion of the EU labour market to Eastern Europe have also created changes in the employment tendencies, particularly in the employers contracting options and in the level of unemployment, and countries and companies are now forced to adapt and create new measures to deal with it.²⁹⁸

The neoliberal trends which have been followed in most countries from the 1990's have brought several features that now characterise, in general, the Western labour market. In the context of economic globalisation, the features that characterise the West are being exported to other parts of the world. These features include **ferocious competitiveness, short term employment and productivity, privatisation of public services, weakening of the social dialogue, rupture from solidarity and collective interests, return to hierarchical management cultures and the directive power of employers, and the rise on income disparity**. The increasing of the global competition (especially

²⁹⁵ Kryvoi, 2008, p. 211.

²⁹⁶ See Articles 45 to 48 TFEU (consolidated version, OJ, 30-03-2010, C 83/47), regarding the free movement of workers within the EU.

²⁹⁷ Mikkola, 2010, pp. 125-127.

²⁹⁸ *Ibidem*, pp. 125-130.

due to the expansion of important markets such as the Chinese) appears to be the justification used by many States for the adoption of this model.²⁹⁹

Furthermore, globalization has posed serious dilemmas related to labour standards. In developing countries, where “cheap labour”, low safety standards, “bonded labour” and child labour is an attraction to investment, the same issues that alarmed Charles Dickens and others in the European industrial revolution have surfaced.³⁰⁰ The *economic reason* has been an important justification for non-compliance with labour standards as some countries and corporations understand higher standards and more restrictive labour regulations as a synonym of reduction of control over their workforce and decreasing of profits (as it would decrease competitiveness) and foreign investment.³⁰¹

Nevertheless, it is also defended the opposite and ignoring core labour standards does not carry necessarily economic growth.³⁰²

An OECD study from 1996 actually concluded that labour standards increase workers’ motivation and productivity and improve workers-management co-operation and sharing of valuable information.³⁰³ Actually, there are several reasons that justify the respect for labour rights. The *economic reason* suggests that labour standards help to prevent unfair competition (specially between countries with the same level of development). The *legal argument* defends that labour standards are enshrined in core international legal instruments and are considered to be a tool to assist and measure development and good governance. It reflects and builds respect for law, it improves dialogue between different social partners and it increases the prospects for exports as the importing countries demands growingly include respect for core labour standards.³⁰⁴

It is indeed difficult to change these new patterns and recall the model of sustainable and long-term production, equal labour relations and improvement of the conditions and level of employment. Notwithstanding, the right to work is a fundamental human right,

²⁹⁹ Mikkola, 2010, pp. 130-131.

³⁰⁰ Monshipouri and Welch, 2001, pp. 383-384.

³⁰¹ Kryvoi, 2008, p. 214.

³⁰² OECD, 1996, pp. 11-12 and 82; Kryvoi, 2008, pp. 212-213.

³⁰³ OECD, 1996, pp. 11-12 and 82.

³⁰⁴ Kryvoi, 2008, pp. 212-213.

often forgotten in times of financial or political crisis. Due to its **collective** nature, the right to work enforcement is sometimes jeopardized, since neither the ESC nor other international human rights' instruments consider this right as an individual entitlement and, therefore, legally and judicially enforceable.³⁰⁵

This is one of the main reasons why the thesis focus is on labour rights and also why an alternative system protecting these specific rights is of great importance.

5.1.1. International labour standards

In a system that relies on indicators to assess human rights situation, particularly labour rights, the core labour standards internationally recognised should be the first tools for the indicators' design. They will be examined in this Section.

In regard to labour standards they are mainly provided from ILO conventions, the International Covenant on Economic, Social and Cultural Rights (Articles 6, 7 and 8), the International Covenant on Civil and Political Rights (Article 8). In Europe, there are also provided by the European Social Charter (Articles 1-10, 20-22 and 24-29), the ECHR (Articles 4, 8 and 11) and several important directives related to labour relations.³⁰⁶

The ILO Declaration on Fundamental Principles and Rights at Work³⁰⁷ contain the four fundamental rights of workers, such as freedom of association, prohibition of forced or compulsory labour, abolition of child labour and elimination of discrimination in labour. These are the four *core labour standards*.³⁰⁸

Additionally, the eight main ILO conventions complete the key ILO standards which should rule and guide any labour relationship.³⁰⁹ These encompass the abolition of forced labour (No. 29 and No. 105), freedom of association and right to organise

³⁰⁵ Mikkola, 2010, p. 131.

³⁰⁶ E.g. Council Directive 2000/78/EC of 27-11-2000, in force since 02-12-2000 (OJ 02-12-2000, L 303) and European Parliament and Council Directive 2008/94/EC of 22-10-2008, in force since 17-11-2008 (OJ 28-10-2008 L 283/36); Mikkola, 2010, p. 136.

³⁰⁷ Adopted by the International Labour Conference at its 86th Session, Geneva, on 18-06-1998.

³⁰⁸ Alston, 2004, p. 458.

³⁰⁹ Mikkola, 2010, pp. 132-134.

(No.87), right to collective bargaining (No. 98), equal remuneration (No. 100) and non-discrimination in employment and occupation (No. 111), minimum wage (No. 138) and worst forms of child labour (No. 182),

The principles of *non-discrimination* (reflected in Articles 2 and 3 of the ICESCR, Article 14 of the ECHR, Article 1 of Protocol No. 12 to the ECHR and in Article E of the ESC) and the *material* (instead of formal) *equality* (Articles 10, 17, 20 and 30 of the ESC) are foundational of international human rights law and are an immediate obligation of States non-object of progressive realisation. As immediate obligations, economic restrictions of States should not be on the basis of the States' inaction or negligence in this regard.

States are the most relevant duty-holders of labour rights' obligations. Despite that, **labour standards are to be respected by both public and private entities**. Actually, ILO conventions do not make forced labour a violation which can only be carried out by States.³¹⁰

Pogge, in a critical analysis of Risse's revisionist view of human rights as membership rights, highlights several important aspects.³¹¹ One important aspect for this thesis is the extension of responsibilities for human rights violations to all agents who "*actively conduct themselves in ways that foreseeably and avoidably contribute to the frustration of fundamental needs or interests*", regardless if they are States or private entities such as foreign companies. In Pogge's view, **foreign banks, corporations and governments are as much responsible as the local government if they benefit, enable and incentive** violations or oppression against the local population.

Other relevant aspect of the Pogge's analysis respects labour rights concretely. Contrarily to Risse's position (who understands the right to work as a right to offer one's services since it allows the owner to have a source of his/her livelihood and self-esteem), Pogge defends that the right to work should include the right to have a work

³¹⁰ Kryvoi, 2008, p. 220.

³¹¹ Pogge, 2009, pp. 38-47.

opportunity and to have **real access to a job**.³¹² Despite the economic disincentive for private entrepreneurship that this might create, true commitments should be required (also) to the private entities so that their role in the human rights' world can be seen as genuine. Therefore, combining the two relevant aspects underlined, it is fair to conclude that private actors should also have labour rights-related duty when creating job opportunities and hiring someone.

Furthermore, the most relevant principle to ensure that labour standards should be on the basis of any economic activity is that *social progress should go hand in hand with economic progress*.³¹³ In fact, as it has been defended in **Section 4** following Sen's position, economic progress does not imply, necessarily, *development, welfare and human dignity*. Nevertheless, the means at disposal of economically developed societies require them to achieve a certain social level. Thus, indicators should be able to assess, the "*progressive realisation*" of labour rights according to "*available resources*".

Although one of the most important objectives of the 1998 ILO Declaration was to create a link between international trade and improvement of labour standards at the national level, there is obviously a divergence concerning the means to achieve it.³¹⁴ Neo-liberal economists (contrarily to human rights lawyers) defend that international labour law might distort the free labour market functioning and be counter-productive, defending that the trade liberalisation will naturally lead to improvements in working conditions.

A **middle position** can be defended and potentially competing positions can be accommodated.³¹⁵ As was already pointed, economic incentives attached to human rights compliance can be the answer to the apparent incompatibility of economic gains and respect for human rights.

³¹² Pogge, 2009, pp. 38-47.

³¹³ Mikkola, 2010, *idem*.

³¹⁴ Alston, 2004, p. 471.

³¹⁵ *Ibidem*, p. 472.

6. The pertinence of a human rights certification system

6.1. The “group metaphor”

Amongst different contexts and living beings, a common feature can be identified: the interest of making part of a certain group. The concept of “group identification” is historically one of the most important concepts in social psychology.³¹⁶

As suggested by some authors³¹⁷, also some European countries (e.g. Poland and Slovakia³¹⁸) have made legal efforts to belong to the “European family” and to be recognized as democracies. The accession to the ECHR was one of the ways found by former non-democratic countries to achieve that goal.

When creating a certification system of human rights, there is also an implicit premise of “group” (and *group identification theory*³¹⁹) attached. Those entities that are able to have a certificate will belong to a **cluster of compliance, agreement and respect for core human rights principles and provisions**.

6.2. Overview of accreditation and certification systems

Two essential premises serve as base to the proposal of a certification system: the first is that, in general and with some already noted exceptions, human rights protection does not include, directly, economic incentives for those who help defend them. The second is that, in order to introduce this economic approach into the realm of human rights protection the use of some already developed indicators is necessary - bearing in mind that only what can be measured can be economically evaluated. Both premises are essential to design the certification system proposed.

This Section will therefore introduce certification systems. To begin with, certification will be defined and certification schemes will be put in context with the change in

³¹⁶ As Lau points out, “*People choose as reference groups the groups that can provide them with positive rewards*”. See Lau, 1989, pp. 220-221.

³¹⁷ Keller and Sweet, 2008, Chapter 9.

³¹⁸ In Poland, the ratification was the necessary step to consolidate its return to the “European family” and provide Poland a certain *certificate of legitimacy*. Likewise, Slovakia was anxious to show that, although originating from a division of a democratic republic, it had all conditions to be a genuine democracy.

³¹⁹ Tajfel, 1982, pp. 20-27.

global governance. It will be discussed the role of certification entities as a new class of governance entities. Questions will be raised concerning their democratic legitimacy and the accessibility to certification systems.

In the following Section three of the oldest and most relevant accreditation and certification systems will be analysed.

The definitions of certification vary between institutions and scholars. For the International Standards Organisation (ISO), “*Certification is a procedure by which a third party gives a written assurance that a product, process or service conforms to specified requirements (...). Certification is based on the result of tests, inspections and audits and gives confidence to the customer on account of the systemic intervention of a competent third body*”. Governments and consumers are increasingly demanding certifications of goods that are carried out by organisations that are independent of any link to the manufacturer or purchaser. Indeed, as an economic market-based instrument, certification aims to raise awareness and, through this, provide incentives for both producers and consumers. It is, thus, “*a positive alternative system designed to encourage compliance with **voluntary standards** and to **reward** those who do comply by offering increased market share*”.³²⁰

Certification can assume three different types: first-party certification, where organisations generate internal rules and report conformity themselves; second-party certification, where firms and organisations produce together the rules and report compliance, and finally third-party certification, where independent entities set the standards and other bodies report conformity.³²¹

Nowadays, as it has been shown across this thesis, the role of private institutions has changed and they are no longer solely concerned with their influence in the international political and policy cycle, and gradually are agreeing upon, implementing and monitoring alternative forms of regulation, which include codes of conduct, management standards and also labels of certified products.

³²⁰ Conroy, 2001, p. 4 (emphasis added).

³²¹ Pattberg, 2005, p. 179.

In effect, there is a shift in the traditional concept of authority. “**Authority**” can be understood as a tool to command a certain behaviour. “*Private authority*” can be distinguished from “*public authority*” since the latter derives essentially from coercion while the former is a “*market or moral authority*”, based on persuasion.³²² But the so-called private “authority” can also be used to address issues that were before only in the hands of the public power. In this sense, authority now encompasses for example, the power of public opinion as it was developed in the **Section 3.4.3**.

There is, indeed, a broad and growing private movement using voluntary social and environmental standards, stakeholder-based, as a substitute of nations’ (*un*)control over the production and process methods of the products they import. This movement was very much made through advocacy-led certification processes.³²³

Moreover, the notion of rule-making is no longer only associated with States and international bodies but also with private institutions at the global scale. As regards global governance, many scholars argue that it “*is an analytical framework to capture systems of rule beyond the state and more traditional forms of international politics*” where private governance is also relevant.³²⁴

This “*new class of governance*” entities, involving private and non-governmental stakeholders, are negotiating health, safety, labour and environmental standards (so-called “*private rule-making*”), while establishing mechanisms of self-regulatory approaches, labelling and certification that “*provide incentives for firms to meet these standards*” in order to integrate social justice issues.³²⁵

The role of **social auditing** systems, in growth over the past years, has been one such tool for regulation and accountability.³²⁶ Social auditing can be used, for example, to

³²² Pattberg, 2005, p. 176.

³²³ Conroy, 2001, p. 2.

³²⁴ Pattberg, 2005, pp. 176-177.

³²⁵ O’Rourke, 2006, p. 899.

³²⁶ Courville, 2003, pp. 269-271.

verify the validity of the information included in companies social and sustainability reports.³²⁷

Social certification systems are a different type of corporate social responsibility initiatives and have defined standards and indicators, which are based on widely accepted social principles and rules and also through stakeholder consultation. The social audit is usually a component of the certification.³²⁸

One of the most controversial issues is the question of *who* undertakes the social auditing: should it be done by skilled and expert auditors with experience in other fields of auditing or are there other skills needed for the specific case of social auditing.

The auditing can be done for instance by profit entities, usually accounting and quality assurance companies (e.g. KPMG, PricewaterhouseCoopers) that despite having higher resources that can benefit the auditing process, may see social auditing as just another service provided to companies with which they have developed strong financial relationships. This might weaken the auditor's impartiality (pointed as one failure of the giant PricewaterhouseCoopers' social auditing).³²⁹ Furthermore, the *for-profit approach* has been criticised as being difficult to match with the underlying moral of social and environmental auditing, especially in the case of certification of small-scale producers from developing countries. Actually, some international auditing companies have been criticised for their lack of sensitivity regarding the local cultural, social and environmental contexts.³³⁰

Social auditing can also be done by *non-profit* NGOs. NGOs have due backgrounds in human rights, environment and social justice and their commitment to social change may result in lower charged fees which is important for small entities. In order to shape social transformation in the private sector, a mission-driven certification (less business-driven) can be more effectively carried out by not-for-profit entities (such as the Forest

³²⁷ Courville, 2003, p. 272.

³²⁸ *Ibidem*, p. 273.

³²⁹ *Ibidem*, pp. 275-276.

³³⁰ *Ibidem*, p. 276.

Stewardship Council) than by private for-profit auditors.³³¹ However, NGOs have political normative motivations that may constrain the impartiality needed to such a technical work.³³²

These new certification schemes, including social auditing, raise questions about democratic governance. The existence of democratic structures and institutions does not mean, *per se*, good governance and the concept of democratic governance is broader than the institutions which compose a State. The democratic institutions are important to make audits effective and useful, since social and other types of audits need to be grounded inside a specific legal regime.

Furthermore, to understand to which extent and to whom are social audits accountable, it is essential that social auditors too (and not only the entities that are being object of auditing) are subjected to transparency processes, such as strong auditor guidelines, conformance assessment, sanctions, reporting and appeal mechanisms for all stakeholders affected by the certification system.³³³

One essential element of any certification system, for the maintenance of the system itself, is *trust* from consumers and supply-chain companies on the social justice values of a certified company.

This attribute of the certification system is closely related to its voluntary nature. Companies and other entities will only voluntarily submit themselves to a scrutiny of their operations, books and means of production if the third party system he is trustable i.e. serious, transparent and fair. If a company is punished, for example with negative publicity, due to the failure or unreliable work of a certification entity, it is unlikely that it will seek certification again. Diversely, a trustable certification organisation with strong accountability mechanisms will be very positive for companies when the certificates are made public. From the consumers' perspective, in order to "*distinguish*

³³¹ Courville, 2003, pp. 276-277.

³³² Braun and Gearhart, 2004, p. 187.

³³³ Courville, 2003, pp. 281-283 and 285.

real performance benchmarks and green imagery” the only safeguard is an independent and trustable third-party certification.³³⁴

Another important aspect worth discussing concerns the *accessibility* of certification and its costs. If **certification costs** (for fees and introduction of sophisticated management systems) are very high, most vulnerable producers will not be able to benefit from the incentives and rewards brought by the system and will be, once again, in a disadvantaged position compared to powerful enterprises.

This is indeed a very serious problem of the current schemes. For example, despite the fact that SAI (Social Accountability International) is not seen as a for-profit organisation, SAI’s accreditation system has been criticized precisely because of the high fees charged.³³⁵ Also FLO (Fairtrade Labelling Organisations International), which before did not charge certification fees, has already introduced fees in its system.³³⁶ In this sense, a critique to non-governmental governance systems can declare the latter as a “*new form of privatized, elite regulation*” that aims to protect brands (capable to pay high fees) which will enjoy the benefits of the certification, rather than promote changes in their behaviour.³³⁷

The problem is not exactly to protect or not protect brands. Instead, it is the accessibility’ question. It is highly contradictory that these certification entities are created to certify in a non-profitable way, and then small producers are unable to pay the charged fees.

Despite the already explained efforts and improvements in the certification and accreditation schemes, there are still some critics regarding the **lack of commitment** of some schemes with human rights issues. For example, Greenpeace has filed a complaint in April 2011 to the Forest Stewardship Council (FSC) based on human rights serious and systematic abuses of the Sodefor/Nordsudtimber timber company in Democratic Republic of Congo (DRC), asking for the disassociation of the Nordsudtimber. The FSC

³³⁴ Courville, 2003, p. 290.

³³⁵ *Ibidem*, pp. 291-292.

³³⁶ FLO’s website.

³³⁷ On the critics addressed to certification systems, see O’Rourke, 2006, pp. 899-900.

decided, in the beginning of 2012 (11 months after the complaint), not to disassociate and, instead, to require changes in the Sodefor behaviour.^{338,339} This FSC solution may be target of criticism: for the lengthy proceedings and also for the flexibility regarding its “Policy of Association” requirements. Indeed, if there is enough evidence of non-compliance, and if the acts that constitute the non-compliance are serious, the certification or accreditation system should revoke the certificates.

The express commitment to human rights is essential to give credibility to a certification entity. **Human rights shall not be seen as accessory and must lead its activity.**

The three systems, analysed below, are different in nature, form and in objects of auditing, so their analysis will enable a broader perspective of current accreditation and certification systems.

6.2.1. The Forest Stewardship Council

The **Forest Stewardship Council** (FSC), founded in 1993 with the participation of famous organisations such as the World Wide Fund for Nature (WWF) and Greenpeace, is one of the most respected and prominent **private governance institutions** in the area of environment. Its “FSC Standards and Principles” managed to have consensus among its Council. More important, the FSC was able to join - for the same goal - Greenpeace and other environmental organisations and MacMillan Bloedel, a giant Canadian timber and paper enterprise.³⁴⁰

As happens in other certification and accreditation systems or mechanisms, to become certified by the FSC the entity certified must conform to all applicable human rights principles and standards before earning the certification³⁴¹ and the right to use the FSC label. The procedure for setting the FSC standards involves in its forum several

³³⁸ Greenpeace, 27-03-2012.

³³⁹ The same happened in the case of the external complaint of an Italian NGO to CoopItalia for human rights abuses committed by a Kenyan pineapple supplier, Delmonte Royal. The SA8000 standard requires CoopItalia (as certified company) to control its suppliers. Nevertheless, CoopItalia decided not to seek another supplier and worked with the pineapple supplier to improve the workers’ rights. Courville, 2003, p. 286.

³⁴⁰ Conroy, 2001, p. 2.

³⁴¹ FSC’s website.

different (and sometimes opponent) actors and relevant stakeholders.³⁴² **The FSC does not undertake certification itself; instead, it gives other entities the accreditation needed to perform certification.** It is organised in three chambers: environmental, economic and social, which ensures the wide application-range of its rules and standards.³⁴³

Accreditation Services International (ASI)³⁴⁴ is the company managing the FSC accreditation program, as a third-party to assess and ensure trust, transparency and credibility to the certification. The accreditation bodies ensure neutrality and independence of standard-setting and evaluation. If non-conformity with the original conditions of accreditation occurs, a “correction action request” will take place and the certification entity will be required to remedy the problem within a certain period, with the consequence of the withdrawal of accreditation.³⁴⁵

For the proper and useful work of the system, the certification bodies are subjected to on-going observation by the accreditation body. Termination of accreditation in case of non-conformity or post-violation of the required standards is always possible.

One key aspect of the “institutionalised solution” of the FSC is the *production* and *dissemination* of norms, standards and knowledge in sustainable practices. Additionally, although the FSC is not expressly focused in human rights, the FSC has explicitly incorporate core labour ILO norms in its standards. Another very relevant aspect of the FSC work and standards established is the importance given to the indigenous people’s rights, as well as to the economic and social well-being of the communities whose life is influenced by the certified activity.³⁴⁶³⁴⁷

All these aspects are important to both internal organisational learning, to guarantee the maintenance of the FSC credibility and inter-organisational learning, based on its

³⁴² Pattberg, 2005, pp. 179-181.

³⁴³ Conroy, 2001, p. 5.

³⁴⁴ ASI’s website.

³⁴⁵ Pattberg, 2005, p. 181.

³⁴⁶ Conroy, 2001, p. 6.

³⁴⁷ Pattberg, 2005, pp. 182-183.

organisational diversity, with a wide network of members, stakeholders and general public.³⁴⁸

Nevertheless, concerns have been addressed towards FSC. First, the certification is mainly concentrated in industrialised countries with a well-institutionalised forest sector.

Second, the competing private initiatives³⁴⁹ (often with less strict standards and cheaper certification options) may undermine the political relevance of the FSC and consequently its relevance, as well as weakened the voluntary approach defended by the FSC.³⁵⁰ The proliferation of fraudulent or deceptive labels of certification is indeed a current problem and it is important to firmly monitor the activity, to raise information on customers and to address the unlawful acts.³⁵¹ If no agreement upon strict standards is reached, the implications and values of certification would vary widely.

This second issue demands the establishment of relevant, independent and credible **certifiers** as well as accreditation systems to ensure the integrity on the standards application and certifiers' independency.³⁵² The use of core international conventions and well developed indicators might help to solve these difficulties. This is obviously applied, in general, to all credible certification and accreditation systems.

The demand for "FSC products" has grown rapidly, not solely due to the *demand of consumers for certified wood products* but also due to the *commitments* of key producers and retailers in accordance with their internal culture of social and environmental responsibility.³⁵³

³⁴⁸ Pattberg, 2005, pp. 183-185.

³⁴⁹ Conroy, 2001, p. 8.

³⁵⁰ Pattberg, 2005, pp. 185-187.

³⁵¹ Conroy, 2001, p. 16.

³⁵² *Ibidem*, p. 4.

³⁵³ *Ibidem*, p. 7.

6.2.2. The Fairtrade Labelling Organizations International

The **Fairtrade Labelling Organizations International** (FLO), created in 1997, is probably one of the most important fair trade organisations. Social certification is provided for the purpose of using the so-called “*fair trade*” label. The *fair trade movement* has helped to extend the scope of social auditing, by including issues of trade and fairer prices to support small producers in their trade relationships with international corporations and other international buyers.³⁵⁴

FLO standards focus on social and economic standards and therefore include environmental issues. The harmonisation process operated by FLO in its standards structure as well as its important development goal, resulted in two sets of criteria: *minimum criteria* (which is required for the certification) and *progress criteria* to be developed over time. There are different standards for small producers and hired labour producers. For small-holder producers’ cooperatives or associations, the FLO focus is the democratic functioning of the organisation, ensuring all members benefit equally from “fairtrade”. In the case of organisations working with hired labour, the standards are focused on the workers’ rights, applying core principles and provisions of the ILO conventions.³⁵⁵

The economical element is quite relevant, since it gives an economic incentive to the social responsibility through the “**Fairtrade**” **premium and the pricing mechanism**, and allows producers to have their production costs covered and also to have the financial comfort necessary for long-term development and planning.³⁵⁶

In the coffee market, the certification process was very significant and its impact on coffee farmers was substantial.³⁵⁷ The advocacy of the civil society and certain NGOs has been crucial to convince companies to sell certified coffee to their customers.^{358,359}

³⁵⁴ Courville, 2003, p. 274.

³⁵⁵ *Ibidem*, p. 280.

³⁵⁶ *Ibidem*, p. 281.

³⁵⁷ Conroy, 2001, pp. 10-11.

³⁵⁸ *Ibidem*, p. 11.

One fundamental difference of FLO when compared to other certification systems is that it provides marketing support to producer and “Fairtrade”, and therefore has a specific development function in helping disadvantaged producers.³⁶⁰

6.2.3. The Social Accountability International

The **Social Accountability International** (SAI), created in 1997 by the Council on Economic Priorities (CEP), is an accreditation system for organisations certifying compliance with the *SA8000 standard* (standard for decent work), based on core labour rights, mainly provided by the ILO Conventions, UN conventions and declarations, as well as on ISO management systems.³⁶¹ The voluntary standard was developed by and international multi-stakeholder Advisory Board that includes human rights NGOs (e.g. Amnesty International), trade unions and transnational corporations.

The SAAS (Social Accountability Accreditation Services) is the accreditation body, which accredits and monitors organisations seeking to act as certifiers of compliance with social standards.

Besides accreditation services, SAI also supply training to auditors and suppliers and promotes educational events.³⁶² Contrarily to the FLO, **SAI does not carry certification processes**. Only organisations listed on the SAAS website are accredited by SAAS and have the ability to grant legitimate and recognised SA8000 certificates.

The SA8000’s standards only deal with issues related to workers’ rights and labour conditions, covering issues such child labour, forced labour, freedom of association, collective bargaining, discrimination, working hours and compensation (right to a living wage). The working facilities are required to have a management system to implement the SA8000.³⁶³

³⁵⁹ E.g., after being pressured by the social activist organisation “Global Exchange”, since 2000 the Starbucks, probably the largest chain of coffee houses in the U.S., started selling fair trade coffee. Conroy, 2001, p. 3.

³⁶⁰ Courville, 2003, p. 279.

³⁶¹ *Ibidem*, pp. 270 and 280.

³⁶² *Ibidem*, pp. 278 and 280.

³⁶³ *Ibidem*, pp. 280-281.

Looking close to the SA8000 standard, it is possible to assess that its text is excessively broad what leaves a high discretion to the auditing or certification entity. Moreover, the standard is very much attached to national legislation and some exceptions to the criteria set in the SA8000³⁶⁴ are allowed in accordance with national laws, which may be less favourable to the worker.

For example, Article 8, at 8.2 (a), allows deductions in salaries for disciplinary purposes if it is permitted by national legislation. The ILO Protection of Wages Convention, 1949 (No. 95)³⁶⁵ under Article 8 states that deductions³⁶⁶ from wages are permitted if prescribed by national laws or regulations. Also the European Social Charter allows such deduction based on the same motive.³⁶⁶ According to the ILO General Survey of the reports concerning the Protection of Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85) of 1949, there are several differences in the countries' approach to the wages deduction.³⁶⁷ Thus, the application of the SA8000 standard is open to uncertainty and discretion.

If the application of SA8000 standards is dependent on national State's legislation, allowing exceptions to labour standards, SAI does not embody a true alternative to the current human rights system.

Comparing SAI and FLO, SAI has a greater focus on external actors while FLO brings the key stakeholders to its system (e.g. Fairtrade Forum).³⁶⁸ To strengthen accountability and the follow-up process, both FLO auditors and SA8000 auditors have reporting mechanisms. The auditors in both organisations are prohibited to give technical advice or make recommendations. Both have non-conformance mechanisms (with different procedures depending on the degree and seriousness of the non-

³⁶⁴ The SA8000 standard last version (2008) is available on the SAI's website.

³⁶⁵ Which came into force on 24-09-1952.

³⁶⁶ Under Article 4 ESC, paragraph 5, States undertake to "*permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards*".

³⁶⁷ In many countries, such as Argentina, Cameroon, Mexico and Viet Nam, the imposition of disciplinary fines by way of wage deductions is formally prohibited. In contrast, deductions in the form of fines for breaches of discipline or negligence acts are authorized in, e.g., Chile, Morocco, Romania, Kuwait, Oman and United Arab Emirates. See ILO General Survey of 2003, submitted in the 91st Session of the International Labour Conference, 2003, p.133.

³⁶⁸ Courville, 2003, p. 287.

conformance) and commensurate sanctions for situations such as misuse of the premium or lack of cooperation with monitoring body.³⁶⁹

In what concerns the possibility of appeal and complaints, the SA8000 has different levels of complaints, which can be filled by external entities or by certified companies. Also the FLO has a complaint procedure and the issues are investigated by the certification committee. Nevertheless, the FLO mechanism is not widely publicized, contrarily to the case of SA8000 that guarantees stronger monitoring, **transparency** and public awareness.³⁷⁰

7. A Certification System for Human Rights Protection: a proposal

7.1. Background

Since human rights compliance is still deficient, despite a number of innovative approaches to human rights compliance, the need for an alternative and more efficient mechanism for human rights protection seems certain and urgent, as discussed in detail.

Nonetheless, the analysed current trends already embody *alternatives* to the traditional human rights system and suggest a *link between human rights and economics* in trying to regard *development* both as economic and social. This innovative link is usually created through the attachment of *economic incentives* to human rights' compliance and exists in both *public and private* schemes. Moreover, it has been found that *private systems of governance* do not preclude the maintenance of *human rights critical authority*, since they rely on and advance core human rights instruments.

7.2. Overarching objective

The proposed system intends to improve the human rights protection through the attachment of economic incentives to compliance. A certification system provides the operational basis of the system. That is, human rights certificates based on sound

³⁶⁹ Courville, 2003, pp. 284-285.

³⁷⁰ *Ibidem*, p. 286.

indicators would measure/attest the level of protection and justify the granting or removal of economic incentives. The system aims to demonstrate that a *voluntary approach* to human rights may be the most effective way to create willingness for compliance and make accountable both private and public entities.

The proposed system does not merely aim to link human rights compliance to money-benefits. That would make human rights lose their normative/non-negotiable weight. The aim is to use an economic spur to increase the motivation to comply with human rights at both formal (treaty ratification) and substantial (capability of rights enjoyment) levels.

In the case of States, for example, for a system of human rights certificates to fully respect of international law, such certificate and their benefits should only apply after treaty ratification. In this way, human rights' compliance is not trivialised, making clear that compliance is not dependent on the certificate and that even if the certificate or attached incentives are removed (for any reason) the country is still bound by international law.

For companies, the certificates' reliance on internationally recognized standards will ensure that they are brought under the scope of international human rights law.

7.3. Key design aspects of the system

Voluntarism

An essential difference from existing human rights approaches and mechanisms is the voluntarist aspect of the proposed system. States and other entities voluntarily want to belong to this system and respect its standards because it is able to bring them a surplus-value.

As the purpose of the certificate system is to augment compliance vis-à-vis the stricter, inflexible and confrontational traditional human rights system, it should be given a chance to *progressive compliance* (similar to an “*à la carte*” approach).

This is consistent with the previous observations, which is that the monitoring system should take into account the situation of the country to a certain extent. If the general objective is to achieve a balance between the normative and the descriptive dimensions of human rights (as defended by Beitz and Koskeniemi), the system here proposed should probably be strict on the human rights that are on the core human rights instruments (as their content is non-negotiable), but more flexible on the number with which a country needs to comply at once.

The “*à la carte*” design can be seen as a serious inconvenient of the system, recalling the already criticized European Social Charter. Perhaps we could avoid this shortcoming by making accession to a certificate dependent on the certified entities compliance with *all* the indicators defined in the most exigent certification standards. However, this would be too utopian and could put away the interest of certain actors for the system.

Progressive compliance

Therefore, the system would be organised in **scales of compliance**. Following the harmonisation process operated by FLO in its standards structure, two sets of criteria would exist: *minimum criteria* (required for the certification) and *progress criteria* to be developed over time. That is, within a process aiming to streamline human rights compliance, the design focuses on small steps rather than unreachable goals.

It is expected that the economic incentive attached to the certificates will, *per se*, create the stimulus in the participants to progressively adhere to the “*maximum compliance scale*”.

Non-regressiveness

The system will not allow to do regressive compromises, that is, once the participant entity have adhered to a certain number of human rights, it cannot reduce its compromise in the next turn.

Non-governmental

The system will adopt the form of non-governmental organisation, being a not for-profit scheme, in order to ensure the system's inclusiveness and detachment from politicization.

Stakeholder-based

In addition, stakeholder-based standards - contrarily to superimposed standards - guarantee the incorporation of multiple voices and, therefore, provide a higher chance of reaching consensus on the certification requirements and, more likely, compliance with the requirements.

Indicators would be previously set through the consultation of interested stakeholders, such as States, companies, trade unions, human rights experts and NGOs, ensuring that the conceptualisation of the system is made in light of different perspectives and interests.

7.4. Structure of the system

The design of the system requires clarification on the following issues:

Content of the indicators

This thesis will not develop upon the design of indicators for academic reasons.

Despite that, some key aspects should be outlined. Basically, indicators should match the “*SMART criteria*” and therefore they should be “*Specific, Measurable, Attainable, Relevant, and Time-framed*”.³⁷¹ In this sense, indicators need to:

- i) Measure the material implementation of rights, following the teachings of the capabilities approach.
- ii) Be precise and explicit, providing for objective criteria and not assume a discretionary nature as to deprive beneficiaries of their rights under these schemes.

³⁷¹ Andersen and Sano, 2006, pp. 14-15.

- iii) Be founded on an acceptable methodology of data collection.
- iv) Be suitable to the context taking into account the social and economic development of the country concerned.
- v) Be anchored in core human rights instruments (such as the ICCPR, ICESCR, ILO conventions, ESC, ECHR, and local laws), being based in the normative content and the minimum core attributes of the rights in order to reflect the duty-holder's responsibility to *respect*, *protect* and *fulfil* human rights and encompass cross-cutting principles such as non-discrimination, accountability, indivisibility and empowerment.
- vi) Rely on already developed labour rights indicators (such as the ones from the OECD, the World Bank, among others).
- vii) Ensure impact assessment of granting or removal of certificates.
- viii) Modifiable across time to so that the certification standards are not fixed and to adapt certain technical standards to the current realities. Nevertheless, this shall not mean that stakeholders will be able to make pressure towards the standards revision in accordance with their private interests.
- ix) Be publicly available.
- x) *Types of economic incentives*
- xi) The actors who comply with human rights obligations should be awarded with economic benefits for their effort and behaviour.
- xii) There are several potential incentives of a human rights certification system. The system benefits can be divided in two main groups. First, inherent incentives (e.g. consumers interest in products with a "human rights label"). Second, negotiated incentives that can be established relationships between private parties (e.g. having a valid certificate as a contractual conditionality), public parties (e.g. the inclusion of the certificates in EPA's and in other trade agreements conditionality clauses³⁷²) or public and private parties (e.g. award companies who hold a certificate with tax benefits; establish certificates as requirement in public procurement activities).

³⁷² Imagine, *for instance*, the ironic situation that would be France being excluded from a certain multimillionaire business for not having a human rights certificate, due to discriminative migration policies.

Types of economic incentives

The actors who comply with human rights obligations should be awarded with economic benefits for their effort and behaviour.

There are several potential incentives of a human rights certification system. The system benefits can be divided in two main groups. First, inherent incentives (e.g. consumers interest in products with a “human rights label”). Second, negotiated incentives that can be established relationships between private parties (e.g. having a valid certificate as a contractual conditionality), public parties (e.g. the inclusion of the certificates in EPA’s and in other trade agreements conditionality clauses³⁷³) or public and private parties (e.g. award companies who hold a certificate with tax benefits; establish certificates as requirement in public procurement activities).

Participants

Stakeholder participation in all stages (from standard-setting to enforcement) is required to bring legitimacy to the system. Thus, a multilateral framework and a joint enforcement regime should be introduced. Therefore, cooperation with ILO and UN bodies, NGOs, human rights experts and trade unions should be mandatory. It aims to make stakeholders share a sense of ownership and participate in the standards development and revision.

Accessibility

To avoid the exclusion of economically disadvantaged candidates and cover all the interested actors, low fees should be applied and special financial help should be provided to the most vulnerable. This will help them introducing human rights management systems (in accordance with the certification requirements) and the making the corresponding changes within their companies or institutions.

³⁷³ Imagine, for instance, the ironic situation that would be France being excluded from a certain multimillionaire business for not having a human rights certificate, due to discriminative migration policies.

If all interested parties are granted the same entrance and operational conditions, the economic advantages of the system will be allocated without discrimination.

Accountability

An external accreditation system (similar to the ones existing both in the FSC and the SAI) will scrutinise the granting of certificates.

The granting and withdrawing decisions should always be subject to an appeal mechanism that ensures the objective application of the conditionality requirements.

An effective complaints and appeal mechanism should be introduced. In case of suspicion of standards' violation, a detailed investigation will take place. If a breach in the standards is found, the withdrawal procedure will be initiated. The withdrawal procedure should follow detailed guidelines and must include impact assessment to avoid or minimise unintended side effects.

The complaints and appeal mechanism should be endorsed with detailed guidelines, and to ensure objectivity, implementation bodies will not be provided with too much discretion. The strictness of the guidelines for granting and withdrawal of certification will avoid the application of double standards and minimise the chances of fraud and other unlawful acts.

Moreover, a strict code of conduct of the certification entity and its auditors will be in place. The auditors will be subject to transparency processes, such as strong auditor guidelines, conformance assessment, sanctions, reporting and appeal mechanisms for all stakeholders affected by the certification system.

Publicity

The system will assume a public nature, to accomplish the objective of awareness and diffusion of the system and of its contents as well as to ensure its accountability and transparency. Therefore, indicators, applicable standards, auditing methodologies, application procedures, complaint and appeal procedures, granting and withdrawal of certificates will be published in an appropriate and accessible data-base. For the same

reasons, all the private participants should be committed in making companies' audits public.

Periodicity

The granting procedure should closely review the country and the company situation and therefore it is essential that it includes visits *in situ*. The participants will be required to have a supply chain monitoring system as well as a labour rights management system.

The beneficiaries should be under periodic review. A comprehensive annual reporting mechanism should be introduced.

Designation

The system may adopt designation of ***Certification for Human Rights (CHUR)***.

7.5. Potentially interested actors

It is conceivable that the proposed system may interest different human rights' actors, due to the voluntary nature and the benefits of the mechanism and make them decide to participate in the process or belong to the cluster of certified entities.

Policy-makers and/or Governments

Policy-makers and/or Governments would be able to evaluate the human rights' situation within a country, helping in the design of strategies for public policies. The adoption of a rights-based approach for public policy would lead to a more effective application of the commitments assumed by Governments with the international human rights' community.

Additionally, a certification system can be viewed as an alternative to the crisis of the public authority analysed throughout the paper, i.e., some kind of "*epistemic authority*" to which can be delegated certain functions originally in the hands of public entities.

Moreover, as tax incentives are often associated with preferential tax treatment, as an incentive to investment³⁷⁴, States can award with tax benefits those who comply with human rights using the certificates to attract foreign investment.

In addition, States can be interested in such a system for economic reasons, as they may consider that their companies will gain comparative advantages with State-level certification, just like some companies use corporate social responsibility and its correspondent labels to increase their profits.

Therefore, on a cost-benefit analysis, if the money loss in result of trade sanctions is higher than the economic benefit of foreign investment, the States would tend to comply with human rights instruments.

Nevertheless, when the reason for non-compliance is a situation of political pressure, for example, the evaluation of effectiveness of the link between economics and human rights might be different, since the loss of political control might not be comparable with an economic benefit. The mere “*mobilization of shame*” can play an important role in democratic regimes, even though it might not influence dictatorial or non-democratic.³⁷⁵

NGOs

NGOs can use the certification system in four different ways. First, by participating in the certification process, bringing the know-how and the independent field experience to the process in order to improve its results. Second, by being certified (and accredited) as human rights defenders or human rights protection bodies, having more legitimacy to work both in the private and public sector.

Third, many NGOs (Oxfam, World Wide Fund for Nature, among others) find the corporate engagement through certification an important and productive approach to reach their goals. As the global advocacy is harder in a global context of changes and global expansion of human rights and environmental issues, the certification performed

³⁷⁴ OECD, 2010, p. 38.

³⁷⁵ Kryvoi, 2008, p. 221.

by accredited entities may help NGOs to focus their work in specific problems and in monitoring changes of behaviour, instead of making advocacy against general issues or the corporate sector in general. As the certification is based in robust indicators, NGO's can use the assessment prior to a certification to lobby international institutions and hold states and other entities accountable for fulfilling human rights obligations, as well as to promote policy reforms.

Finally, NGOs can use certification benefits to promote the widespread of the certification process to non-certified industries that will seek human rights certification for their products.

Corporations and Business Community in general

The already demonstrated irrefutable link between business and human rights and the growing recognition of the need to integrate human rights in corporate activities is creating a new “profit arena”: the economic value of corporate social responsibility (explained in **Sections 3.4.3.1.** and **3.4.3.2.**).

On one hand, and most relevant, all companies have responsibility to ensure respect for human rights in their activities, within the workplace and towards the local communities. On the other hand, branding and consumer awareness towards social and environmental reduces risk against criticism of the company practices.

Moreover, companies to realise that certification has an economic value due to image vulnerability issues (particularly of the more successful companies), credibility through third-party certification (which goes far beyond internal codes of conduct), **economic benefits** brought by the **market differentiation** and interest of socially responsible investors.

Finally, the best and more attractive option for companies is to take part with social advocacy groups in the creation of standards and systems of certification that are able to match corporate interests, instead of entering into image-damaging battles.

Communities and grass roots organisations

Those which are themselves affected by certain measures, policies, and laws or organisations working closely with groups or communities can use the available data and the certificates to better understand and inspect the behaviour of governments, business community or other participating entities. The tools and data can be used as additional value of empowering these groups and also to develop their choices.

Additionally, grass roots organisations can participate in the standards' design, providing valuable information and ensuring the inclusion of their interests.

International Organisations

The certificates can be used by international organisations to pressure States and to lobby at international political meetings and committees, due to the chance to make comparisons between countries on the implementation of the same human rights obligations. The same function can be used regarding the private sector.

Moreover, requiring NGOs themselves to be certified would provide an immediate source of NGO legitimacy (accreditation) in their legal arrangements.

Finally, human rights mechanisms, such as the UN Universal Periodic Review could be connected with the certification system, as complementary to it, since it could be used as an official tool of assessment of the human rights situation within a certain country.

7.6. Speculations on the system

The CHUR can push the human rights system towards a less politicised, more credible, transparent and effective scheme. With coordinated efforts, regulatory human rights systems can be opened-up and strengthened by bringing in new voices and mechanisms for encouraging improvements in States and global supply chains.

The public nature of the system and the inherent widespread of information would help in making a comparison between different actors, provide liable information to workers and consumers, create incentives for brands and States to avoid hurdles in their

contracts, create willingness increase transparency, improve technical capacities and most of all support change.

Despite all that has been said, no guarantee can be given that a voluntary certification system and its indicator and monitoring schemes will naturally converge into a more complete, effective or democratic human rights regulation system. The potential unintended consequences of the certification system can be conjectured. It may lead to corruption; what is more, proliferation of similar human rights certification systems with less strict guidelines competing for the hearts and minds of consumers could jeopardise and confuse the public opinion on the system. This would harm its credibility and consequently threaten the effectiveness of the system. In addition, practical impossibilities such as countries not opening up their borders to being examined may hinder the operational feature of CHUR.

In a more general way, the system may raise the question of the privatisation of regulation, and the danger of substituting democratic forms of regulation by top-down, elite governance systems.

8. Conclusions

The thesis has demonstrated that since our contemporary account of universal human rights is not universally accepted, but it is able to provide a critical perspective to judge countries' behaviour, the certification system will allow maintaining the critical function of human rights, but deprive human rights' compliance of any type of *superimposition*.

Following the same path of Koskenniemi, the thesis emphasised the idea that human rights obligations should not be enforced in every country regardless of their consent or adherence to human rights treaties since that would resemble a "*post-colonial*" imposition of ideals (*i.e.* the Western conception of human rights). Diversely, it is expected that, with the system of certificates and the economic incentives attached to them, treaty ratification will increase, respecting thus the consent needed in international law to request compliance with human rights' standards.

It has also been found that treaty ratification does not mean implementation. In this sense, Nussbaum and Sen's *capabilities approach* can be linked to the phenomenon known as "*regulatory ritualism*" whereby some States consistently ratify conventions they think that would make them "look good", but then prove lethargic in their implementation. Thus, the assessment of treaty implementation should be connected with the real context of the country, *i.e.*, with the capacity of *enjoyment* of the rights enshrined in the ratified treaties. Hence, the certificate system of human rights comes with institutional and periodical checks of the implementation and existence of real capabilities.

Advantages over current systems

Applying these premises to currently available mechanisms of human rights compliance, it is possible to conclude that the latter are constrained by the following limitations: 1) the **politicization** of the human rights world; 2) the lack of **reciprocity** of certain measures; 3) **enforcement** through *sanctioning* of most systems (in opposition to an "*incentives approach*" herein proposed).

Politicization is common in the human rights world and, particularly, in some mechanisms, such as the UPR and the GSP+. After analysing the UPR, we have concluded that it is politically manipulated and non-transparent. The political influence in GSP transpires mainly from the application of “double standards” in the withdrawing procedure.

Likewise, NGOs, which are meant to be independent and impartial, face a real danger of co-optation from governmental, corporate and funding interests. The NGO sector is undergoing a crisis of transparency, accountability and credibility. The question of *who will watch the watchdogs* is pertinent and relevant to the suggested certification system.

Even though the role of NGOs has increased, there are still legal and political limitations to their legitimate intervention in the decision-making process. It has been demonstrated that the question of legitimacy of NGOs within international organisations can be solved through accreditation processes. Despite having been contemplated in some important organisations, the current accreditation systems grant insufficient powers to NGOs. Contrarily, the approach proposed in this thesis would address these obstacles and bring co-operation and openness to the necessary scrutiny. On one hand, NGOs may use CHUR for themselves, as a way of accreditation. On the other hand, NGOs would be able to participate with their expertise and field-experience in CHUR.

As it was revealed, the critics made to the European “*facilitation measures*”, like the ones operated under the EPA’s and the GSP+, for instance, are mainly due to the fact that those measures are not based on **reciprocity** and that Europe would never accept being under the same “foreign” scrutiny. The aggressive unilateralism of the EPA’s and the GSP scheme, conferring to European partners a fragile negotiation position, does not enable a fair balance of all intervenients.

A system like the proposed might help solving the question of reciprocity. In fact, the voluntary adherence to a certification system will not be dependent on unilateral imposition of certain rules upon a party (e.g. the developing country) by another (e.g. the EU member states) since *all* participants enjoy the same conditions. Actually, the risk that the system may violate non-discrimination rules (as granting special conditions

to particular entities) is minimal as far as there is an objective and open criteria for the participants.

Moreover, it is reasonable to request that the connection of trade and human rights is made seriously and committedly. That is, that the provisions ensuring the connection are embodied of “operational legal force, in other words, **enforcement**. It is true that the EPA’s encompass *human rights, development and sustainability*, linking trade with non-trade issues. Nevertheless, these are solely treaties’ general objectives. As they are international contracts, the application of the principle of *lex specialis* may prevent the significant use of and compliance with those general human rights’ objectives, when differing from a treaty-specific objective.

In the proposed human rights certification system, certificates could be included in the treaty provisions as a substitute to the existing conditionality clauses. Through this, two interdependent advantages would come out: 1) the effective application of the human rights conditionality will not be dependent on the country’s interpretation since the human rights assessment would be made *a priori* (only if certified the entity could be part to the treaty) and; 2) the economic incentive would lead to a real human rights engagement in the trade sphere.

Moreover, the nature of economic sanctions, present in the Security Council sanctions system and – arguably – in the GSP withdrawing system, has been object of concern.

First, they can likely have the unintended consequence of hurting the whole population in the name of whose rights sanctions are introduced. Indeed, it is very difficult to support the *economic effectiveness* of the economic sanctions – even from a mere utilitarian perspective –, attending to the brutal human damages, usually disproportional to its political objectives, that the measure entails. Thus, the *political dimension* of both systems does not allow a fair and equal application or use of the economic element.

Second, these consequences are amplified because the country where human rights are being violated becomes politically and economically isolated. Targeting particular sectors and/or companies (as opposed to sanctions directed to the whole population) may have more balanced results.

In addition, the benefits of the economic element attached to human rights recognized in the GSP+ and economic sanctions (international definition, recognition and national internalisation of human rights values and norms, as their effects can go beyond the targeted country or entity) are also possible within the certification system.

Moreover, the certification system, although necessarily encompassing withdrawing procedures to guarantee effectiveness and accountability, is more protected from political influence or application of “*double standards*” due to the openness and strictness of its complaint and appeal guidelines, similar to the SAI system. Moreover, unlike multilateral sanctions, the withdrawal procedure of a certification system does not require the achievement of international consensus and therefore can be implemented more rapidly and efficiently.

Indicators

After analysing the quantitative and qualitative capacities of indicators, it is possible to conclude that they are particularly relevant for CHUR for four main reasons: 1) the reliance on indicators to evaluate human rights compliance; 2) the idea and possibility of rating different entities on the basis of such evaluation; 3) their use as a tool to describe and measure good governance, welfare, development and human rights compliance, concretely labour rights, in context. Contextual analysis is needed for an effective assessment and application of the consequent operational measures. In order to overcome the erosion in the sovereign State’s role and capacity in protecting human rights new forms of “*soft governance*” (of which the OMC is an example) have included indicators in their core. Moreover, the fact that CHUR aims to be farther than current certification schemes, requires the use of tools that are designed to measure beyond the mere existence of rights; finally, 4) the fact that the deep evaluation can justify the granting of removal of certificates.

Application to labour rights

Labour rights are transversally applicable to private and public entities. This is probably the reason why they have been used in certification systems not expressly committed to protect first and second generation human rights, such as the FSC.

The Western labour market has changed and with the economic globalisation other parts of the world have changed accordingly (e.g. short term employment and productivity, weaken of the social dialogue, rupture from solidarity and collective interests, rise of the income disparity). The wider range of actors involved in these changes calls for wider models for human rights compliance which are able to address properly the new labour challenges and include State and non-State actors.

Corporations are seen as one of the most relevant actors regarding labour rights. Several aspects are at the basis of corporate social responsibility: 1) the shift of the role of the sovereign State in a context of globalisation; 2) the contemporary definition of human rights imposes duties on all entities that can pose threats to human dignity, becoming, therefore, new human rights' duty holders; 3) the public awareness and demands requiring a new role for corporations regarding human rights.

Regarding human rights in general, corporations have responded against criticism and impunity by implementing voluntary self-regulatory mechanisms such as codes of conduct. In addition, new partnerships with non-governmental agencies were created to negotiate standards for labelling and certification mechanisms. However, contrarily to third-party certification systems, codes of conduct are often seen as exercises of public relations.

Corporate social responsibility is now seen as a tool for credibility and, consequently, for economic comparative advantages. The fact that a growing number of companies is searching for different ways to show their commitment towards human rights and environmental issues shows that a certification system directly pointing to human rights could have a massive adherence from these relevant actors.

Thus, economic, social and cultural rights, especially labour rights, create the link needed between the shared private and public commitments to human rights and the current international law enforcement challenges brought by the economic globalisation - which affect largely labour rights.

Certification

In general terms, the system of certification is seen as a modern way of soft governance and a tool of compliance with internationally accepted standards. A certification system is important to keep human rights standards in the international spotlight, as it has an important diffusional function of good labour practices and the shaming effect on some States and companies that do not comply with them.

The analysis on the existing certification and accreditation systems reflected on their limitations and their achievements.

The certification model of the FSC is probably the most complete, encompassing the participation of a broad range of actors. The “institutionalised solution” of the FSC ensures the production and dissemination of norms, standards and knowledge in sustainable practices. The existence of a third-party (ASI) in managing the FSC accreditation programme ensures trust, transparency and credibility. Nevertheless, the concentration of certifications in industrialised countries with well-institutionalised forest sector.

The FLO most important feature is its explicit economic element, since it gives an economic incentive to the social responsibility through the “Fairtrade” premium and the pricing mechanism, and allows producers to have production’ costs covered as well as the financial comfort necessary for long-term development and planning. Nevertheless, its complaint procedure is not public what constraints its transparency and accountability.

SAI system is the most clearly directed to human rights and, in this regard, the mostly relevant for this paper. Nevertheless, it is not a certification system. SAI only carries accreditation system for organisations certifying compliance with the SA8000 standard. In addition, besides being insufficiently strict leaving high discretion to the auditing and certification entity, the standard is very much attached to national legislation and some exceptions to the criteria set in the SA8000 are made in accordance with national laws, which may be less favourable to the worker.

More broadly, the fees applied by the mentioned accreditation and certification schemes oppose the non-elitist spirit required for a certification or accreditation' function - differently to what has been proposed in CHUR.

Thus, CHUR is a response to recent trends in the weakening of national regulatory systems, the incompleteness of the current (public and private) systems, the strengthening of transnational corporations, growing importance of branding and comparative advantages, and emergent demands from civil society for new mechanisms of corporate accountability.

Consequently, the proposed certification system would definitely allow a ranking and comparison of the participant and non-participant entities. First, because it would encompass the idea of being “*out*” of a legitimate and trustable system. Second, because it requires close monitoring, auditing and regular control of entities who have voluntarily opened themselves to scrutiny.

The public awareness will predictably result in resistance by consumers against unlabelled products, leading to pressure on States and companies to improve human rights, notably labour conditions. Thus, the *enforcement* of a certification system will rely fundamentally on market “sanctions”.

As it was explained, the challenges of economic globalization for governance and human rights remain daunting. If a human rights certification system (admittedly new and fragile) could work and be designed in a more transparent, accountable and democratic manner, this new form of governance could turn into an important response to contemporary obstacles in human rights protection.

In sum, the thesis has answered effectively to the questions put forward with the proposal.

Open questions

As the system presented embodies a proposal to be developed as an alternative to current human rights systems, further research is needed, notably in what concerns the design of the system, its structure and the content of the indicators to be used.

In addition, important questions remain in regard to the proposed system legitimacy, remarkably if the certification system can be applied and binding to States.

References

Books and Articles

- Alston, Philip, “*Core Labour Standards’ and the Transformation of the International Labour Rights Regime*”, pp. 457-521 in *European Journal of International Law*, Vol. 15, Issue 3, 2004.

- Andersen, Erik André and Sano, Hans-Otto, “*Human rights indicators at Programme and Project level - Guidelines for defining indicators, monitoring and evaluation*”, pp. 5-64 in *The Danish Institute for Human Rights*, 2006.

- Andreassen, Bård Anders and Sano, Hans-Otto, “*What’s the Goal? What’s the Purpose? Observations on Human Rights Impact Assessment*”, pp.1-24 in *The Norwegian Centre for Human Rights Research Notes 02/2004*, 2004.

- Bartels, Lorand, “*Human Rights and Democracy Clauses in the EU’s International Agreements*”, pp. 1-59 in *European Parliament Committee on Foreign Affairs Policy Department study*, Subcommittee on Human Rights, Directorate-General for External Policies of the Union, EP/ExPol/B/2005/06, September, 2005.

- Bartels, Lorand, “*The Application of Human Rights Conditionality in the EU’s Bilateral Trade Agreements and Other Trade Arrangements with Third Countries*”, pp. 1-21 in *European Parliament Committee on International Trade, European Parliament Policy Department study*, Directorate-General for External Policies of the Union, November, 2008.

- Baur, Dorothea, and Schmitz, Hans Peter, “*Corporations and NGOs: When Accountability Leads to Co-optation*”, pp. 9-21 in *Journal of Business Ethics*, Volume 106, Number 1, 2012.

- Beitz, Charles R. "*Human Rights as a Common Concern*", pp. 269-282 in *American Political Science Review*, Vol. 95, No. 2, 2001.

- Borrmann, Axel, Busse, Matthias and Neuhaus, Silke, "*EU/ACP Economic Partnership Agreements: Impact, Options and Prerequisites*", pp. 169-176 in *Intereconomics*, Vol.40, No. 3, 2005.

- Braithwaite, John, Makkai, Toni and Braithwaite, Valerie A., "*Regulating Aged Care: Ritualism and the New Pyramid*", Cheltenham: Edward Elgar, 2007.

- Braun, Rainer and Gearhart, Judy, "*Who Should Code Your Conduct? Trade Union and NGO Differences in the Fight for Workers' Rights*", pp. 183-196 in *Development in Practice*, Vol. 14, No. 1/2, 2004.

- Burger, Ronelle and Owens, Trudy, "*Promoting Transparency in the NGO Sector: Examining the Availability and Reliability of Self-Reported Data*", pp. 1263-1277 in *World Development*, Vol. 38, No. 9, 2010.

- Carozza, Paolo G., "*Subsidiarity as a Structural Principle of International Human Rights Law*", pp. 38-79 in *The American Journal of International Law*, Vol. 97, 2003.

- Clapham, Andrew, "*Human Rights In the Private Sphere*", Oxford: Clarendon Press, 1993.

- Conroy, Michael E., "*Can Advocacy-Led Certification Systems Transform Global Corporate Practices? Evidence and Some Theory*", pp. 1-26 in *University of Massachusetts Amherst Political Economy Research Institute Working Paper No. 21*, 2001.

- Courville, Sasha, "*Social Accountability Audits: Challenging or Defending Democratic Governance?*", pp. 269- 297 in *Law & Policy*, Vol. 25, No. 3, 2003.

- Davis, Kevin E., Kingsbury, Benedict and Merry, Sally Engle, “*Indicators as a Technology of Global Governance*”, pp. 71–104 in *Law & Society Review*, Volume 46, Issue 1, 2012.

- Galtung, Johan, “*On the Effects of International Economic Sanctions, with examples from the case of Rhodesia*”, pp. 378-416 in *World Politics*, Vol. 19, Issue 3, 1967.

- Geiss, Robin, “*Humanitarian Safeguards in Economic Sanctions Regimes: A Call for Automatic Suspension Clauses, Periodic Monitoring, and Follow-Up Assessment of Long-Term Effects*”, pp. 167-199 in *Harvard Human Rights Journal*, Vol. 18, 2005.

- Gordon, Joy, “*The Concept of human Rights: The History and Meaning of Its Politicization*”, pp. 689-792 in *Brooklyn Journal of International Law*, Vol. 23 (3), 1998.

- Gordon, Joy, “*A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions*”, pp. 123-142 in *Ethics & International Affairs*, Volume 13 (1), 1999.

- Humbert, Franziska, “*Do Social Clauses in Generalized Systems of Preferences advance the Cause of Women?*” pp. 1-48 in *Swiss National Centre of Competence in Research (NCCR) Trade Regulation Working Paper, No 2008/04*, 2008.

- Keitner, Chimène I., “*Kiobel v. Royal Dutch Petroleum: Another Round in the Fight Over Corporate Liability Under the Alien Tort Statute*”, pp. 1-5 in *American Society of International Law (ASIL)*, Volume 14, Issue 30, September 30, 2010.

- Keller, Helen and Sweet, Alec Stone, “*A Europe of Rights*”, Oxford: Oxford University Press, 2008.

- Klasen, Stephan, “*Low Schooling for Girls, Slower Growth for All? Cross Country Evidence on the Effect of Gender Inequality in Education on Economic Development*”, pp. 345-373 in *World Bank Economic Review*, 16 (3), 2002.

- Klein, Naomi, “*No Logo*”, 2000, Lisbon: Relógio d’Água Editores, Pedro Miguel Dias (translation), July 2002.

- Koskenniemi, Martti, “*From Apology to Utopia: The Structure of International Legal Argument*”, Cambridge: Cambridge University Press, 2005 (re-issued).

- Kryvoi, Yaraslau, “*Why European Union Trade Sanctions Do Not Work*”, pp. 209-246 in *Minnesota Journal of International Law*, Vol. 17, Issue 2, 2008.

- Lau, Richard R., “*Individual and Contextual Influences on Group Identification*”, pp. 220-231 in *Social Psychology Quarterly*, Vol. 52, No. 3, 1989.

- McBarnet Doreen, “*Human Rights, Corporate Responsibility and the New Accountability*” pp 63-80 in Tom Campbell and Seumas Miller, (eds.), *Human Rights and The Moral Responsibilities of Corporate and Public Sector Organisations* in *Issues in Business Ethics*, Vol. 20, Part Two, Chapter 4, 2005.

- McQueen, Matthew, “*Are EU Non-reciprocal Trade Preferences Passé?*”, pp. 205-218 in *Intereconomics*, Vol. 42, No. 4, 2007.

- Mikkola, Matti, “*Social Human Rights of Europe*”, Porvoo: Karelactio, 2010.

- Monshipouri, Mahmood and Welch, Claude E., “*The Search for International Human Rights and Justice: Coming to Terms with the New Global Realities*”, pp. 370 -401 in *Human Rights Quarterly* Vol. 23, Issue 2, 2001.

- Nussbaum, Martha C., “*Capabilities as Fundamental Entitlements: Sen and Social Justice*”, in Thom Brooks, (ed.), *Global Justice Reader*, Oxford: Blackwell Publishing, 2008.

- Ochieng, Cosmas Milton Obote, “*The EU–ACP Economic Partnership Agreements and the ‘Development Question’: Constraints and Opportunities Posed by Article XXIV and Special and Differential Treatment Provisions of the WTO*”, pp. 363–395 in *Journal of International Economic Law*, 10(2), 2007.

- O’Connell, Mary Ellen, “*Debating the Law of Sanctions*”, pp. 63-79 in *European Journal of International Law*, Vol. 13, No. 1, 2002.

- O’Neill, Onora, “*The Dark Side of Human Rights*”, pp. 427 -439 in *International Affairs*, Vol. 81, Issue 2, 2005.

- O’Rourke, Dara, “*Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring*”, pp. 1-29 in *The Policy Studies Journal*, Vol. 31, No. 1, 2003.

- O’Rourke, Dara, “*Multi-stakeholder Regulation: Privatizing or Socializing Global Labor Standards?*”, pp. 899–918 in *World Development*, Vol. 34, No. 5, 2006.

- Pattberg, Philipp, “*What Role for Private Rule-Making in Global Environmental Governance? Analysing the Forest Stewardship Council (FSC)*” pp. 175-189 in *International Environmental Agreements*, Vol. 5, No. 2, 2005.

- Pogge, Thomas, “*Severe Poverty as a Violation of Negative Duties*”, pp. 55-83 in *Ethics & International Affairs*, Volume 19, Issue 1, 2005.

- Pogge, Thomas, “*Comment on Mathias Risse: “A Right to Work? A Right to Leisure? Labor Rights as Human Rights”*”, pp. 38-47 in *Law & Ethics of Human Rights*, Volume 3, Issue 1, Article 2, 2009.

- Ratner, Steven R., “*Corporations and Human Rights: A Theory of Legal Responsibility*”, pp. 446-545 in *The Yale Law Journal*, Vol. 111, Issue 3, 2001.

- Raustiala, Kal, “*The ‘Participatory Revolution’ in International Environmental Law*”, pp. 537-586 in *Harvard Environmental Law Review*, Vol. 21, 1997.

- Reisman, Michael, “*Assessing the Lawfulness of Nonmilitary Enforcement: The Case of Economic Sanctions*”, pp. 350-360 in *American Society of International Law Proceedings of the Annual Meeting (Structures of World Order)*, Vol. 89, 1995.

- Rudra, Tara, “*How Legitimate is the EU’s Use of Social Conditionality in Promoting Development Under Its Generalised System of Preferences?*” pp. 62-73 in *Cambridge Student Law Review*, Vol. 7, No. 1 Summer, 2011.

- Ruse-Khan, Henning Grosse, “*A Real Partnership for Development? Sustainable Development as Treaty Objective in European Economic Partnership Agreements and Beyond*”, pp. 139-180 in *Journal of International Economic Law*, Vol. 13, Issue 1, 2010.

- Sandor, Richard L., Bettelheim, Eric C. and Swingland, Ian R., “*An Overview of a Free-market Approach to Climate Change and Conservation*”, pp. 1607-1620 in *Philosophical Transactions: Mathematical, Physical and Engineering Sciences of The Royal Society A*, Vol. 360, Issue 1797, 2002.

- Sen, Amartya, “*Capability and Well-Being*”, in Nussbaum, Martha C. and Sen, Amartya, (eds.), “*The Quality of Life*”, Oxford: Clarendon Press, 1993.

- Seymour, Dan and Pincus, Jonathan, “*Human Rights and Economics: The Conceptual Basis for their Complementarity*”, pp. 387–405 in *Development Policy Review*, Volume 26, Issue 4, 2008.

- Shore, Cris “*Government Without Statehood? Anthropological Perspectives on Governance and Sovereignty in the European Union*”, pp. 709–724 in *European Law Journal*, Vol. 12, No. 6, November, 2006.

- Steiner, Henry, Alston, Phillip and Goodman, Ryan, (eds.), “*International Human Rights Law in Context*”, Oxford: Oxford University Press, 2008.

- Stohl, Michael and Stohl, Cynthia, “*Human Rights and Corporate Social Responsibility: Parallel Processes and Global Opportunities for States, Corporations, and NGOs*”, pp. 51-65 in *Sustainability Accounting, Management and Policy Journal*, Vol. 1 Issue 1, 2010.

- Stokes, Ray “*Chemistry at War*”, pp. 1052-1053 in *Science*, Books review, Vol. 240, 1988.

- Sweeney, Gareth and Saito, Yuri “*An NGO Assessment of the New Mechanisms of the UN Human Rights Council*”, pp. 203- 223 in *Human Rights Law Review*, Vol. 9, Issue 2, 2009.

- Tajfel, Henri “*Social Psychology of Intergroup Relations*”, pp. 1-39 in *Annual Review of Psychology*, Vol. 33, 1982.

- Trubek, David M. and Trubek, Louise G., “*Hard and Soft Law in the Construction of Social Europe: the Role of the Open Method of Co-ordination*”, pp. 343–364 in *European Law Journal*, Vol. 11, No. 3, May 2005.

- Van den Bossche, Peter, “*Rules on NGO Accreditation - Do Existing Legal Arrangements Facilitate the Legitimization of the Role of NGOs in International Organisations?*”, pp. 3-26 in *Maastricht Faculty of Law Working Paper 2005/10*, 2005.
- Van den Bossche, Peter, “*NGO Involvement in the WTO: A Comparative Perspective*”, pp. 717–749 in *Journal of International Economic Law*, Volume 11 Issue 4, 2008.
- Winters, L. Alan, “*International Trade and Poverty: Cause or Cure?*”, pp. 347–358 in *The Australian Economic Review*, Vol. 39, No. 4, 2006.
- Zürn, Michael, Binder, Martin and Echer-Ehrhardt, Matthias, “*International Authority and its Politicization*”, pp. 69–106 in *International Theory*, Volume 4, Issue 01, 2012.

Case-Law and Opinions

- Council of Europe, European Court of Human Rights, *X and Y v. The Netherlands*, Application No. 8978/80 (Chamber), 26 March 1985, available at http://www.coe.int/t/dg2/equality/domesticviolencecampaign/resources/x%20and%20y%20v%20the%20netherlands_EN.asp (last consulted in 08-06-2012)
- Inter-American Court of Human Rights, *Velásquez-Rodríguez v. Honduras* case, Application No.7920 (07-10-1981), Judgment (Merits) of July 29, 1988, Series C No. 4, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf (last accessed 08-06-2012).
- International Court of Justice, *Advisory Opinion: “The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories”*, ICJ Rep (2004) 9 July 2004, 136–203, <http://www.icj-cij.org/docket/files/131/1671.pdf> (last accessed 16-06-2012).

- United States Court of Appeals for the Southern District of California Circuit, *Haidar Muhsin Saleh, et al. v. Titan Corporation*, decision No. 08-7008 on application No. 05cv01165 (appeals argued in February 10, 2009 from the United States District Court for the District of Columbia), 11 September 2009, available at [http://www.cadc.uscourts.gov/internet/opinions.nsf/B6913B5CFF9D636B852578070058D528/\\$file/08-7008-1205678.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/B6913B5CFF9D636B852578070058D528/$file/08-7008-1205678.pdf) (last consulted on 27-06-2012).

- United States Supreme Court, *Esther Kiobel, Individually and on behalf of her late husband,; Dr. Barinem Kiobelet al. v. Royal Dutch Petroleum Co., et al.*, Application No. 10-1491, Transcript of Oral Argument, 28 February 2012, available at http://www.supremecourt.gov/oral_arguments/argument_transcripts/10-1491.pdf (last consulted on 17-06-2012).

- United States Supreme Court, *Exxon Shipping Company v. Grant Baker et al.*, Application No. 554 U.S. 471 (2008), Appeal No. 07-219 25 June 2008, available at <http://www.supremecourt.gov/opinions/07pdf/07-219.pdf>, (last consulted on 17-06-2012).

International and European Sources

Council of Europe

- Council of Europe, European Committee of Social Rights, “*European Social Charter: Conclusions XIX-3 (2010)*”, Council of Europe publishing, 2010, available at http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/ConclusionsYear_en.asp (last consulted in 08-06-2012)

- Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Treaty Series No.5, CETS No 5, 04-11-1950, in force since 03-09-1953, available at http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf (last consulted on 10-06-2012).

- Council of Europe, *European Social Charter*, Treaty Series No.35, 18-10-1961, CETS No. 35, in force since 26-02-1965, available at <http://conventions.coe.int/Treaty/en/Treaties/html/035.htm> (last consulted on 10-06-2012)

European Union

- European Union, *Agreement Amending the Fourth ACP- EC Convention of Lomé (revised)*, 4 November 1995, Official Journal of the European Communities 29-05-1998 (L 156/3), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:156:0003:0003:EN:PDF> (accessed in 12-06-2012).

- European Union, *Consolidated Version of the Treaty of Lisbon*, Official Journal of the European Union 30-03-2010 (C 83/15), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:en:PDF> (last consulted in 12-06-2012).

- European Union, *Consolidated Version of the Treaty on the Functioning of the European Union*, Official Journal of the European Union 30-03-2010 (C 83/47), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF> (last consulted in 09-07-2012).

- European Union, Council of the European Union, *Regulation (EC) No. 552/97 of 24 March 2012 temporarily withdrawing access to generalized tariff preferences from the Union of Myanmar*, Official Journal of the European Union 27-03-1997 (L 085) available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1997:085:0008:0009:EN:PDF> (accessed on 10-06-2012)

- European Union, Council of the European Union, *Regulation (EC) No. 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007*, Official Journal of the European Union 06-08-2008 (L 211/1), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:211:0001:0039:EN:PDF> (last consulted in 08-05-2012)

- European Union, Council of the European Union, *Council Decision 90/530/EEC of 8 October 1990 concerning the conclusion of the Framework Agreement for trade and economic cooperation between the European Economic Community and the Argentine Republic*, Official Journal of the European Union 26-10-1990 (L 295/67), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1990:295:FULL:EN:PDF> (consulted in 16-06-2012)

- European Union, Council of the European Union, *Regulation (EC) No 194/2008 of 25 February 2008, renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 817/2006*, Official Journal of the European Union 10-03-2008 (L 66/1), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:066:0001:0087:EN:PDF> (consulted in 17-05-2012)

- European Union, Council of the European Union, *Directive No. 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation* Official Journal of the European Communities 02-12-2000 (L 303/16), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:EN:PDF> (last consulted on 01-07-2012).

- European Union, *Economic Partnership Agreement between the CARIFORUM States and the European Community and its Member States* (CEPA), 15 October 2008, Official Journal of the European Union 30-10-2008 (L289/I/3), available at http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc_137971.pdf, (accessed in 12-06-2012).

- European Union, European Commission, *Communication from the Commission on the Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries*, COM (95) 216 final, 23-05-1995, at <http://aei.pitt.edu/4097/1/4097.pdf> (consulted on 07-05-2012).

- European Union, European Parliament and of the Council of the European Union, *Regulation (EU) No. 512/2011 of the of 11 May 2011 amending Council Regulation (EC) No 732/2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011*, Official Journal of the European Union 31-05-2011 (L 145/28), available at http://trade.ec.europa.eu/doclib/docs/2011/may/tradoc_147958.pdf (consulted on 17-05-2012).

- European Union, European Parliament and Council of the European Union, *Directive 2008/94/EC of 22 October 2008 on the protection of employees in the event of the insolvency of their employer*, Official Journal of the European Union 28-10-2008 (L 283/36), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:283:0036:0042:EN:PDF> (last accessed in 07-07-2012).

- European Union, *Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part*, 23 June 2000, Official Journal of the European Communities 15-12-2000 (L 317), available at <http://eur->

lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:317:0003:0286:EN:PDF

(accessed in 12-06-2012).

International Union for Conservation of Nature

- International Union for Conservation of Nature, *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES), 3 March 1963 entered in force on 1 July 1975, available at <http://www.cites.org/eng/disc/E-Text.pdf> (last consulted in 27-05-2012).

Organisation for Economic Co-operation and Development

- Organisation for Economic Co-operation and Development, “*Trade, Employment and Labour Standards: A Study of Core Workers’ Rights and International Trade*”, pp. 9-145, OECD publication, 1996, available at <http://browse.oecdbookshop.org/oecd/pdfs/free/2296031e.pdf> (last consulted in 21-06-2012).

- Organisation for Economic Co-operation and Development, “*The Development Dimension: Integrating Human Rights into Development: Donor Approaches, Experiences and Challenges*”, OECD publication, 2006, Paris, available at <http://www.oecd-ilibrary.org.ezproxy.its.uu.se/docserver/download/fulltext/4306091e.pdf?expires=1340722637&id=id&acname=ocid195069&checksum=8F325F0120FE74648DADE4DB42369E2C> (last consulted in 21-06-2012).

- Organisation for Economic Co-operation and Development, “*Indicators For Monitoring Compliance with International Human Rights Instruments*” in “*Measuring Human Rights and Democratic Governance: Experiences and Lessons from Metagora*”, OECD Journal on Development – Vol. 9, Issue 2, Chapter X, OECD 2008 (a), pp. 161-176; available at http://www.oecd-ilibrary.org.ezproxy.its.uu.se/development/oecd-journal-on-development-volume-9-issue-2_journal_dev-v9-2-en;jsessionid=2gei3mpgog6ov.delta (last consulted in 21-04-2012)

- Organisation for Economic Co-operation and Development, “*Measuring Economic and Social Rights to Hold Governments Accountable*” in “*Measuring Human Rights and Democratic Governance: Experiences and Lessons from Metagora*”, OECD Journal on Development, Vol. 9, ISSUE 2, Chapter XII, OECD 2008 (b)), pp. 195 -214, available at http://www.oecd-ilibrary.org.ezproxy.its.uu.se/development/oecd-journal-on-development-volume-9-issue-2_journal_dev-v9-2-en.jsessionid=2gei3mpgog6ov.delta (last consulted in 21-04-2012)

- Organisation for Economic Co-operation and Development, “*Citizen-State Relations – Improving Governance Through Tax Reform*”, OECD publication, 2010, available at <http://www.oecd.org/dataoecd/19/60/46008596.pdf> (last consulted in 21-06-2012)

United Nations and its specialized agencies

- United Nations, *Charter of the United Nations*, 1 UNTS XVI, 26 June 1945, into force on 24 October 1945, available at <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf> (last consulted in 03-05-2012).

- United Nations, Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The nature of States parties obligations (Art. 2, para. 1 of the Covenant)*, E/1991/23, 14 December 1990, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument) (consulted on 06-06-2012).

- United Nations, Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing*, E/1992/23, 13 December 1991, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument) (consulted on 06-06-2012).

- United Nations, Committee on Economic, Social and Cultural Rights, *General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights*, E/C.12/1997/8, 12 December 1997, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G97/197/19/PDF/G9719719.pdf?OpenElement> (consulted on 06-06-2012).

- United Nations, Committee on Economic, Social and Cultural Rights, *General Comment No. 12: The Right to Adequate Food*, E/C.12/1999/5, 12 May 1999, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/420/12/PDF/G9942012.pdf?OpenElement> (consulted on 06-06-2012).

- United Nations, Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2000/4, 11 August 2000, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/439/34/PDF/G0043934.pdf?OpenElement> (consulted on 06-06-2012).

- United Nations, Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water*, E/C.12/2002/11, 20 January 2003, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/402/29/PDF/G0340229.pdf?OpenElement> (consulted on 06-06-2012).

- United Nations, Committee on Economic, Social and Cultural Rights, *General Comment 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights, (Right to Work)*, E/C.12/GC/18, 6 February 2006, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/403/13/PDF/G0640313.pdf?OpenElement> (consulted on 06-06-2012).

- United Nations, Development Group, “*The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies*”, Report of the Second Interagency Workshop on Implementing a Human Rights-based Approach in the Context of UN Reform, 3-5 May 2003, Stamford, available at http://www.undg.org/archive_docs/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf (last accessed on 18-06-2012).

- United Nations, Economic and Social Council, *Fundamental Principles of Official Statistics*, E/1994/29, Supplement No. 9, paragraph 59, 11-15 April 1994, available at <http://unstats.un.org/unsd/statcom/94report.pdf> (last consulted on 16-04-2012).

- United Nations, Economic and Social Council, *Resolution 1996/31: Consultative relationship between the United Nations and non-governmental organizations*, E/1996/31, 25th July 1996, available at: <http://www.un.org/documents/ecosoc/res/1996/eres1996-31.htm> (last consulted on 14-05-2012).

- United Nations, General Assembly, *Resolution 55/215: Towards Global Partnerships*, A/RES/55/215, 6 March 2001, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/572/05/PDF/N0057205.pdf?OpenElement> (last consulted on 15-05-2012).

- United Nations, General Assembly, *Resolution 217 A (III): The Universal Declaration of Human Rights*, A/RES/217(III) A, 10 December 1948, available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/043/88/IMG/NR004388.pdf?OpenElement> (last consulted on 03-05-2012).

- United Nations General Assembly, *Resolution 2200A (XXI): International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights*, A/RES/21/2200, 16 December 1966, into force on 3 January 1976, available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/005/03/IMG/NR000503.pdf?OpenElement>, (last consulted in 04-05-2012).

- United Nations, General Assembly, *Resolution 60/251: Human Rights Council*, A/RES/60/251, 3 April 2006, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf?OpenElement> (last consulted on 08-06-2012).

- United Nations, General Assembly, *Resolution 41/128: Declaration on the Right to Development*, A/RES/41/128, 4 December 1986, available at <http://www.un.org/documents/ga/res/41/a41r128.htm> (last consulted in 19-06-2012).

- United Nations, General Assembly, *Report of the World Conference on Human Rights: Report of the Secretary-General: Vienna Declaration and Programme of Action*, A(CONF.157/24 (part I), 13 October 1993, Chapter III, available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.24+\(PART+I\).En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.24+(PART+I).En?OpenDocument) (consulted on 03-05-2012).

- United Nations, General Assembly, *Resolution 3068(XXVIII): Convention on the Suppression and Punishment of the Crime of Apartheid*, A/res/3068(XXVIII), Annex, 30 November 1973, in force since 18 July 1976, available at [http://www.un.org/ga/search/view_doc.asp?symbol=A/res/3068\(XXVIII\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/res/3068(XXVIII)) (last consulted on 27-05-2012).

- United Nations, General Assembly, *Report of the Secretary-General: In Larger Freedom, Towards Development, Security and Human Rights for All*, A/59/2005/Add.1,

23 May 2005, available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/gaA.59.2005.Add.1_En.pdf (last consulted on 30-05-2012).

- United Nations, Human Rights Council, *Report of the Working Group on the Universal Periodic Review: China*, A/HRC/11/25, 5 October 2009, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/162/99/PDF/G0916299.pdf?OpenElement> (consulted on 14-04-2012).

- United Nations, Human Rights Council, “*Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*”, A/HRC/17/31, 21 March 2011, available at http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf (last consulted in 11-06-2012).

- United Nations, Human Rights Council, *Resolution 5/1 (Annex): Institution-building of the United Nations Human Rights Council*, A/HRC/RES/1/5, 13 November 2006, at <http://ap.ohchr.org/documents/mainrec.aspx>, (last consulted on 18-05-2012).

- United Nations, Human Rights Council, *Decision 6/102 (Annex): General Guidelines for the Preparation of Information under the Universal Periodic Review*, A/HRC/DEC/6/102, 27 September 2007, available at http://ap.ohchr.org/documents/E/HRC/decisions/A_HRC_DEC_6_102.pdf (last consulted on 18-05-2012).

- United Nations, International Labour Organisation, *International Labour Conference: ILO Declaration on Fundamental Principles and Rights at Work and its follow-up*, 18 June 1998, revised in 15 June 2010, available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm> (last accessed in 27-04-2012).

- United Nations, International Labour Organisation, *Constitution of the International Labour Organisation (ILO)*, 1 April 1919, into force 28 June 1919, available at <http://www.ilo.org/ilolex/english/constq.htm> (last consulted on 14-05-2012).

- United Nations, International Labour Organisation, *Convention concerning the Protection of Wages (No. 95)*, C095, 01 July 1949, in force since 24-09-1952, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:3403882015888588::NO:12100:P12100_ILO_CODE:C095:NO (last consulted on 14-05-2012).

-United Nations, International Labour Organisation, *International Labour Conference: General Survey of the reports concerning the Protection of Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85), 1949*, REPORT III(1B)-2003-EN.DOC, 91st Session 2003, available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-iii-1b.pdf> (last consulted on 14-05-2012).

- United Nations, International Law Commission, *The Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal*, A/CN.4/22, 12 April 1950, available at http://untreaty.un.org/ilc/documentation/english/a_cn4_22.pdf (last consulted on 08-06-2012).

- United Nations, *International Tropical Timber Agreement (ITTA)*, Treaty Series, Vol. 1393-A-23317, 18 November 1983, in force since 1 April 1985, available at <http://treaties.un.org/doc/Publication/UNTS/Volume%201393/volume-1393-I-23317-English.pdf> (last consulted in 27-05-2012)

- United Nations, Office of the United Nations High Commissioner for Human Rights (OHCHR), “*Report on Indicators for Promoting and Monitoring the Implementation of*

Human Rights”, HRI/MC/2008/3, of 6 June 2008 at <http://www2.ohchr.org/english/bodies/icm-mc/docs/HRI.MC.2008.3EN.pdf> (last consulted in 01-06-2012).

- United Nations, Security Council, *Resolution 986 (1995)*, S/RES/986, 14 April 1995, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N95/109/88/PDF/N9510988.pdf?OpenElement> (last accessed 19-06-2012).

- United Nations, Commission on Human Rights, “*Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*”, E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev.2.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En) (last consulted on 15-06-2012).

- United Nations, Security Council, *Resolution 232*, S/RES/232 (1966), 16 December 1966, available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/227/55/IMG/NR022755.pdf?OpenElement> (last consulted on 14-06-2012).

- United Nations, *Vienna Convention on the Law of Treaties*, Treaty Series Vol. 1155, p. 331, 23 May 1969, into force on 27 January 1980, available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (last consulted in 03-05-2012).

- United Nations, World Bank, *Doing Business: Employing Workers 2012*, 2012, available at <http://www.doingbusiness.org/data/exploretopics/employing-workers> (last consulted on 17-05-2012).

World Trade Organisation

- World Trade Organisation, *Marrakesh Declaration*, 15 April 1994, available at http://www.wto.org/english/docs_e/legal_e/marrakesh_decl_e.pdf (consulted in 14-05-2012)
- World Trade Organisation, General Council, *Guidelines for arrangements on relations with Non-Governmental Organizations*, WT/L/162, 18 July 1996, Guidelines, available at http://www.wto.org/english/forums_e/ngo_e/guide_e.htm (last accessed on 14-05-2012).

Internet sources

- Accreditation Services International website <http://www.accreditation-services.com/> (last consulted on 11-05-2012)
- Accreditation Services International, “*Annual Activity Report 2011*”, available at http://www.accreditation-services.com/wp-content/uploads/downloads/2012/05/20_03_2012-ASI_Activity_Report_2011.pdf (consulted on 27-04-2012)
- European Commission, “*EU temporarily withdraws GSP+ trade benefits from Sri Lanka*”, Generalised System of Preferences (GSP), Brussels, 15 February 2010, available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=515> (consulted on 20-04-2012)
- Fairtrade Labelling Organisations International website, at <http://www.flo-cert.net/flo-cert/35.html> (accessed on 13-06-2012).
- Forest Stewardship Council’s website, at <http://www.fsc.org/accreditation.html> (accessed on 13-06-2012).

- Greenpeace, “*Forest Certification Scheme Ignores Human Rights Violations in the Congo Basin*”, by Van Oijen, Danielle, 27 March 2012, at <http://www.greenpeace.org/international/en/news/Blogs/makingwaves/forest-certification-scheme-ignores-human-rig/blog/39708/> (last accessed on 10-06-2012).

- Social Accountability International, *SA8000 Standard*, 2008, available at http://www.sa-intl.org/_data/n_0001/resources/live/2008StdEnglishFinal.pdf (last consulted on 25-06-2012).

- The Associated Press, “*Shell settles human rights suit for \$15.5 million*”, 08 June 2009 http://www.msnbc.msn.com/id/31175017/ns/business-world_business/#.T9YEwrD2aN8 (assessed on 17-06-2012).

- The Guardian, “*Iranian activist sues telecoms firm over 'spying system'*”, by Dehghan, Saeed Kamali, 24 August 2010 <http://www.guardian.co.uk/world/2010/aug/24/iranian-sues-nokia-siemens-networks> (last consulted on 11-06-2012)

- The New York Times, “*Should Corporations Have More Leeway to Kill Than People Do?*”, by Weiss, Peter, 24 February 2012, available at http://www.nytimes.com/2012/02/25/opinion/should-corporations-have-more-leeway-to-kill-than-people-do.html?_r=1&scp=1&sq=peter%20weiss&st=Search (last consulted on 11-06-2012).