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THE BUSINESS AND HUMAN RIGHTS REGULATORY TRAIN IN MOTION:

A Critical Genealogy of Human Rights Due Diligence and Corporate Power

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Abstract

Corporate activity increasingly shapes the material, institutional, and discursive conditions under which human rights are enjoyed or denied. In response to corporate-related human rights violations, Human Rights Due Diligence ('HRDD') has become the dominant regulatory form in Business and Human Rights ('BHR'), particularly through the UN Guiding Principles on Business and Human Rights and the recent movement towards mandatory HRDD. While often presented as the most reasonable and pragmatic response to corporate harm, HRDD also raises deeper questions about the terms on which corporate accountability has been made legally and politically thinkable. Against this background, this thesis addresses the central research question: how did HRDD become the dominant regulatory form in BHR, and what are the implications of this dominance for the regulation of corporate power?

Using a desk-based methodology that combines legal, policy, and literature research, and building on critical legal scholarship, social constructivism, and critical international political-economy, this thesis reconstructs the historical and institutional conditions through which HRDD acquired authority. It argues that HRDD's dominance reflects a neoliberal accommodation of corporate accountability. Although HRDD moves beyond pure voluntarism, it remains grounded in tools already familiar from CSR and corporate risk management.

The findings reveal that HRDD expands the language of accountability while preserving the managerial structure through which companies define, translate, and manage human rights harm. Its legalisation may harden corporate responsibility, but it does not necessarily confront the material, institutional, and discursive forms of corporate power that sustain corporate-related human rights violations.

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Table of Abbreviation

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CSO	Civil society organisation
ECOSOC	United Nations Economic and Social Council
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
GC	General Comment
GDP	Gross domestic product
ILA	International Law Association
ILO	International Labour Organization
IMF	International Monetary Fund
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNRISD	United Nations Research Institute for Social Development
US	United States
WHO	World Health Organization

Introduction

We are currently living in an era marked by an unprecedent crisis of inequality and climate emergency, both rooted in the Capitalocene[1]. Characterised by the imperative of accumulation, this system is sustained through nature appropriation, the subordination of labour, and the continuous expansion of spaces open to extraction and commodification, including human beings. Since the late 1970s, this system has also become increasingly financialised,[2] with accumulation taking place through shareholder value and claims on future income. This contemporary form has also been described as 'late capitalism',[3] marked by the globalisation of production, the expansion of market logic into wider spheres of life, and the dominance of transnational corporations ('TNCs')[4]. TNCs already employ 23% of workers worldwide[5] and represent 33% of global GDP.[6] These figures are conservative, as they only account for formal subsidiaries, and therefore do not fully capture the economic reality of commercial relationships across global supply chains.[7] UNCTAD estimates that, once TNCs' global supply chains are taken into account, their activities represent 80% of all international trade worldwide.[8] According to Global Justice Now, 69 of the wealthiest 100 entities were corporations rather than states, in 2018.[9] This has structurally changed the patterns of authority and power in society. Some corporations now command economic resources exceeding those of many states, a concentration of power that also enhances their political and social influence. Corporate power reshaped global governance and affects the conditions of everyday

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[1] The Capitalocene refers to a historical system of power that organises relations between humans and the rest of nature. See Jason W Moore, 'The Capitalocene, Part I: On the Nature and Origins of Our Ecological Crisis' (2017) 44 J Peasant Stud 594.
[2] Financialisaton corresponds to the 'increasing role of financial motives, financial markets, financial actors and financial institutions in the operation of the domestic and international economies'. See Gerald F Davis and Suntae Kim, 'Financialization of the Economy' (2015) 41 Annu Rev Sociol 203.
[3] Fredric Jameson, *Postmodernism, or, The Cultural Logic of Late Capitalism* (Duke University Press 1991).
[4] The term multinational corporations (MNCs) is often used interchangeably with TNCs in the literature. This thesis, nevertheless, adopts TNCs as its default terminology since the term is closely aligned with UN literature and better captures the cross-border organisation of corporate power.
[5] Charles Cadestin and others, 'Multinational Enterprises in Domestic Value Chains' (2019) OECD STI Policy Papers No 63, 10. The underlying data are from 2013.
[6] Fortune, 'Fortune Global 500' (2025) accessed 3 July 2026.
[7] This thesis uses the terms 'global supply chains' and 'global value chains' interchangeably, unless referring to a specific legal instrument or author that adopts one formulation. While the terms may carry different analytical emphases, with 'global value chains' often referring more broadly to the creation and distribution of value across corporate networks, and 'global supply chains' more closely associated with production, sourcing, and subcontracting, both terms are used here to refer to cross-border corporate networks through which business activities and human rights risks are organised.
[8] UNCTAD, 'Global Value Chains and Development: Investment and Value Added Trade in the Global Economy' (2013) UNCTAD/DIAE/2013/1, 16.
[9] Global Justice Now, '69 of the Richest 100 Entities on the Planet Are Corporations, Not Governments, Figures Show' (*Global Justice Now*, 17 October 2018) accessed 3 July 2026. This comparison is used here as an illustrative indicator of corporate scale, rather than as a precise measure of economic power, since it is arguable that corporate revenues and government revenues have comparable metrics.

life, with corporations increasingly able, as Bakan writes, to 'determine what we eat, what we watch, what we wear, where we work, and what we do'.[10]

As TNCs have become powerful global actors, they have also been implicated in a wide range of human rights[11] violations. This connection is not recent as the historical development of corporations is closely intertwined with 'one of the gravest crimes against humanity'[12]: the transatlantic trafficking of enslaved persons.[13] Throughout the years, the production of corporate wealth has relied on the privatisation of access to common goods, including food, water, and shelter; the use of forced and child labour in commodity production; the pollution of ecosystems; the displacement of indigenous peoples; and the harassment or silencing of those who oppose corporate activity. As criticisms of TNCs intensified, corporations adopted a range of strategies to restore legitimacy in the eyes of society, later grouped under the language of corporate social responsibility ('CSR'). Yet, over the last few decades corporate power has continued to expand and, with it, the visibility of corporate-related human rights violations. Cases involving corporate complicity in genocide, the assassination of indigenous peoples, child labour, unsafe working, and restrictions on freedom of association are just a few examples that have brought scholars, activists, consumers, and policymakers together around the need for stronger responses to corporate misconduct. The field of business and human rights ('BHR') emerged from this context, seeking to develop legal and institutional responses to the human rights impacts of corporate activity.

The difficulty, however, is that much of the debate has remained focused on the symptoms rather than on the underlying disease. Root causes have rarely occupied the centre of the discussion and, in the process, some of the tools presented as solutions have themselves begun to reproduce the problem. In Koskenniemi's words, '[t]he tools we have are the ones that every day continue articulating that world into existence', a world marked by poverty, 'depletion of natural resources, and violence in its myriad forms.'[14] Human Rights Due Diligence ('HRDD') is one such tool.[15] It has become dominant within

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[10] Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (Free Press 2004) 5.
[11] This thesis uses 'human rights' to include labour rights and the right to a clean, healthy, and sustainable environment. However, in historical sections, the terminology might follow the legal and political understandings of the period under discussion, which may sometimes understand labour rights as a distinct framework.
[12] UNGA Res 80/250 (25 March 2026) UN Doc A/RES/80/250.
[13] See eg Grietje Baars, *The Corporation, Law and Capitalism: A Radical Perspective on the Role of Law in the Global Political Economy* (Brill Nijhoff 2019) 346; David Jason Karp, 'Business and Responsibility for Human Rights in Global Governance' in Hannes Hansen-Magnusson and Antje Vetterlein (eds), *The Routledge Handbook on Responsibility in International Relations* (Routledge 2022) 318, 321.
[14] David Kennedy and Martti Koskenniemi, *Of Law and the World: Critical Conversations on Power, History, and Political Economy* (Harvard University Press 2023).
[15] This thesis uses 'HRDD' broadly to refer to human rights and environmental due diligence (HREDD), unless the context refers specifically to human rights due diligence.

BHR and is increasingly presented as the principal response to corporate-related human rights abuses, including through the recent wave of legislation incorporating HRDD requirements. At the same time, the structural origins of corporate harm have receded from view. More importantly, corporate power itself has largely remained outside the terms of the debate. This thesis therefore seeks to recover the history that has been left behind and to demonstrate that the dominance of HRDD cannot, by itself, constrain corporate power.

State of the Art and Research Question

Since the adoption of the UN Guiding Principles on Business and Human Rights ('UNGPs') in 2011, HRDD has generated extensive debate within BHR scholarship. Much of this literature examines the legal nature of HRDD and its capacity to address corporate-related human rights abuses.[16] A significant body of academic and grey literature also focuses on the practical implementation of HRDD, including how companies conduct HRDD in particular sectors and the lessons drawn from case studies.[17] Another strand of scholarship addresses the shift from voluntary to mandatory human rights due diligence ('mHRDD'), with particular attention to the recent wave of legislative initiatives.[18]

Critical scholarship on BHR, however, remains comparatively less developed. This is particularly evident in relation to the political-economy of HRDD, and its connection to corporate power.[19] Few scholars

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[16] See eg Björn Fasterling and Geert Demuijnck, 'Human Rights in the Void? Due Diligence in the UN Guiding Principles on Business and Human Rights' (2013) 116 J Bus Ethics 799; Jonathan Bonnitcha and Robert McCorquodale, 'The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights' (2017) 28 EJIL 899; Robert McCorquodale and others, 'Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises' (2017) 2 BHRJ 195; Robert McCorquodale and Justine Nolan, 'The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses' (2021) 68 NILR 455.

[17] See eg OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (2nd edn, OECD Publishing 2013); Olga Martin-Ortega, 'Public Procurement as a Tool for the Protection and Promotion of Human Rights: A Study of Collaboration, Due Diligence and Leverage in the Electronics Industry' (2018) 3 BHRJ 75; Kendyl Salcito and Mark Wielga, 'What Does Human Rights Due Diligence for Business Relationships Really Look Like on the Ground?' (2018) 3 BHRJ 113; Michael Rogerson and others, 'Accounting for Human Rights: Evidence of Due Diligence in EU-Listed Firms' Reporting' (2024) 99 Crit Perspect Account 102716.

[18] See eg Gabriela Quijano and Carlos Lopez, 'Rise of Mandatory Human Rights Due Diligence: A Beacon of Hope or a Double-Edged Sword?' (2021) 6 BHRJ 241; Nicolas Bueno and Christine Kaufmann, 'The Swiss Human Rights Due Diligence Legislation: Between Law and Politics' (2021) 6 BHRJ 542; Markus Krajewski and others, 'Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?' (2021) 6 BHRJ 550; Surya Deva, 'Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?' (2023) 36 LJIL 389; Vincent Dupont, Diana Pietrzak and Boris Verbrugge, 'A Step in the Right Direction, or More of the Same? A Systematic Review of the Impact of Human Rights Due Diligence Legislation' (2024) 25 Hum Rts Rev 131; Nicolas Bueno and others, 'The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise' (2024) 9 BHRJ 294.

[19] For a few exceptions, see David Birchall, 'Corporate Power over Human Rights: An Analytical Framework' (2021) 6 BHRJ 47; Daniel Brinks and others (eds), *Power, Participation, and Private Regulatory Initiatives: Human Rights Under Supply Chain Capitalism* (University of Pennsylvania Press 2021); David Jason Karp, 'Business and Human Rights in a Changing World Order: Beyond the Ethics of Disembedded Liberalism' (2023) 8 BHRJ 135; Marianna Leite, 'Beyond Buzzwords: Mandatory Human Rights Due Diligence and a Rights-Based Approach to Business Models' (2023) 8 BHRJ 197; Antoine

have examined why HRDD became the dominant regulatory form in BHR under that framework, or what this dominance reveals about the terms on which corporate power operates.[20]

Drawing on Robert Cox's distinction between problem-solving and critical theory,[21] this thesis intends to shift the focus away from questions of effectiveness and implementation and, instead, adopt a critical orientation to understand how the BHR framework came to be organised in such a way that HRDD could appear as the dominant and reasonable response to corporate-related human rights harm. In this sense, it is beyond the scope of this study to analyse the practical implications or effectiveness of HRDD implementation. Instead, this thesis seeks to contribute to critical scholarship on BHR by treating the dominance of HRDD as an object of inquiry in itself.

At a time when corporate power increasingly shapes the conditions under which rights are enjoyed, it becomes necessary to step back from the tools that have become familiar and to ask how they acquired their authority. The central rationale behind this thesis can be approached through the image of a train in motion. We are born aboard a train already in motion, structured by assumptions that organise its internal order and make its direction appear normal, even inevitable. Before invoking Benjamin's 'emergency brake',[22] it is first necessary to acknowledge that we are already enclosed within a moving structure. Without apprehending the logic that sustains this structure, one cannot discern its trajectory or identify whose power determines its route. Recovering the history of HRDD is therefore a way of understanding why this regulatory train was set in motion and which forces continue to sustain it. Only from this position can the machinery itself be called into question. Counter-narratives cannot meaningfully challenge a dominant framework without first understanding how that framework became dominant. Hence, questioning HRDD's place within BHR is a necessary prior step in finding where future critique and political possibilities might begin.

Duval, 'Ruggie's Double Movement: Assembling the Private and the Public Through Human Rights Due Diligence' (2023) 41 NJHR 279; Ioannis Kampourakis and Lottie Lane, 'The Law and Political Economy of Business and Human Rights: From Governance Gaps to Root Causes' (2025) 38 LJIL 417.

[20] For the exceptions, see Christian Scheper, '"From Naming and Shaming to Knowing and Showing": Human Rights and the Power of Corporate Practice' (2015) 19 Intl J Hum Rts 737; Karp (n 19); Duval (n 19).

[21] Robert W Cox, 'Social Forces, States and World Orders: Beyond International Relations Theory' (1981) 10 *Millennium* 126, 128-129.

[22] Walter Benjamin, 'Paralipomena to "On the Concept of History"' in Howard Eiland and Michael W Jennings (eds), *Walter Benjamin: Selected Writings, vol 4: 1938-1940* (Edmund Jephcott and Howard Eiland trans, Belknap Press 2006) 402.

The central research question is therefore: ***how did Human Rights Due Diligence become the dominant regulatory form in Business and Human Rights, and what are the implications of this dominance for the regulation of corporate power?***

To examine how HRDD became dominant in the BHR and how this dominance relates to corporate power, this thesis addresses the following sub-questions:

- How has corporate responsibility been historically constructed across changing political-economic understandings of the corporation, the market, and the role of the state?
- How did HRDD emerge as a plausible regulatory response to corporate-related human rights harm?
- How has corporate power shaped the development and limits of BHR regulation, particularly in relation to HRDD?
- To what extent does HRDD confront corporate power?

Methodological Approach

The methodology adopted consists of a desk-based legal, policy, and literature research, which includes international and regional legal documents, as well as grey literature, such as reports, policy papers, consultation materials, and institutional reports, produced by civil society organisations, business associations, corporate actors, and international organisations. These sources are used to reconstruct the development of HRDD as a dominant regulatory form and to examine how corporate responsibility and corporate power have been framed across different stages of CSR and BHR governance.

Grounded in critical legal scholarship on human rights and BHR, this research follows the recent turn towards interdisciplinary critical analysis. It crosses conventional boundaries between international human rights law, BHR, international political-economy, political science, critical legal studies, philosophy, sociology, and discourse analysis. This interdisciplinary approach makes it possible to analyse HRDD as a product of broader political-economic conditions, institutional choices, corporate strategies, and dominant narratives.

Outline of the Research

The thesis is structured in five chapters, in addition to this introduction and the conclusion. Chapter 1 sets out the theoretical framework that informs this research. It develops the conceptual tools through which HRDD is analysed as a regulatory form, drawing on critical international political-economy, social constructivism, theories of corporate power, and accounts of hegemony. Chapter 2 traces the evolution of CSR before the consolidation of BHR. It examines how earlier forms of corporate social responsibility created the terrain in which HRDD could later emerge as a plausible regulatory response to corporate-related human rights violations. Chapter 3 turns to the emergence of BHR and to the institutionalisation of corporate human rights responsibility under the UNGPs. Chapter 4 examines the genealogy of due diligence as a regulatory technique and its translation into HRDD. It shows how due diligence moved across different legal and regulatory fields before becoming central to BHR and then traces the recent proliferation of HRDD through soft-law instruments, as well as legislative developments. Chapter 5 draws on the preceding chapters to answer the central research question of the thesis. It examines why HRDD became dominant within BHR by analysing its relationship with CSR, the ways in which corporate actors have responded to mHRDD, and the interaction between HRDD, neoliberal governance, and corporate power.

Chapter 1: Theoretical Framework

This section provides a brief description of the most relevant theoretical frameworks considered throughout the research. Concepts such as ‘structural power’, ‘corporate power over human rights’, and ‘hegemony’ are presented here only to the extent necessary to clarify the analytical orientation of the research. Other conceptual tools will be introduced later, where they become relevant to specific sections of the thesis.

1.1. The Underlying Premises

This research is situated within BHR critical scholarship and adopts an interdisciplinary theoretical framework grounded in social constructivism and critical International Political-Economy (‘IPE’). The framework is designed to analyse HRDD as a regulatory form whose predominance in the BHR reflects historically constructed ideas about corporate responsibility, market governance, state intervention, and corporate power.

IPE refers to the ‘academic field of study that examines the interaction of economic and political phenomena across state borders’.[23] Different theories of IPE assign different weight to the role of the state, institutions, non-state actors, rational choice, technological change, and the place of norms and ideas in shaping the global political-economy. This thesis is grounded, particularly, in a social constructivist premise, according to which social reality is produced through shared meanings, ideas,

[23] Robert O’Brien and Marc Williams, *Global Political Economy: Evolution and Dynamics* (7th edn, Bloomsbury Academic 2024) 23.

categories, and behaviours.[24] Concepts like the corporate obligation to respect human rights are therefore not fixed or self-evident but historically constructed through norms and ideas that give them meaning. From this perspective, questions about why states prioritise economic growth, why corporations define their purpose through profit, or why corporate-related human rights violations become normalised, require attention beyond the material structures. A constructivist approach asks, for instance, how corporate power is interpreted: whether corporations are understood as necessary agents of development or as threats to democratic control. In this sense, social constructivism within IPE allows the reading of the evolution of CSR, the emergence of the UNGPs, and the consolidation of HRDD as part of broader political-economic settlements in society. These settlements are traced through three transformations within the capitalist political economy: classical liberalism, embedded liberalism, and neoliberalism.

1.2. The Concept of Power

Power is a concept that cuts across several academic traditions. In its conventional definition, power is 'the chance of a man or of a number of men to realize their own will in a communal action even against the resistance of others who are participating in the action'.[25] Put differently, the Weberian notion of instrumental or relational power focuses on whether A has the ability to get B to do something that B otherwise would not do.[26] This is linked to a narrow notion of capabilities as resources or properties to exert power.[27] In this sense, corporate political power has been interpreted throughout the twentieth-century as corporations being able to 'directly control and influence political leaders'[28] due to its economic power. However, this idea artificially separates the economic and the political spheres. Susan Strange, an IPE seminal author, highlighted that :

> It is impossible to have political power without the power to purchase, to command production, to mobilize capital. And it is impossible to have economic power without the sanction of political authority, without the legal and physical security that can only be supplied by political authority.[29]

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[24] Peter L Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (Doubleday 1966).
[25] Max Weber, 'Class, Status, Party' in HH Gerth and C Wright Mills (eds and trans*), From Max Weber: Essays in Sociology* (OUP 1958) 180.
[26] Susan Strange, *States and Markets: An Introduction to International Political Economy* (Pinter 1988) 24-25.
[27] Florian Wettstein, *Multinational Corporations and Global Justice: Human Rights Obligations of a Quasi-Governmental Institution* (Stanford Business Books 2009) 190-192.
[28] Wettstein (n 27).
[29] Strange (n 26).

As a result, through the interplay of these two forces, Strange developed the concept of 'structural power', where power is not only the capacity of one actor to force another to act against its will, but also the capacity to affect outcomes by shaping the structures within which choices are made. In Strange's words, structural power 'confers the power to decide how things shall be done, the power to shape frameworks within which states relate to each other, relate to people, or relate to corporate enterprises'.[30] Under this notion, power can be exercised even when it is not intended, as it happens, for instance, in cisgender heterosexual relationships, where, due to the social structures, men partners have power over women even when they did not sought to.[31] Applied to corporate power, corporations benefit from structural power as they are in a position and capacity to mould the conditions under which states, institutions, workers, consumers, and affected communities act, reflecting a shift of power from states to markets in the global political-economy.[32]

1.3. Corporate Power over Human Rights and Hegemony

Birchall developed an analytical framework to translate instrumental and structural power into the specific question of corporate power over human rights.[33] The author defines corporate power over human rights as the capacity to 'influence, violate, retrogress, reshape, realize or restrict those rights'.[34] This power is then disaggregated into four sites: (i) power over individuals, (ii) power over materialities, (iii) power over institutions, and (iv) power over discourse.

Power over individuals refers to direct or weakly mediated impacts on rights-holders. This includes situations in which corporate conduct exposes individuals to labour exploitation, privacy violations, unsafe working conditions, violence, or other forms of direct harm. Birchall uses this category to also draw attention to an area often sidelined in BHR: the employer-employee relationship.[35] Due to its structural power, corporations are able to organise work and contractual conditions in ways that produce precarious employment, even within the margins of legality.

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[30] Strange (n 26).
[31] Susan Strange, *The Retreat of the State: The Diffusion of Power in the World Economy* (CUP 1996) 44.
[32] Wettstein (n 27) 193.
[33] For conceptual precision, Birchall's framework draws on Barnett and Duvall's account of power in international politics, itself shaped by Strange's structural power, neo-Gramscian structuralist theory, Foucault's discursive power, and realist approaches to international relations.
[34] Birchall (n 19) 50.
[35] Birchall (n 19) 54.

Power over materialities concerns the material foundations on which rights depend, including land, housing, food, water, health, environmental conditions, finance, and public resources. A recent UN report shows how a small number of TNCs control the global food system, orienting it towards the 'ultimate goal of profit maximization instead of the public good'.[36] This directly affects the right to food, as well as the rights to health, safe drinking water, and a clean environment. As the report stresses, 'treating land like a commodity and a resource is one of the most destructive global practices and a major cause of hunger and starvation.'[37] Similar concerns appear in the work of successive Special Rapporteurs on adequate housing, who have been calling for a move away from housing 'as a commodified asset for investors to speculate over'.[38] The BHR field has tended to overlook economic and social rights, especially where corporate power operates through access to material conditions rather than direct abuse. By contrast, CSR has often treated these same areas as opportunities for corporations to demonstrate 'good citizenship' through building schools, hospitals, or other social projects. Through this dual movement, corporations are the main characters of the privatisation of essential needs, while also presenting themselves as providers of non-accountable solutions to the inequalities themselves they have helped produce. In both scenarios, corporations are exerting power over materialities.

Power over institutions captures the capacity of corporations to influence the governance structures through which human rights are defined, protected, enforced, or weakened, including states, international organisations, regulatory bodies, and multi-stakeholder initiatives. It can operate through relational forms of power, such as lobbying, which has played a crucial role in the development of the UNGPs and mHRDD legislation, as explored *infra*. Birchall also includes here the privatisation of state functions that go beyond the material conditions of rights, such as security, border control, and prison management. While states were classically understood as the main providers of security, as one expression of their coercive authority and of the social contract, private corporations have increasingly assumed roles within that structure.

Finally, power over discourse refers to the capacity to shape the epistemic framework of human rights: the production of expertise, the definition of best practice, the framing of responsibility, and the boundaries of what counts as a relevant human rights problem. In this sense, power belongs to those 'who are acknowledged by society to be possessed of … knowledge', 'those entrusted with its storage', and

[36] UNGA, 'Corporate Power and Human Rights in Food Systems' (21 July 2025) UN Doc A/80/213.
[37] UNHRC, 'Land and the Right to Food' (7 January 2026) UN Doc A/HRC/61/51.
[38] UNGA, 'Land and the Right to Adequate Housing' (27 August 2025) UN Doc A/80/351.

'those controlling in any way the channels by which knowledge, or information, is communicated'.[39] As developed throughout the thesis, by configuring human rights language through managerialism and self-regulation, corporations have been able to exercise discursive power and advance an ideological agenda in which the structural conditions underlying corporate-related human rights violations remain largely unaddressed.

Following a Foucauldian understanding of power, corporations may also exert discursive power. This differs from Strange's account insofar as it operates at a meta-level, configuring the language through which human rights problems are framed and addressed. Neo-Gramscian theory connects this process with hegemony: the formation of consent around a social order in which particular ideas come to be regarded as common sense because they are supported by institutions and material interests. In this light, the dominance of HRDD will be assessed as reflecting the construction of a hegemonic settlement, in which a particular account of corporate responsibility comes to appear as the most reasonable one because it fits the material interests and governing assumptions of the existing order.

Chapter 2: The Genealogy of Corporate Social Responsibility

This chapter reconstructs the genealogy of CSR, from its pre-CSR philanthropic origins to the corporate scandals of the 1990s. It constitutes the first step in answering the broader question of why HRDD became dominant and whether it can constrain corporate power over human rights, since it traces the earlier vocabulary through which business-related harms were addressed before the consolidation of BHR. This field develop under a particular political-economy framework, shaped by CSR and its underlying ideas about the corporation, the state, the market, and human rights. The chapter argues that CSR became the dominant language through which corporate involvement in environmental and human rights harms was addressed, while stronger attempts to confront the roots of corporate power were displaced or absorbed. By following this trajectory, the chapter shows how corporate power over human rights was progressively constructed through liberal and, later, neoliberal ideology.

The chapter begins before CSR became an academic and business vocabulary, when corporate engagement with social concerns appeared mainly through philanthropy and charity. Read alongside classical liberal thought, these early practices help explain why corporate social engagement was framed within the private sphere. It then turns to the post-war period, where CSR acquired a language of social

[39] Strange (n 26) 121.

purpose within the embedded liberal compromise. The following sections examine the neoliberal reconfiguration of the 1970s and 1980s, the expansion of TNCs mobility, the separation between economic control and legal responsibility, and the failure of more structural projects to contest corporate power. The final section follows this movement into the 1990s, when corporate scandals and media exposure connected CSR more directly to human rights and environmental harms. It highlights the CSR as the corporate response to those events: a way of containing criticism through market-compatible tools rather than confronting the structures that had produced the harm.

2.1. Before CSR: Philanthropy and Classical Liberalism

Long before CSR became a formal academic and business vocabulary, corporate engagement with social concerns was primarily articulated through philanthropy and charity.[40] From the 17th to the 19th centuries, businesses and wealthy individuals addressed issues such as poverty, through charitable practices, driven by religious obligations or philanthropic ideals.[41] These early interventions would establish a visible pattern in what was later to become the CSR movement: corporate social engagement framed as a discretionary and reactive conduct. This configuration of corporate social engagement reflected the political-economic thought of the period. Influenced by the work of Adam Smith and David Ricardo, economic organisation was largely grounded in principles of free markets, competition, and limited state intervention. This intellectual framework, which evolved in the 19th century into *Laissez-Faire* doctrine or Classical Liberalism, conceptualised the market as a self-regulating system in which economy is separated from society and where the primary role of corporations is the pursuit of economic efficiency and profit.[42] This was accompanied by a profound distrust of political intervention into the supposed 'natural laws' of market.[43]

At the same time, particularly in the United States, corporations were being legally and ideologically constructed as subjects with personhood, 'treated as a free individual enjoying the constitutional rights of real human beings'.[44] As Wettstein suggests, personhood was precisely one of the foundations through

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[40] Archie B Carroll, 'A History of Corporate Social Responsibility: Concepts and Practices' in Andrew Crane and others (eds), *The Oxford Handbook of Corporate Social Responsibility* (OUP 2008) 21-24.
[41] Carroll (n 40); Eric C Chaffee, 'The Origins of Corporate Social Responsibility' (2017) 85 U Cin L Rev 352.
[42] Wettstein (n 27) 170-171.
[43] Irving Kristol, *Reflections of a Neoconservative: Looking Back, Looking Ahead* (Basic Books 1983) 203; Wettstein (n 27) 171.
[44] Wettstein (n 27) 185; Roland Marchand, *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business* (University of California Press 1998) 7.

which corporate power was created and sustained.[45] This development allowed companies to claim rights and legal protections while offering an ideological basis for resisting corresponding social responsibilities. Following this framework, corporate engagement with social issues was located within the private sphere and understood not as an inherent obligation, but as an external and discretionary activity. Corporate contributions to society could therefore appear as acts of benevolence but not demanded as a duty.

However, the social transformations brought about by the 19th and early 20th century marked a gradual shift. As corporations accumulated assets and decision-making power, critics became increasingly concerned that corporate activity could affect the lives of large numbers of workers and citizens.[46] Large corporations were increasingly portrayed as 'soulless' leviathans: an impersonal, amoral 'thing' driven by a 'cold economic logic'.[47] In response to this growing backlash, companies began to adopt more structured forms of public-relations strategies, such as employee welfare programs, workers' clubs, and institutional advertising campaigns designed to cultivate a benevolent image in the eyes of the public.[48] These practices allowed corporations to respond to social criticism and regain their legitimacy while preserving the voluntary character of their engagement with society.

2.2. From Philanthropy to CSR: the 1950s and 1960s

Following the Second World War, Western economies moved away from *Laissez-Faire* models and progressively institutionalised a Keynesian system, in which market openness was combined with state intervention via the implementation of social welfare policies and regulatory constraints to ensure both economic growth and social stability. This shift responded both to the social misery associated with the crises of the interwar period and to the ideological confrontation between capitalism and communism. John Ruggie latter coined this period, within the political economy field, as *embedded liberalism*.[49] Embedded liberalism consisted in a proposal to resolve the failures of post-war classical liberalism by ensuring that the economic order is embedded in the social order. It followed closely Polanyi's theory of the mid-1940s that high levels of international economic openness are only politically sustainable when States provide protection for socially vulnerable groups in society, otherwise societies will prefer to close

[45] Wettstein (n 27) 185.
[46] Kristol (n 43) 204-206; Marchand (n 44) 7-9.
[47] Marchand (n 44) 7-10.
[48] Marchand (n 44) 3-5, 22-25, 141.
[49] John Gerard Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order' (1982) 36 International Organization 379.

their economic borders.[50] Hence, it described a compromise between international trade liberalisation and multilateral economic cooperation with domestic social investments and protection in order for markets 'to thrive and survive'.[51] It was, in this sense, capitalism with a 'domestic social purpose'.[52] As Chapter 3 will argue, Ruggie's theorisation of embedded liberalism formed a central intellectual foundation for his later role in the institutionalisation of BHR.

Within this framework, the 1950s — often described as 'the philanthropic era' — marked an early phase in the formal development of CSR, while still carrying the imprint of the earlier philanthropic understanding of corporate responsibility.[53] This period was also marked by Howard Bowen's publication of the seminal book *Social Responsibilities of the Businessman*, widely regarded as the first systematic attempt to conceptualise the responsibilities of business actors beyond purely economic or technical interests.[54] Yet these early articulations of CSR remained limited in scope. As Carroll notes, it was more of a 'talk' than 'action' period,[55] with corporate responsibility still grounded primarily in philanthropy and moral obligation rather than in rights-based frameworks. At this stage, the idea that corporations bore responsibility for their impacts on human rights was completely absent. Corporate responsibility was instead framed through discretionary and morally desirable actions towards workers, the poor and the sick, reinforcing an understanding of CSR as purely voluntary benevolence. As Wettstein suggests, although 'this view has become less pervasive, it has not disappeared entirely'.[56]

This understanding of CSR did not change during the following decade of the 1960s; however, the decade placed corporate responsibility within a broader context of political and social contestation. At the international level, the second wave of decolonisation in Africa led to the incorporation of newly independent States into the UN, expanding, at least formally, the participation of countries historically colonised within international law and global governance. At the same time, the UN launched the Development Decade and established the UNCTAD, placing economic development and global inequality at the centre of the international agenda. Domestically, the 1960s were marked by significant

[50] Karl Polanyi, *The Great Transformation* (Farrar & Rinehart 1944).
[51] John Gerard Ruggie, 'The Social Construction of the UN Guiding Principles on Business and Human Rights' in Surya Deva and David Birchall (eds), *Research Handbook on Human Rights and Business* (Edward Elgar 2020) 63, 65.
[52] Karp (n 19)139-140.
[53] Carroll (n 40) 25-26.
[54] Carroll (n 40) 25-26; Florian Wettstein, 'The History of "Business and Human Rights" and its Relationship with "Corporate Social Responsibility"' in Deva and Birchall (n 51) 33.
[55] Carroll (n 40) 26.
[56] Florian Wettstein, 'From Side Show to Main Act: Can Business and Human Rights Save Corporate Responsibility?' in Dorothée Baumann-Pauly and Justine Nolan (eds), *Business and Human Rights: From Principles to Practice* (Routledge 2016) 80.

social movements, including the anti-war mobilisation surrounding the Vietnam War, the Civil Rights Movement in the United States, the second-wave feminism, and the protests of May 1968 in France. The 1969 Santa Barbara oil spill, involving an offshore platform operated by the US company Union Oil (current Chevron Corporation), was particularly significant as it publicly exposed the environmental consequences of corporate industrial activity, and helped bring environmental protection within the emerging CSR agenda.[57] Taken together, these developments contributed to a wider politicisation of social and economic life: questions of poverty, racial and gender inequality, consumerism, and environment degradation were increasingly framed as public concerns, and corporation as a 'common enemy' to 'those seeking individual freedoms and social justice'.[58]

2.3. The Rise and Consolidation of Neoliberalism and Corporate Power: the 1970s and 1980s

Despite these advances, CSR remained emergent and highly contested. As the Keynesian and embedded-liberal model came to be widely perceived as being in crisis in the 1970s, economic perspectives that had long resisted the attribution of social responsibilities to business 'arrived with a vengeance'.[59] This was particularly visible in the work of Friedrich Hayek, a central figure in the development of neoliberal economic thought, and Milton Friedman, who famously argued that '[f]ew trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than to make as much money for their stockholders as possible'.[60] Neoliberalism, as understood here, refers to a

> theory of political economic practice that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterised by strong private property rights, free markets, and free trade.[61]

Therefore, neoliberal rationality is more than an economic theory where the state policy and international order are actively reconfigured to facilitate deregulation and borderless global economic competition

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[57] Evanthia K Zervoudi, Nikos Moschos and Apostolos G Christopoulos, 'From the Corporate Social Responsibility (CSR) and the Environmental, Social and Governance (ESG) Criteria to the Greenwashing Phenomenon: A Comprehensive Literature Review About the Causes, Consequences and Solutions of the Phenomenon with Specific Case Studies' (2025) 17 *Sustainability* 2222, 4-5.
[58] David Harvey, *A Brief History of Neoliberalism* (OUP 2005) 42.
[59] Wettstein (n 27) 175.
[60] Milton Friedman, *Capitalism and Freedom* (University of Chicago Press 2002),133.
[61] Harvey (n 58) 2-3.

between private market actors. It is an ideology that takes the market as an organising reference point and extends its values across society so that individuals, institutions, and the state are increasingly evaluated by their capacity to compete and succeed within market conditions.[62] Moreover, as Whyte argues, neoliberalism carries the political premise that a society coordinated through competitive market will achieve social virtues such as social peace and the protection of individual freedoms.[63]

Crucially, neoliberalism departed from classical liberalism insofar as the state was no longer perceived as an obstacle to the free-market project, but as an active agent in its construction and enforcement.[64] Following Harvey's formulation, the role of the state is to 'create and preserve an institutional framework appropriate to [neoliberal practices] … if markets do not exist (in areas such as land, water, education, health care, social security, or environmental pollution) then they must be created, by state action if necessary'.[65] As a result, neoliberalism does not operate through state absence but through state intervention: on the one hand, the removal of barriers to capital flow, on the other, the construction of legal regimes protecting foreign direct investment ('FDI'), shareholder value, and enabling the commodification and privatisation of public goods.[66] In this sense, the political sphere is instrumentalised in support of market objectives.

From the 1980s onwards, neoliberalism had become the hegemonic ideological paradigm.[67] Its consolidation as the hegemonic[68] orthodoxy was achieved via a powerful group of intellectuals and corporations that sought to displace the embedded liberal paradigm.[69] To accomplish this, they set in motion lobbying strategies and institutional networks that operated across sites of knowledge production, such as universities or think-tanks, professional associations, churches, the media, and the financial and political institutions.[70] Free-market policies were first experimented in Chile after Pinochet's coup of 1973, before finding their most influential expression in the governments of Thatcher and Reagan in the 1980s.[71] At the same time, organizations such as the OECD, the IMF, and the World Bank promoted

[62] Wendy Brown, *Edgework: Critical Essays on Knowledge and Politics* (Princeton University Press 2005) 39-45; Jessica Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Verso 2019) 13-26.
[63] Whyte (n 62) 19-21.
[64] Harvey (n 58) 3; Brown (n 62); Wettstein (n 27) 176.
[65] Harvey (n 58) 2-3.
[66] Harvey (n 58) 66, 160-161; Wettstein (n 27) 197, 236-239.
[67] Karp (n 19).
[68] See ch 1, section 1.3.
[69] Harvey (n 58) 19-22.
[70] Harvey (n 58) 40-63; John Gerard Ruggie, 'Multinationals as Global Institution: Power, Authority and Relative Autonomy' (2018) 12 Regul Gov 317, 321.
[71] Harvey (n 58) 7, 22-30; Wettstein (n 27) 175.

shareholder primacy and neoliberal policy reform, contributing to the diffusion of market-oriented governance across domestic and international legal orders.[72] As Global South States turned to these institutions for financial assistance, lending was made conditional on the adoption of structural adjustment programmes (SAPs), requiring debtor States to 'adjust' their economic structure to the principles of the free market.[73] Consequently, development finance became a mechanism of neoliberal disciplines,[74] producing nothing more than, what Baars calls, a 'competition among Third World countries for (public and private) "development" loans'.[75]

During this period, the foundational pillars of the modern corporate law were also being consolidated and developed. This was the case with separate legal personality, which means that the company and its shareholders are distinct legal entities, and the derivative principle of limited liability, according to which shareholders can only be liable up to the amount they have invested. Within this context, liberalisation policies facilitating FDI and privatisation enabled firms to expand their operations across multiple jurisdictions and exploit differences between regulatory environments.[76] This process was particularly visible in the rise of TNCs and the reorganisation of global supply chains. These chains were structured not only through parent companies' control of foreign subsidiaries, which operated in different jurisdictions, and each possessed separate legal personality, but also through networks of contractual relationships in which lead firms exercised *de facto* control over business partners located in 'host' States while keeping them formally outside their corporate structure. As a result, lead firms were able to benefit from transnational production while distancing themselves from the social and environmental consequences generated within those networks, by atomising responsibility across their various constituent units. As several authors argue, this transnational mobility constitutes a cornerstone of structural corporate power.[77] Ultimately, the neoliberal system allowed firms to dominate the 'production structure', effectively deciding 'what is to be produced, where, and by whom', [78] thereby converting their economic flexibility into power that bypasses the regulatory grip of national governments.

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[72] Harvey (n 58) 92; Charlotte Villiers, 'A Game of Cat and Mouse: Human Rights Protection and the Problem of Corporate Law and Power' (2023) 36 LJIL 415, 425.
[73] Zehra F Kabasakal Arat, 'Human Rights, Neoliberalism, and the UN's Balancing Act' (2025) 47 HRQ 165, 171.
[74] Karp (n 19).
[75] Baars (n 13) 126.
[76] Wettstein (n 27) 204-206; Baars (n 13) 72; Karp (n 19); Arat (n 73) 175.
[77] Birchall (n 19) 60; Wettstein (n 27) 187, 194; Ruggie (n 70) 7; Villiers (n 72) 433.
[78] Strange (n 31) ix.

Neoliberal ideology reinforced this arrangement by treating competition and shareholder value as the dominant criteria of business success. Under this orthodoxy, all aspects of society could be virtually transformed into commodities. As Wettstein suggests, this may have led to legitimisation of corporations' pursuit of business success, even where it implied the use of child labour or the deterioration of ecosystems.[79] The structure of TNCs were optimised in order to protect the maximum corporate interests, relocating production mostly to the Global South, while capital and power remained in the Global North.[80] Against this broader context of economic globalisation[81] and changing patterns of governance, debates regarding corporate power over human rights became more visible, particularly in its most unmediated form in the Third World Countries.

2.4. Contesting Corporate Power: the NIEO and the UNCTC's Code of Conduct

The growing concentration of corporate power did not go uncontested. It fed into a broader international discourse, led in large part by developing countries, that increasingly associated TNCs with the adverse impacts of cross-border investment, and with unequal distribution of its gains to the Global North.[82] These concerns soon entered the UN agenda through a proposal advanced by the Non-Aligned Movement and the G77 for a New International Economic Order ('NIEO'). The NIEO intended to restructure the global economy by reclaiming postcolonial control over their economies, resources and position in the global economic order.[83] Although not yet framed as human rights language, but rather in terms of trade, sovereignty over natural resources, and technology transfer, this debate directly confronted corporate power over human rights, challenging the growing capacity of corporations to shape the material and institutional conditions through which rights are realised or denied.[84] At the same time, contestation over

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[79] Wettstein (n 27) 217. Similarly, see Harvey (n 58) and Baars (n 13) 351.
[80] Baars (n 13) 72.
[81] Globalisation is a contested concept. For the purposes of this thesis, economic globalisation refers to the intensification of cross-border flows of capital, goods, knowledge, services, and, to a lesser extent, people, enabled by free trade policies, FDI protection regimes, and technological developments that have significantly reduced the costs of transportation and communication. Globalisation and neoliberalism are closely connected, although they are not interchangeable. Economic globalisation has operated as a vehicle through which neoliberalism has been consolidated as a political-economic project; in turn, neoliberal policies have accelerated the process of globalisation. Contemporary neoliberalism, in this sense, cannot be understood apart from globalisation.
[82] Anita Ramasastry, 'Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability' (2015) 14 J Human Rights 237, 240-241.
[83] UNGA Res 3201(S-VI) (1 May 1974) UN Doc A/RES/3201(S-VI); UNGA Res 3202(S-VI) (1 May 1974) UN Doc A/RES/3202(S-VI).
[84] Larry Catá Backer, 'Multinational Corporations, Transnational Law: The United Nations' Norms on the Responsibilities of Transnational Corporations as a Harbinger of Corporate Social Responsibility in International Law' (2006) 37 Colum Hum Rts L Rev 101, 124.

corporate-related human rights harm was emerging through civil society mobilisation. The controversial role of TNCs in the South African apartheid regime[85] gave rise to boycott and divestment movements, which pressured companies to withdraw from the South African economy. Simultaneously, the involvement of US companies, most notably ITT, in efforts to overthrow of Allende's democratically elected Marxist government in Chile and led to the imposition of Pinochet's neoliberal military dictatorship, brought corporate political interference in the Global South into public view.[86]

This context prompted the establishment of the United Nations Centre on Transnational Corporations ('UNCTC') in 1974,[87] which was responsible for the elaboration of a draft binding Code of Conduct on Transnational Corporations (the 'Code') as part of an attempt to develop a universal framework for overseeing corporate conduct at the global level and increase Global South countries bargaining power against the TNCs.[88] Several disputed issues in the Code negotiations reveal how the attempt to discipline TNCs power was gradually narrowed by the legal and economic priorities of developed market-economy States. While Global South and socialist countries intended to preserve the right to nationalise or expropriate foreign assets, the Global North insisted on protecting foreign investors through the establishment of compensation standards.[89] Similar tensions appeared in relation to the extraterritorial application of national laws[90] and the legal nature of the Code itself. While the first group of countries pushed for a legally binding instrument, market-economies increasingly favoured a voluntary set of guidelines.[91] Over time, the language of effectiveness helped narrow the original ambition of the project and redirected the project towards a softer framework. Ultimately, this initiative failed in the face of sustained opposition from TNCs and Western governments — particularly from the neoliberal governments of the UK and US[92] —, and the UNCTC was subsequently abolished in the early 1990s.[93]

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[85] This was the case of Royal Dutch Shell, which continued supplying petroleum products used by industry and state structures, and of Barclays, which continue to provide loans and financial services to the apartheid government.
[86] Strange (n 31) 68-69; Backer (n 84) 145; Elisa Giuliani and Chiara Macchi, 'Multinational Corporations' Economic and Human Rights Impacts on Developing Countries: A Review and Research Agenda' (2014) 38 Camb J Econ 479, 485; Whyte (n 62) 137-171.
[87] ECOSOC Res 1913(LVII) (5 December 1974) UN Doc E/RES/1913(LVII).
[88] UNCTC, 'The United Nations Code of Conduct on Transnational Corporations' (September 1986) UN Doc ST/CTC/SER.A/4, 1.
[89] UNCTC (n 88) 20.
[90] UNCTC (n 88) 23.
[91] UNCTC (n 88) 26-27.
[92] Particularly influential was the Cancún summit in 1981, known as the 'death-knell of the NIEO', where Reagan exhorted Third World leaders to embrace 'the magic of the market'. See Whyte (n 62) 192.
[93] Justine Nolan, 'The Corporate Responsibility to Respect Human Rights: Soft Law or Not Law?' in Surya Deva and David Bilchitz (eds), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (CUP 2013) 147; Ramasastry (n 82) 241; César Rodríguez-Garavito, 'Business and Human Rights: Beyond the End of the Beginning' in César Rodríguez Garavito (ed), *Business and Human Rights: Beyond the End of the Beginning* (CUP 2017) 17; Wettstein (n 54) 26;

Nolan argues the Code was viewed as 'an attempt by the United Nations to meddle in the affairs of business'.[94] This failure reflected a broader international shift towards a distinctly neoliberal discourse. The NIEO movement was gradually absorbed into the international development agenda, where the language of 'development' came to legitimise the very neoliberal paradigm that the movement had sought to contest.[95] Rather than restructuring the global economic order, development discourse increasingly justified deregulation, FDI and market-compatible approaches to corporate governance, extending neoliberal rationalities to the Global South.

2.5. The Rise of Voluntary Governance

After the failure of more structural attempts to discipline TNCs, CSR was increasingly channelled through softer and more market-compatible forms of governance. The OECD Guidelines for Multinational Enterprises ('MNE Guidelines'), adopted in 1976, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy ('MNE Declaration'), adopted in 1977, illustrate this shift. Jenkins's work suggests these instruments allowed Global North States 'to respond to the growing criticism of TNCs, while at the same time making it clear that they were not prepared to see excessive controls imposed on TNC activity'.[96] The MNE Guidelines reflected this compromise particularly clearly. Adopted within the OECD, an organisation composed of industrialised market-economy States, they framed responsible business conduct through voluntary standards, based on disclosure requirements. Drafted in a tripartite process, involving two advisory committees composed of business and trade union representatives, Muchlinski observes that corporations found themselves with more space to influence the outcome of the Guidelines.[97] Accordingly, the Guidelines emphasis remained largely on competition and limited disclosure requirements, such as corporate structure, employment figures, and geographical operations. Labour issues appeared mainly through non-discrimination and trade union representation, while human rights remained confined to brief paragraph.[98] The MNE Declaration, in turn, went further in relation to labour standards, focusing on

Peter Muchlinski, 'The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights' (2021) 6 BHJR 212, 215-216.

[94] Justine Nolan, 'The United Nations' Compact with Business: Hindering or Helping the Protection of Human Rights?' (2005) 24 UQLJ 445, 455-456.

[95]Nolan (n 94); Baars (n 13) 126.

[96] Rhys Jenkins, 'Corporate Codes of Conduct: Self-Regulation in a Global Economy' (2001) UNRISD Technology, Business and Society Programme Paper No 2, 2. See similarly Scheper (n 20) 755.

[97] Muchlinski (n 93) 214.

[98] Wettstein (n 54) 25.

employment, conditions of work and life, training and freedom of association, but still with no explicit connection to human rights.

In the same year, a new proposal — the *Sullivan Principles* — appeared as a response to the TNCs activity in the South African apartheid regime. The Principles sought to establish standards of corporate conduct for companies operating under apartheid and encourage businesses to 'exercise civil disobedience' and 'to engage in the active dismantling of the apartheid regime'.[99] Although connecting more directly corporate conduct with human rights concerns, their regulatory form remained voluntary and disclosure-based. Instead of imposing binding obligations or requiring corporate withdrawal, the Principles relied on reporting duties, particularly in relation to workplace desegregation and the improvement of conditions for Black and other non-white South Africans.[100] The public outrage against the apartheid-regime also impacted the financial world, with calls to incorporate social and ethical considerations into financial decision-making, a practice commonly referred to as Socially Responsible Investment ('SRI'). Through SRI, corporate responsibility began to enter the allocation of capital itself. The question was no longer only whether companies should follow soft standards, but whether investors should take corporate conduct into account when deciding where capital should flow. The voluntary logic traced above was extended it into the market, making social criticism dependent on investor choice rather than enforceable corporate obligation. This would lay the ground for the later emergence of the Environmental, Social and Governance ('ESG') criteria.

2.6. Corporate Power over Human Rights and Neoliberalism

By the 1990s, the neoliberal orientation described above had spread across the post-Cold War world. The so-called Washington Consensus (1989) consolidated policy guidelines focused on trade liberalisation and privatisation as key strategies for the economic development in South America, while the Copenhagen Criteria limited EU's accession through the requirement of a functioning market economy.[101] Within this transformed global political economy, corporate power over human rights was stronger than ever. [102] Concurrently, NGO's 'name and shame' campaigns and reports, amplified by media coverage, contributed to growing public awareness of corporate involvement in serious human

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[99] Wettstein (n 54) 26;
[100] Muchlinski (n 93) 216-217.
[101] Arat (n 73) 172.
[102] Peter T Muchlinski, 'Human Rights and Multinationals: Is There a Problem?' (2001) 77 Intl Aff 31, 32; Florian Wettstein, 'CSR and the Debate on Business and Human Rights: Bridging the Great Divide' (2012) 22 Bus Ethics Q 739, 742-743; Wettstein (n 27) 177-179.

rights and environmental harms. One of the earliest high-profile corporate disasters was the Bhopal disaster in 1984.[103] During the 1990s and beginning of the 2000s, however, the list of high-profile controversies was already long, involving companies such as GAP, Nike, Shell, Unocal, Yahoo, Wal-Mart.[104]

Among these cases, two were particular 'game changers' for the BHR field.[105] The first one — the Niger Delta case —[106] brought international attention to the ways in which corporate power could operate in 'complicity' with authoritarian contexts. Through this case, Shell became an emblem of capitalism's ability to construct gigantic enterprises, generating outraged sentiments and helping to consolidate a public narrative of the existence of 'cruel extraction companies'.[107] The second big case was the Nike 'sweatshop' scandals,[108] which, in turn, shifted attention to global supply chains and the conditions under which branded goods were produced. Reports of low wages, excessive working hours, unsafe working conditions, and child labour intensified public concern over the degrading treatment of workers and gave force to the 'anti-sweatshop' movement.[109] This movement exposed how the corporate power of major apparel brands depended on the commodification of human beings on the 'invisible other side', while also translating critiques of neoliberal globalisation and TNCs into forms of 'lifestyle politics' centred on the ethical consumer.[110]

Nike initially attempted to distance itself from the abuses by relying on the formal separation between the lead company and its suppliers. As Nike's Compliance Director at that time put it: 'Hey, we don't own the factories. We don't control what goes on there.' [111] Another common justification would be that

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[103] In 1984, a gas leak at a Union Carbide pesticide plant in India released toxic gas into the surrounding area during the night. Around 3,000 people were killed, and many more suffered long-term health effects. More than 40 years later, the company claims it bears no responsibility since it 'never owned or operated the plant', hazardous waste remains at the site, and victims have not been fully compensated. See Carroll (n 40) 37 and Wettstein (n 54) 26.
[104] John Gerard Ruggie, *Just Business: Multinational Corporations and Human Rights* (WW Norton 2013) xxxii-xxxiii, 3-19; Ramasastry (n 82) 241-242; Wettstein (54) 28.
[105] Wettstein (n 102) 742, 746; Scheper (n 20) 742-744.
[106] For decades, oil operations by Royal Dutch Shell in the Niger Delta, homeland of the Ogoni people, caused repeated oil spills, gas flaring, and severe pollution of land and water, damaging the livelihoods of local communities. The company was accused of failing to prevent environmental harm and of collaborating with state authorities amid growing protests. In 1995, the Nigerian military regime executed Ken Saro-Wiwa and eight other Ogoni activists. It was alleged that Shell had requested police interventions against protesters and was complicity in the execution of the activists.
[107] Scheper (n 20) 743.
[108] From the 1970s onwards, Nike built its business model through outsourcing production to East Asia. By the early 1990s, reports began to expose the working conditions of the factories: low wages, excessive hours, trade union restriction, exposure to hazardous chemicals and child labour in the so-called 'sweatshops'.
[109] Wettstein (n 54) 746-747; Scheper (n 20) 743.
[110] Scheper (n 20) 743.
[111] Claire Bright and others, 'Toward a Corporate Duty for Lead Companies to Respect Human Rights in Their Global Value Chains?' (2020) 22 Bus Polit 667, 672.

companies should not interfere in the internal affairs of the host countries. This was clear in the response of Shell in the Niger Delta case, issuing a statement 'that it was not its role to get involved with governments'[112] or in the response of Anglo-American Tobacco to a 1993 Amnesty International report on torture in China: 'we operate worldwide and we do not comment on such matters as human rights violations. It is inappropriate for us to do so, particularly as the environment in which we operate is so variable'. [113] Yet the intensity of CSO campaigns and media scrutiny made such distancing increasingly difficult to sustain. Faced with a legitimacy crisis, companies began to respond through the language and instruments of CSR. Nike established a Corporate Responsibility Department, adopted a supplier code of conduct, and developed factory audit mechanisms. Shell followed a similar trajectory, revising its Statement of General Business Principles in 1997 to include respect for human rights of employees and to support for fundamental human rights.[114] Moreover, external organisations also emerged to develop more 'efficient' codes of conduct for corporate adherence, notably the Ethical Trade Initiative (1998).

At the same time, the 1990s saw the consolidation of reporting, certification, auditing, multistakeholder initiatives, and investment-based schemes as responses to corporate scandals. The Global Reporting Initiative (1997) contributed to the development of human rights standards through which corporate conduct could be disclosed in reports. A similar logic emerged in relation to the so-called 'conflict diamonds' exposed in Sierra Leone and other conflict zones. The Kimberley Process, launched shortly afterwards, sought to prevent the trade of such diamonds through certification protocols and compliance assessments. International standards based on external auditing were also extended to the field of human rights, for example, through the development of SA8000 (1997), which assessed workplace performance based on ILO Conventions and the UDHR. In addition, SRIs, such as the Dow Jones Sustainability Index (1999) were created or consolidated during this period, allowing investors to compare companies' 'sustainability' performance.

In sum, corporate responses to the scandals of the 1990s centred on internal codes of conduct, certification schemes, audits, and disclosure practices. This did not depart substantially from the voluntary trajectory that had already taken shape in the 1970s and 1980s. Baars designates this wider shift of a 'private regulation revolution':[115] a movement towards voluntary and privately promulgated frameworks in which the 'self-enlightened' company appears capable of regulating the human rights

[112] Ruggie (n 51) 69.
[113] Muchlinski (n 93) 216.
[114] Ruggie (n 51) 69-70; Muchlinski (n 93) 217-218
[115] Baars (n 13) 355.

violations produced by its own operations. Arat designates this self-regulatory form the emergence of 'neoliberalism for human rights' or 'neoliberalism with a human face'.[116] As it will be explored in detail in Chapter 4, the self-regulation is closely aligned with neoliberal rationality and its arrangement of the private and public spheres. Through this orthodoxy, human rights and environmental violations become 'externalities' and responsibility something that can be measured, ranked, and marketed.

Viewed from the perspective of corporate power over human rights, the CSR movement only gave more authority to businesses by allowing them to define the scope, priorities, and visibility of their own responsibility. Companies can decide which human rights or ecological issues to prioritise, whether and how to address them, how to measure performance, and how to present those efforts publicly. Following Baars's critique,

> these instruments 'while doing little to curb harmful corporate activity, especially in the Global South, were ideologically highly significant' because they help construct corporations as legitimate participants in neoliberal global governance and even as '*providers* of socio-economic and civil rights'.[117]

In this sense, CSR helps normalise a world in which corporations assume *quasi-public* roles while remaining formally private actors. This also explains why CSR became such a powerful response to anti-corporate and anti-globalisation critique. As several scholars have been highlighting, capitalism has an outstanding capacity to overturn any opposition and resistance, by reframing it through its owns institutions.[118] This reflects what Scheper describes as capitalism's capacity for 'quick recovery':[119] Critique is not necessarily defeated by being ignored, but by being absorbed, contained, and reformulated in a way that leaves the underlying structure intact. Leite associates this phenomenon with neoliberalism's creation of a 'smoke screen', whereby neoliberalism advances a counter-proposal 'embodying a highly ethical and moral discourse' and renders invisible the gap between that discourse and its materialisation.[120] Hence, the socio-moral indignation generated by labour exploitation and environmental destruction is mainly answered by corporations themselves, often through an explicit adoption of the language of human rights and without presenting any change to neoliberal prescriptions.

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[116] Arat (n 73) 174.
[117] Baars (n 13) 356.
[118] Peter Utting, 'Corporate Responsibility and the Movement of Business' (2005) 15 Dev Pract 375.
[119] Scheper (n 20) 739.
[120] Leite (n 19) 202.

2.7. Conclusion

This chapter has traced CSR not as a neutral moral development, but as a historically situated response to the growing visibility of corporate power over human rights within a specific hegemonic political economy framework. As elaborated throughout the sections, corporate power was not an accidental or inevitable outcome, but, at least, for the most part, deliberately constructed through neoliberal ideology. Moreover, corporate power over human rights results from the structural tension between neoliberal orthodoxy — which *inter alia* privileges the maximisation of shareholder value and privatisation of public goods — and the respect and protection of human rights. It is due to that fundamental clash that human rights violations were responded by corporations through market-compatible mechanisms, focused on voluntary and self-regulatory governance. Instead of undermining TNCs' power and addressing some of its root causes, CSR, across its different phases, expanded the vocabulary through which corporate harm could be named, while remaining attached to a neoliberal rationale. As a result, CSR neutralises contestation and generates even more corporate power by transforming the subject of regulation into the regulator.

This critique of CSR contributed in part to the development of the BHR field.[121] Emerging from the work of legal scholars and practitioners, BHR appeared to place greater emphasis on binding instruments, strategic litigation, and effective remedies for victims, in opposition to the voluntary corporate philanthropy characteristic of CSR.[122] Corporate accountability became the field's principal objective, distinguishing BHR from CSR by implying legal responsibility and the use of tools capable of enforcing businesses compliance with human rights. It also renewed attention to the role of the state in ensuring the protection of all international recognised human rights, rather than accepting the *a la carte* approach to human rights responsibility that corporations had tended to adopt.[123] However, as the following chapters will argue, the regulatory advances achieved within the BHR field have not fully broken away from the same political-economy ideology. The hegemony of neoliberalism has constrained the field's political imagination and limited its capacity to address the root causes of corporate power over human rights. Instead, the BHR movement has largely sought to legalise, and render binding, many of the same tools associated with CSR, particularly by placing HRDD at the centre of the field's debates.

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[121] Ramasastry (n 82) 238; Wettstein (n 54) 34.
[122] Ramasastry (n 82) 238; Wettstein (n 56) 80-81.
[123] Ramasastry (n 82) 239, 247.

Chapter 3: The Birth of the UNGPs

The BHR field is defined by Aristova as 'a broad set of instruments at the intersection of human rights and business, … described as a "galaxy of norms" which includes "multiple forms of guidance with differing legal effects, formulated by both public and private entities''.'[124] This chapter examines the emergence of BHR as a distinct regulatory field, from the competing initiatives of the early 2000s to the consolidation of the UNGPs. Its regulation was developed through a struggle between different governing imaginaries: one grounded in partnership and corporate self-regulation, and another seeking to articulate more direct human rights obligations for corporations. Beyond norm formation, other tools were also being developed by the end of the twentieth-century. Although this thesis does not analyse them in detail, strategic litigation is worth mentioning here. Understood as the litigation that pursues objectives broader than the individual claims formally brought by the parties, seeking to trigger wider legal or institutional change through judicial decision-making, it played a crucial in the consolidation of the BHR, [125] and remains, to date, one of the avenues gaining most momentum.[126]

The chapter begins at the turn of the century, when the UN Global Compact and the Norms offered two competing pathways for governing corporate conduct. It then examines Ruggie's mandate and his rejection of the Norms, before turning to the diagnosis of 'governance gaps' as the conceptual foundation of the UNGPs. The subsequent section analyses the UNGPs as a form of re-embedded liberalism and polycentric governance. The final section considers the consensus around the UNGPs through the lens of corporate power over institutions and knowledge, showing how the apparent settlement of the field displaced more confrontational projects of corporate accountability. The chapter argues that this process produced a particular framing of the BHR predicament, one that cannot be disconnected from the political-economy system or from its hegemonic effects. Throughout the chapter, this narrative is

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[124] Ekaterina Aristova, 'Strategic Business and Human Rights Litigation: It Is a Marathon, Not a Sprint' (2025) 10 BHRJ 379, 381.

[125] Ramasastry (n 82) 241; Wettstein (n 54) 27.

[126] Human Rights lawyers began bringing lawsuits in Western countries against TNCs in their home jurisdictions for the violation of human rights and environmental violations arising from their foreign operations. High-profile cases involving companies such as Chiquita, Unocal, BHP, Texaco, Total, or Shell started to challenge prevailing assumptions about parent-company liability. These claims were initially brought through the Alien Tort Statute in the US and, later, through tort law and civil liability. At the same time, class-action lawsuits emerged against corporations for their participation in the Holocaust, including major Swiss banks, European insurance companies, and German businesses such as Volkswagen or Siemens. Strategic litigation has received extensive attention from BHR scholars. See eg Sabine Michalowski (ed), *Corporate Accountability in the Context of Transitional Justice* (Routledge 2013); Beth Stephens, 'The Rise and Fall of the Alien Tort Statute' in Deva and Birchall (n 51) 46; Radu Mares, 'Liability within Corporate Groups: Parent Companies' Accountability for Subsidiary Human Rights Abuses' in Deva and Birchall (n 51) 446; Bright (n 111); Aristova (n 124).

critically unfolded, shedding a light on how corporate power helped legitimise certain regulatory choices within the BHR field while marginalising alternative routes to corporate accountability.

3.1. Two Competing Paths at the Turn of the Century: The UN Global Compact and the Norms

By the turn of the millennium, the 'golden age' of neoliberalism had been disrupted by the bursting of the 'New Economy' bubble[127] and a series of catastrophic corporate scandals. Yet, despite this crisis, the international legal order was becoming increasingly effective in protecting corporate and investor interests. Investor-State Dispute Settlement (ISDS) in particular, strengthened the capacity of foreign investors to challenge state regulation, deepening the power asymmetry between TNCs and States.[128] In this context, the relationship between corporations and human rights was being pulled in two different regulatory directions. One path sought to transpose CSR's voluntary logic into the international arena and institutionalise it as a fully-fledged governance industry. The other, driven by dissatisfaction with CSR, attempted to formulate more direct obligations for corporations under international human rights law. The first approach, led by UN Secretary-General Kofi Annan and his senior adviser John Ruggie, became the prevailing one, planting the institutional seeds from which the UNGPs would later emerge.

Kofi Annan's appointment as UN Secretary-General in January 1997 marked a significant turning point in the UN's attitude towards businesses, recasting the relationship from one of antagonism into one of partnership.[129] According to Martens, this reorientation also reflected the growing influence of corporate actors within the organisation in the following years.[130] In 1999, acting on his own initiative, Annan proposed at the World Economic Forum in Davos a voluntary learning forum through which companies were invited to commit to nine broad principles concerning human rights, labour, and the environment,[131] and to share case-studies in order to identity and promote best practices. Underlying the initiative was the assumption that the UN should engage with the private sector as a partner, thereby incentivising and

[127] Harvey (n 58) 192; Wettstein (n 27) 3-5.
[128] A Claire Cutler and Thomas Dietz (eds), *The Politics of Private Transnational Governance by Contract* (Routledge 2017) 156-158.
[129] Nolan (n 94).
[130] Jens Martens, 'Corporate Influence on the Business and Human Rights Agenda of the United Nations' (MISEREOR, Brot für die Welt and Global Policy Forum, Working Paper, June 2014) 8. See also Nolan (n 94) 466-467 regarding the imbalanced influence of businesses in comparison to NGO's and labour participants.
[131] The nine principles, later transformed into ten in 2004 with the addition of anti-corruption, were drawn from the UDHR, the ILO's Fundamental Principles on Rights at Work, the Rio Principles on Environment and Development and the UN Convention Against Corruption.

legitimising its capacity ‘to play a governance role’ and to act as a ‘potential agent of change’.[132] In Annan’s words, business leaders should ‘embrace, support and enact a set of core values’ to avoid a crisis of the open global market. By ‘embedding the global market in a network of shared values’ or, as Annan famously put it, by giving ‘a human face to the global market’, the multilateral trading system would be preserved.[133] In 2000, the UN Global Compact was launched and, as Wettstein has argued, became for many years the ‘symbol of what many hoped would be the beginning of a transformation of the global economy’.[134]

This project stood in direct conflict with the alternative path being constructed at the same time. In 1999, the UN Sub-Commission on Human Rights, acting on its own motion, asked David Weissbrodt, a human rights scholar and member of the Sub-Commission, to draft a code of conduct for transnational corporation. This process resulted in the 2003 Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (the ‘Norms’).[135] This initiative responded to calls from human rights advocates and NGOs, who opposed the UN’s partnership with companies perceived as perpetrators of human rights violations and advocated binding regulation of corporate conduct. As Backer suggests, at that time, there was a clear ‘discomfort with “free market philosophy,” … and a fundamental disagreement with the profit motive as inimical to the greater imperative of development’.[136] The Norms were designed to extend to companies the human rights obligations traditionally attributed to States, namely the duties to respect, protect, and fulfil human rights.[137] They established that, *inter alia*, businesses should assess their conduct against all internationally recognised human rights, be subject to periodically review by UN bodies, and fall under a grievance mechanism through which NGOs and other actors could submit complaints concerning corporate conduct.[138] In this sense, the Norms represented a markedly different regulatory imagination from the UN Global Compact.

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[132] John Gerard Ruggie, ‘Trade, Sustainability and Global Governance’ (2002) 27 Colum J Envtl L 297, 301.
[133] Kofi Annan, ‘Global Compact with Business’ (Speech to the World Economic Forum, Davos, 31 January 1999) accessed 2 June 2026.
[134] Wettstein (n 54) 28.
[135] UN Sub-Commission on the Promotion and Protection of Human Rights, ‘Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights’ (26 August 2003) UN Doc E/CN.4/Sub.2/2003/12/Rev.2 (‘Norms’).
[136] Backer (n 84) 139.
[137] Norms (n 135) para 1; David Weissbrodt and Muria Kruger, ‘Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’ (2003) 97 AJIL 901, 912-913.
[138] Norms (n 135) paras 15-19; Weissbrodt and Kruger (n 137).

Although the Norms depended on domestic incorporation by States, or on the adoption of a binding treaty, to become mandatory, they were not conceived as voluntary or as mere 'aspirational statements of desired conduct'.[139] Instead, they were intended to restate principles derived from international treaties and customary law that, according to their drafters, already applied to corporations. This generated fierce opposition from much of the private sector, which 'claimed that compliance with human rights law should be by choice and should occur only to the extent needed by the business community'.[140] The move from self-regulation to a legal framework was therefore not welcomed by most businesses. Several Western States also contested the Norms, concerned that their architecture departed from the traditional framework of international human rights law, 'demoting' the state.[141] At the same time, many Global South countries remained cautious, partly due to concerns that stronger regulation could discourage FDI, and partly due to the possibility that the Norms required corporations to promote human rights even where host States did not, thereby undermining their authority.[142] Cuba was the only state explicitly to support the Norms, describing them as a 'welcomed progressive development of international law'.[143] The US, by contrast, became one of their most forceful opponent, arguing that the Norms had no legal status, were 'doomed from the outset' and, crucially, that widespread human rights abuses in host countries were caused not by corporations but by the 'action or inaction of States'.[144] This opposition would later be critical not only for the rejection of the Norms, but also for the regulatory framework that replaced them.

The Norms were presented for adoption in 2004. Although they received a strong endorsement from major NGOs, including Amnesty International,[145] the Commission gave them a cold reception: while thanking the Sub-Commission for its work, it clarified that it had not requested the Norms, they had no legal value and that the Sub-Commission should not carry out any monitoring of corporate conduct.[146]

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[139] Weissbrodt and Kruger (n 137).
[140] Pini Pavel Miretski and Sascha-Dominik Bachmann, 'The UN "Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights": A Requiem' (2012) 17 Deakin L Rev 5, 27. On Shell's lobbying campaign against the Norms, see Bart Slob and Francis Weyzig, 'Corporate Lobbying and Corporate Social Responsibility: Aligning Contradictory Agendas' in José Carlos Marques and Peter Utting (eds), *Business, Politics and Public Policy* (Palgrave Macmillan 2010) 160.
[141] Miretski and Bachmann (n 140) 30-34. Judith Schrempf-Stirling, Harry J Van Buren III and Florian Wettstein, 'Human Rights: A Promising Perspective for Business & Society' (2022) 61 Bus Soc 1282, 1286.
[142] Miretski and Bachmann (n 140) 31.
[143] cited in Miretski and Bachmann (n 140) 32.
[144] Miretski and Bachmann (n 140) 20, 33.
[145] Scheper (n 20) 744.
[146] Commission on Human Rights Dec 2004/116 (20 April 2004) UN Doc E/2004/23(Part I)–E/CN.4/2004/127(Part I), 345; Wettstein (n 53) 28–29; Wettstein (n 54) 28-29.

As Ruggie himself later recognised, ‘this outcome undoubtedly suited business interests’.[147] In 2005, the Norms were effectively abandoned, and the Commission recommended that Kofi Annan appoint a Special Representative to review the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (the ‘SRSG’). John Ruggie was appointed to that role, bringing with him a particular understanding of global governance, the role of the markets and corporations, and the limits of binding regulation.

3.2. The Institutionalisation of the BHR

John Ruggie’s mandate opened a new phase in the debate on corporate human rights accountability, with a strong focus on transforming the deadlock over regulation into a search for a more viable framework. Ruggie was mandated, *inter alia*, to ‘identify and clarify standards of corporate responsibility and accountability’, concepts such as ‘“complicity”’ and ‘“sphere of influence”’, and ‘develop materials and methodologies for undertaking human rights impact assessments of the activities of’ TNCs.[148] Despite continued calls from civil society and NGOs for a binding instrument, and their insistence that the Norms should provide the basis for the SRSG’s work, Ruggie chose not to confront directly the political and business resistance that had defeated the Norms. His first major move was instead to criticise the Norms so sharply that his intervention was later described as their ‘death knell’ or as ‘Normicide’. First, he rejected the proposition that corporations already bore generally accepted binding human rights obligations under international law.[149] Second, he argued that the Norms’ methodology blurred the distinction between States and companies by extending to corporations duties which, in their full legal form, belonged to public institutions.[150] From his perspective, companies were economic organs, not democratic public institutions; their social role could therefore not simply mirror that of the state. Moreover, Ruggie considered the pursuit of a binding international instrument unrealistic, not only because there was little political will among States, but also because, even if such political will existed, ‘states would be incapable of re-embedding the global economy’.[151] His response to those disappointed by the failure of hard international obligations was thus not to insist on the treaty path, but to construct a framework that could gain institutional support across States, business actors, and civil society.

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[147] Ruggie (n 51) 71.
[148] Commission on Human Rights Res 2005/69 (20 April 2005) UN Doc E/CN.4/RES/2005/69.
[149] SRSG, ‘Interim report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises’ (22 February 2006) UN Doc E/CN.4/2006/97 paras 60-65.
[150] SRSG (n 149) paras 66-69.
[151] Duval (n 19) 283.

3.3. The Governance Gaps: the Diagnosis

Ruggie's work began from a particular diagnosis of the business and human rights problem, one that accepted open markets as desirable and located the difficulty in the weakness of governance around them. He left the role of corporations within global capitalism largely unchallenged, as he deemed that 'the world needs open markets', both for business 'to maximise its opportunities' and because an open world economy offers 'the only hope of pulling billions of poor people out of abject poverty'.[152] Ruggie's approach was therefore grounded in a broadly liberal political-economic outlook, in which TNCs are perceived as positive and desirable forces whose adverse effects had to be managed rather than structurally confronted. From that starting point, the 'root cause of the business and human rights predicament' lay, according to Ruggie, in the 'governance gaps created by globalisation', understood as the gap 'between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences'.[153] Business-related human rights harms were thus framed as occurring where governance gaps — weak, deficient, or incomplete forms of public governance — created permissive environments, leaving corporate abuse without adequate sanction or remedy.[154] This diagnosis quickly became central to the vocabulary of BHR literature and to the subsequent development of the regulatory landscape.

The apparent simplicity of the concept, however, obscures the choices through which these gaps are produced. As Deva warns, the concept oversimplifies the relation between business conduct and human rights abuse, since almost any contemporary problem can eventually be described as a governance gap.[155] Chapter 2 has already demonstrated that the disjuncture between corporate power over human rights and public regulation did not arise naturally. It was made possible by neoliberal legislative and economic reforms that facilitated and protected free trade, capital movement, privatisation of public goods, and the expansion of corporate activity, thereby incentivising the reorganisation of production across jurisdictions. Critical BHR scholars have similarly contested the neutrality of the 'governance gap' diagnosis. Duval, for instance, argues that such gaps 'are not a "natural" occurrence', but the result of

[152] John Gerard Ruggie, 'The Theory and Practice of Learning Networks: Corporate Social Responsibility and the Global Compact' (2002) 5 J Corp Citizsh 27, 30.
[153] SRSG, 'Protect, Respect and Remedy: A Framework for Business and Human Rights' (7 April 2008) UN Doc A/HRC/8/5 para 3 ('2008 Framework').
[154] SRSG, 'Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts' (19 February 2007) UN Doc A/HRC/4/35 para 3; The 2008 Framework (n 153) para 104; Ruggie (n 104) xxiii-xxiv.
[155] Surya Deva, 'Business and Human Rights: Time to Move Beyond the "Present"?' in Rodríguez-Garavito (n 93) 46, 62.

legal and political choices.[156] Dehm, in a related critique, underlines that the emphasis on 'governance gaps' obscures the role played by international law, especially trade and investment law, in producing those gaps.[157] Kampourakis and Lane make the same point when they argue that,

> while it is acknowledged that changes in the global economy, such as the shift to offshore outsourcing, have profound implications for public governance, it is often forgotten that these changes did not occur in a vacuum but were largely a product of new institutional arrangements – in this case, reforms of trade and market liberalization, intellectual property protection, or labour under-regulation associated with export-led growth.[158]

Moreover, the 'governance gaps' diagnosis appears to imply that, if the world were composed entirely of liberal countries with advance regulatory systems, human rights abuses would not occur. However, as Karp explains, '[t]he reason that the world needs the UNGPs is not that some states are human rights heroes and others are human rights villains.' It is because '[n]eoliberalism structures the relationship between markets and *all* states at an international level.'[159] Put differently, the problem is not merely that some countries fail to regulate corporations adequately, but that the dominant global political-economy reorganises state authority around market compatibility and its expansionary logic, while human rights are relegated to the outskirts of political-economic decision-making. Kampourakis and Lane stress, in this vein, that private power is 'a historical product of existing legal regimes and institutional constellations and the global social relations of production these enable'. Using forced labour as an example, the authors argue that such harm is better understood as a predictable consequence and symptomatic expression of intentional institutional arrangements than as a regrettable result of governance gaps, as Ruggie's diagnosis appears to suggest.[160]

Nevertheless, Ruggie identified corporate power with considerable precision. He recognised that such power emerged in the context of the expanding activity of TNCs, and that this expansion had been made possible through trade liberalisation, deregulation, privatisation, and FDI.[161] He also acknowledge that 'the corporate sector … has done more than any other to create the growing gaps between global economy

[156] Duval (n 19) 302.
[157] Julia Dehm, 'Beyond Climate Due Diligence: Fossil Fuels, "Red Lines" and Reparations' (2023) 8 BHRJ 151, 167.
[158] Kampourakis and Lane (n 19) 425-426.
[159] Karp (n 19)142.
[160] Kampourakis and Lane (n 19) 425-426.
[161] The 2008 Framework (n 153) para 12; Ruggie (n 70) xxiv.

and national communities'.[162] In his later work, he even described the multinational enterprise as a global institution at the 'center of global power', marked by 'a relatively autonomous transnational authority structure'[163] and possessing 'authority that states lack'.[164] Ruggie therefore saw many of the elements that a structural critique would later foreground. As SRSG, however, he did not translate that recognition into a regulatory project that treated governance gaps as symptoms of a broader architecture producing corporate power asymmetries. Instead, he reframed the predicament as one of institutional misalignment, flattening the different layers that structure it. While this thesis contests Ruggie's diagnosis as reductive, and perhaps ultimately mistaken, the central point here is how that diagnosis became embedded in a broader framing through which HRDD could emerge as the dominant regulatory form in the BHR field.

3.4. The Solution: The UNGPs as Re-Embedded Liberalism and Polycentric Governance

Drawing on his earlier theorisation of embedded liberalism and social constructivism,[165] Ruggie approached the problem of governance gaps as one of re-embedding global markets within social norms, institutional practices, and governance arrangements. As Chapter 1 explained, embedded liberalism described a compromise in which market openness was made politically sustainable through social protection and institutional constraint. The SRSG's response to business-related human rights abuse followed this logic. Markets, in his view, required 'broader social norms and institutional practices' in order 'to thrive and survive';[166] as he put it elsewhere, 'markets work optimally only if they are embedded within rules, customs and institutions'.[167] The same theoretical commitments had already informed his understanding of the UN Global Compact, which he described as reflecting 'a desire to tap into the capacity of the private sector, not a desire to regulate companies'.[168] The aim was therefore to entrench global business activity within social values and expectations, while preserving the basic legitimacy of open markets and corporate participation in governance.

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[162] John Gerard Ruggie, 'Taking Embedded Liberalism Global: The Corporate Connection' (2003) IILJ Working Paper2003/2, 3.
[163] Ruggie (n 70) 330.
[164] Ruggie (n 70) 327.
[165] John Gerard Ruggie, 'What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge' (1998) 52 Intl Org 855.
[166] Ruggie (n 51) 65.
[167] The 2008 Framework (n 153) para 2.
[168] John Ruggie, 'How to Marry Civic Politics and Private Governance' in Andrew Kuper (ed), *The Impact of Corporations on Global Governance* (Carnegie Council 2004) 13.

This approach also shaped Ruggie's understanding of which actors were needed to address his diagnosis. He considered that States alone could not do 'all the heavy lifting'[169] in responding to the 'complex and ever-changing forces of globalisation'.[170] Companies should instead be incentivised to deploy their own capacities in response to such challenges. In Ruggie's view, this required moving beyond the 'conceptual shackles'[171] surrounding human rights discourse: a discourse that treated law as the sole avenue for addressing corporate conduct and often cast companies as antagonists of human rights. His framework relied on bringing enterprises into the conversation as necessary partners in governance.[172] This move drew closely on social constructivism and theories of reflexivity, since it aimed to reshape the ideas informing corporate identity and to make business-related human rights violations increasingly unacceptable within corporate practice itself. To achieve this, he proposed a polycentric governance system,[173] designed to align three governance systems: public law and state governance; corporate governance and internal management; and external pressures from civil society, investors, consumers, and affected communities.[174] Within this system, companies were encouraged to upgrade their self-reflective capacities and to place limits on their own conduct, while the 'courts of public opinion' would operate as a mechanism of discipline, creating pressure for companies to self-regulate. The corporation thus entered the framework as a reflexive governance site, expected to internalise human rights norms through management systems, institutional learning, stakeholder engagement, and social pressure.

This solution was first institutionalised in the 2008 Protect, Respect and Remedy Framework ('2008 Framework')[175] and, later, in the 2011 UNGPs[176]. Both instruments were organised around three pillars:

(i) the State duty to protect against human rights abuses by third parties, including business enterprises, through policies, regulation, legislation, and effective enforcement; [177]

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[169] John Gerard Ruggie, 'Global Governance and "New Governance Theory": Lessons from Business and Human Rights' (2014) 20 Global Governance 5, 8.
[170] John Gerard Ruggie, 'Business and Human Rights: The Evolving International Agenda' (2007) 101 AJIL 819, 840.
[171] John Gerard Ruggie, 'Life in the Global Public Domain: Response to Commentaries on the UN Guiding Principles and the Proposed Treaty on Business and Human Rights' (2015) SSRN, 9 accessed 3 July 2026.
[172] Alysha Kate Elias Shivji, 'Time for a Break from the UNGPs? Reimagining the Future of Business and Human Rights' (2025) 10 BHRJ 407, 410.
[173] Polycentric governance is a political science concept that refers to systems of governance in which authority is distributed across multiple actors, institutions, and levels, including public, private, and civil society organisations.
[174] Ruggie (n 169) 8-10; Ruggie (n 51) 74-78.
[175] See n 153.
[176] UNHRC, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (21 March 2011) UN Doc A/HRC/17/31.
[177] Principles 1-10.

(ii) the corporate responsibility to respect human rights, meaning that enterprises should do no-harm and address harms when they occur;[178]

(iii) access to effective remedy for victims of business-related human rights harms through judicial and non-judicial mechanisms, provided by both States and businesses.[179]

This polycentric approach gave the UNGPs their particular regulatory form, even though Ruggie did not include a separate pillar dedicated to civil governance.[180] Under the first pillar, States remained the primary bearers of international human rights obligations, and it fell to them to regulate the conduct of private actors, set expectations for businesses, foster corporate cultures in which human rights are respected, and take appropriate steps to prevent, investigate, and redress business-related human rights abuse. Corporations, by contrast, were assigned a responsibility to respect human rights. Ruggie deliberately used different language in order to reject the idea that companies should bear the same general human rights obligations as States. While States have duties to respect, protect and fulfil human rights under international human rights law, businesses have only a responsibility to do no-harm, based on social shared expectations.[181] Ruggie later described these expectations as 'a transnational social norm', since they rest on the social acknowledgement by 'the global public domain', namely States, civil society, and enterprises, that businesses should respect human rights.[182] Hence, the scope of the corporate responsibility to respect was located beyond a company's formal legal licence to operate and tied instead to what is sometimes described as its 'social licence to operate': a broader form of social acceptance through which a company's specific activity acquires legitimacy within the communities and societies affected by it.[183] This approach has been extensively criticised in the literature for relying exclusively on a moral norm, thereby raising questions, for instance, about the scope or the enforceability of the corporate's duty to respect.[184]

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[178] Principles 11-24.
[179] Principles 25-31 UNGPs.
[180] Duval (n 19) 291; Tara J Melish and Errol E Meidinger, 'Protect, Respect, Remedy and Participate: "New Governance" Lessons for the Ruggie Framework' in Radu Mares (ed), *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation* (Martinus Nijhoff 2011) 303, 307.
[181] David Bilchitz, 'The Ruggie Framework: An Adequate Rubric for Corporate Human Rights Obligations?' (2010) 7 SUR Intl J Hum Rts 199, 204; Wettstein (n 54) 29.
[182] Ruggie (n 51) 75-76.
[183] 2008 Framework (n 153) para 54; John Morrison, 'The Social Licence: One Way of Thinking about Business and Human Rights' in Baumann-Pauly and Nolan (n 56) 101-103; Aristova (n 124) 381.
[184] To illustrate, what follows when society does not expect respect for a particular human right? Conversely, what happens when social expectations require a company to go beyond the responsibility to respect? If corporate human rights responsibilities are grounded in moral obligations, can individuals legally require corporations to respect human rights? This allocation of obligations also appears to reproduce a distinction between positive and negative duties that has long been contested in human rights scholarship.

Nevertheless, the UNGPs were presented as a major breakthrough in the field, especially as it was the first time the Human Rights Council unanimously endorsed 'a normative text … that governments did not negotiate themselves'.[185] They are also viewed by some scholars and practitioners as marking a departure from CSR, since the second pillar expressly requires companies to assess their conduct by reference to internationally recognised human rights, rather than only by reference to the domestic law of the jurisdiction in which they operate. The UNGPs were further praised for their emphasis on a 'smart mix of measures', understood as a combination of 'national and international, mandatory and voluntary' measures designed to foster business respect for human rights.[186] This hybrid structure has been read as central to the framework's political acceptability and institutional influence.[187] The UNGPs thus became widely recognised as the 'lingua franca' of corporate human rights responsibility, the common global language through which corporate human rights responsibilities are understood.[188] Although they were recognised as not being a 'silver bullet',[189] they nevertheless became a 'global source of authority for the private sector'.[190]

3.5. Consensus achieved through Corporate Power over Institutions

The 2008 Framework and the UNGPs derived much of their authority from being presented as the product of an extensive consensus-building process.[191] After years of polarisation, the idea that States, civil society, and business actors could converge around a common platform became central to the legitimacy of the project. Throughout his mandate, Ruggie undertook a comprehensive consultation process which consolidated 'nearly 50 international consultations on all continents'.[192] According to the SRSG, this process was also accompanied by in-person visits to companies' operations sites, combined 'where possible' with 'discussions with local community leaders or workers' representatives, arranged through

[185] Ruggie (n 51) 62.
[186] Commentary to Principle 3.
[187] Karin Buhmann, 'Business and Human Rights: Understanding the UN Guiding Principles from the Perspective of Transnational Business Governance Interactions' (2015) 6 Transnational Legal Theory 399.
[188] Ramasastry (n 82) 247; Nicola Jägers, 'UN Guiding Principles at 10: Permeating Narratives or Yet Another Silo?' (2021) 6 BHRJ 198, 200.
[189] 2008 Framework (n 153) para 7.
[190] Karp (n 19).
[191] Ruggie (n 169) 9-10.
[192] Ruggie (n 51) 79.

NGOs or international labor federations'.[193] The achievement of a consensus among different global actors has been celebrated by proponents of the UNGPs as one of the project's major achievements.[194]

This consensus was reached through what Ruggie called 'principled pragmatism': an 'unflinching commitment' to strengthening the protection of human rights in relation to corporations, paired 'with a pragmatic attachment to what works best' in practice.[195] At the same time, following the failure of the Norms, Ruggie was committed to obtaining support from the private sector. In his view, recommendations addressed to firms should 'find resonance' there, otherwise they would be 'resisted or ignored'.[196] From the corporate side, participation in the process was equally strategic. As Preuss and Brown note, if businesses did not become involved 'in shaping the debate', they risked 'leaving the interpretation of human rights entirely to NGOs and intergovernmental organisations'.[197] In any event, corporate participation in the UNGPs process has not been downplayed in the literature; on the contrary, it has often been defended, and, to some extent, celebrated. Buhmann, for instance, contends that the success of the UNGPs was attained by actively involving private non-state actors in the rule-making process.[198] Given the state-centric architecture of international human rights law, companies, although perceived as duty-bearers, had no access to the 'technical room of practical negotiations'.[199] Ruggie's extensive consultation process and inclusion of corporate perspective circumvented this problem, a move Buhmann views as essential to the legitimacy of the project and to corporate compliance with the norms.

Bracketing the debates over whether corporations should be characterised as subjects of international law and duty-bearers, and whether stakeholder participation in norm-making increases subsequent compliance, the analysis developed here focuses instead on how TNCs' structural power operated through the institutional construction of the UNGPs. Critics have pointed out to the disproportionate weight to TNCs' views in the construction of the UNGPs, which went beyond mere participation.[200] As

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[193] Ruggie (n 51) 79.
[194] See eg Karin Buhmann, 'The Development of the "UN Framework": A Pragmatic Process Towards a Pragmatic Output' in Mares (n 180) 85.
[195] SRSG (n 149) para 81.
[196] John Gerard Ruggie, 'The Construction of the UN "Protect, Respect and Remedy" Framework for Business and Human Rights: The True Confessions of a Principled Pragmatist' (2011) 2 EHRLR 127, 128.
[197] Lutz Preuss and Donna Brown, 'Business Policies on Human Rights: An Analysis of Their Content and Prevalence Among FTSE 100 Firms' (2012) 109 J Bus Ethics 289, 290.
[198] Buhmann (n 187); Karin Buhmann, 'Navigating from "Train Wreck" to Being "Welcomed": Negotiation Strategies and Argumentative Patterns in the Development of the UN Framework' in Deva and Bilchitz (n 93) 29.
[199] Buhmann (n 194) 93.
[200] See eg Surya Deva, 'Treating Human Rights Lightly: A Critique of the Consensus Rhetoric and the Language Employed by the Guiding Principles' in Deva and Bilchitz (n 93) 78; Carlos López, 'The "Ruggie process": from legal obligations to corporate social responsibility?' in Deva and Bilchitz (n 93) 58; Akinwumi Ogunranti, 'Norm Contestation in the BHR Field—The Role of Corporate Actors as Entrepreneurs, Antipreneurs, and Saboteurs' (2024) 9 *BHRJ* 381.

Martens' work shows, already at the very beginning of SRSG's mandate, three international business associations,[201] which '"together form the most representative voice of global business"', played a particularly influential role.[202] They directly endorsed Ruggie's mandate and issued joint letters of support in which they specifically asked the SRSG to 'move the debate away from anti-business rhetoric to create a more effective partnership approach' and to 'explicitly recognize that there is no need for a new international framework'.[203] This overt engagement was met with a corresponding openness on SRSG's part, who, in the same year and as one of his first courses of action, invited an international business association to develop guidelines for companies operating in 'weak governance zones'.[204] Moreover, the SRSG benefited from a considerable amount of *pro bono* work, much of which was provided by large corporate law firms and which he regarded as essential to the project.[205] In Ruggie's words, law firms became crucial to the 'development of the due-diligence requirements under the corporate responsibility to respect human rights', since they had extensive experience in conducting due diligence in other areas.[206] Following the adoption of the UNGPs, international business associations, corporate law firms, and TNCs all backed Ruggie's work, praising its 'principled pragmatism' and 'flexible framework'.[207] Notably, the available evidence suggests that, throughout the mandate, there was little friction between these actors and Ruggie's proposals. The clearest visible resistance concerned the creation of an international ombudsman to receive complaints from victims of business-related abuses — a measure proposed in the 2008 Framework and later dropped in the UNGPs Draft following business opposition.[208] Nevertheless, the homogenous support of these stakeholders contributed significantly to the perception that the UNGPs represented a consensus-based achievement: a perception that endures to this day.[209]

From a critical perspective, consensus-based processes have been challenged as an appropriate basis for regulatory policy and, even, democratic legitimacy. Laclau and Mouffe reject the Habermasian assumption that political conflict can be overcome through rational deliberation.[210] Instead, they argue

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[201] Namely, the International Chamber of Commerce (ICC), the International Organisation of Employers (IOE) and the Business and Industry Advisory Committee to the OECD (BIAC).
[202] Martens (n 130) 12
[203] cited in Martens (n 130) 13.
[204] Buhmann (n 194) 103.
[205] Ruggie (n 196) 129.
[206] Ruggie (n 104) 150.
[207] Martens (n 130) 16.
[208] Martens (n 130) 14.
[209] Schrempf-Stirling, Buren III and Wettstein (n 141) 1287.
[210] Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (Verso 1985); Chantal Mouffe, 'Deliberative Democracy or Agonistic Pluralism?' (1999) 66 Social Research 745.

that, since conflict and division is constitutive of politics, 'any form of consensus is the result of a hegemonic articulation' and therefore always contains an 'outside': marginalised positions and excluded demands that reveal the limits of the settlement.[211] Following a neo-Gramscian account of hegemony, the concept captures not merely explicit domination, but a more subtle operation through which a particular configuration of power secures consent through institutions, ideas, material relations, and the apparent naturalisation of a given order. Hence, the triumph of consensus can be read as the temporarily stabilisation of a hegemonic dynamic, a universalisation of a certain viewpoint,[212] where a particular political and cultural view becomes sufficiently dominant to appear the only natural, reasonable, pragmatic, or even inevitable, while other perspectives are recoded as excessive, radical, naïve, unrealistic, or disruptive.[213] This critique has direct implications for regulatory processes. Coglianese observes that consensus-based process might appear very attractive because it 'conjures up notions of teamwork, community, and harmony'; however, when treated as the basis for regulation, consensus may also become politically dangerous, producing imprecision and a bias towards the *status quo*, especially where there are power asymmetries among the actors.[214] Several case studies have demonstrated that consensus-seeking in multistakeholder negotiations can present a bias towards States and powerful economic actors.[215] Consequently, that bias can sometimes facilitate what is designated as 'corporate capture', a phenomenon present across different areas of international rule-making, where public decisions over legislation or policy are shaped by the interests of a narrow and powerful group, rather than by the public interest.[216]

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[211] Laclau and Mouffe (n 210) xviii.
[212] Subhabrata Bobby Banerjee, 'Transnational Power and Translocal Governance: The Politics of Corporate Responsibility' (2018) 71 Human Relations 796, 804.
[213] Martin Fougère and Nikodemus Solitander, 'Dissent in Consensusland: An Agonistic Problematization of Multi-stakeholder Governance' (2020) 164 J Bus Ethics 683.
[214] Cary Coglianese, 'Is Consensus an Appropriate Basis for Regulatory Policy?' in Eric W Orts and Kurt Deketelaere (eds), *Environmental Contracts: Comparative Approaches to Regulatory Innovation in the United States and Europe* (Kluwer 2001) 93, 95.
[215] See eg Friederike Döbbe and Daniel Nyberg, '"…All Stakeholders Are Equally Unhappy": The Politics of Frame Consensus' (2026) Organization Studies and Juanita Uribe, 'Excluding through Inclusion: Managerial Practices in the Era of Multistakeholder Governance' (2024) 31 RIPE 1686. In both articles, the authors show how consensus-seeking within global sustainable food frameworks, in the first case, and in the UN Food Systems Summit, in the second, allowed powerful member states and corporate actors to dilute more ambitious framings. See also Ayelet Berman, 'Between Participation and Capture in International Rule-Making: The WHO Framework of Engagement with Non-State Actors' (2021) EJIL 227. Berman highlights how the increased participation of business actors in the WHO Framework resulted in rules more profit-friendly rather than public-interest goals. Lastly, see Fougère and Solitander (n 213) where the authors examine the issue of consensus-led in multi-stakeholder initiatives, such as the Roundtable Sustainable Palm Oil and in the Bangladesh Accord on Fire and Building Safety.
[216] OECD, *Preventing Policy Capture: Integrity in Public Decision Making* (OECD Publishing 2017) 19.

Applied to the UNGPs, the celebration of consensus can be read as the stabilisation of a hegemonic settlement, obscuring the struggle through which the regulatory field was reorganised while more confrontational projects were displaced to the margins. Several authors have suggested that different stakeholders, such as CSOs and rights-holders, were relegated to a passive or excluded from the process altogether.[217] The limited ability of CSOs to influence the UNGPs process illustrates the first case. Many groups remained engaged in the process and sought to affect its content, including Amnesty International, Human Rights Watch, FIDH, and ESCR-NET. Their criticisms repeatedly pointed to the same concerns: the emerging framework was moving away from stronger legal accountability; the draft UNGPs adopted a more regressive approach to State obligations and non-state actor responsibilities than existing interpretations of international human rights law; the human rights falling within the framework's scope should be less ambiguous; the relationship between international investment agreements and international human rights law should also be addressed.[218] However, none of these demands found resonance in the project.[219] On the contrary, they gave rise to a public dispute between major NGOs and the SRSG, who was publicly defended by Herbert Smith, a corporate law firm, and the Vice-Chairman of the UN Global Compact.[220] In this sense, CSOs, particularly NGOS, were present in the process, but its participation did not translate into meaningful influence over the regulatory form that emerged.

Furthermore, the participation within the consultation process of rights-holders directly affected by business-related human rights abuse was virtually non-existent.[221] Ruggie decided not to engage directly with victims, arguing that 'a mandate aimed at producing general principles and guidance for states and business would not mix well with jumping into the middle of specific disputes, which in any case are

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[217] See eg Deva (n 200); Chris Jochnick, 'Shifting Power on Business and Human Rights: States, Corporations and Civil Society in Global Governance' in Rodríguez-Garavito (n 93) 127, 132.
[218] Amnesty International and others, 'Joint Civil Society Statement on the Draft Guiding Principles on Business and Human Rights' (January 2011).
[219] Regarding the last point, the Commentaries to Principles 9 and 10 UNPS acknowledge that 'the terms of international investment agreements may constrain States from fully implementing new human rights legislation, or put them at risk of binding international arbitration if they do so. Therefore, States should ensure that they retain adequate policy and regulatory ability to protect human rights under the terms of such agreements …' and that 'States retain their international human rights law obligation when they participate …' 'in multilateral institutions that deal with business-related issues'. However, the UNGPs do not identify the specific measures through which States should preserve that regulatory space. Instead, the Principle 9 frames '[e]conomic agreements concluded by States, either with other States or with business enterprises – such as bilateral investment treaties, free-trade agreements or contracts for investment projects' as 'economic opportunities for States', while also stressing the need for 'investor protection', without highlighting how such agreements reinforce corporate power over human rights.
[220] BHRRC, 'Critiques of Guiding Principles by Amnesty Intl., Human Rights Watch, FIDH, others - debate with UN Special Representative Ruggie - Business and Human Rights Centre' (4 February 2011) accessed 13 June 2026.
[221] Deva (n 200) 83-84.

extremely difficult to resolve from thousands of miles removed'.[222] López adds that '[d]ealing with specific instances of abuse or complaints would derail the process and alienate businesses, who would then see it as another opportunity for criticism of them'.[223] As a result, rights-holders directly impacted by corporations misconduct were given no empowered role in the process. Their presence was mediated through reports, submissions and CSOs mediation leaving them as a passive voice in a framework formally concerned with their protection from corporate misbehaviour and their access to remedy.

Even the much-praised 'unanimous endorsement' was more ambiguous than it first appears. In fact, this statement can be misleading if read as evidence of affirmative approval by the international community as a whole. Institutionally, the UNGPs were endorsed by the Human Rights Council, a body composed of only 47 Member States, not by the 193 States of the General Assembly. Moreover, endorsement by consensus within the Council does not necessarily indicate that each member voted in favour of the UNGPs, as it is enough that no member requested a formal vote. In other words, unless a vote is requested, a resolution may be adopted without formal voting, making silence or non-objection procedurally sufficient for endorsement. This requires a distinction between a formal affirmative vote, which provides visible evidence of a certain position, and acquiescence or tacit consent, where silence or non-objection may stem from factors other than acceptance, such as strategic blame avoidance, indifference, high transaction costs, or the social pressure exerted by the shadow of majority voting.[224] Although no country called for a vote on the UNGPs, the 'endorsement' was accompanied by expressions of opposition from different States. South Africa had explicitly stated that it did not support the 2008 Framework.[225] Later, in 2011, Ecuador expressed dissatisfaction with Ruggie's framework, stating that its concerns had not been reflected in the final text of the resolution: 'the Guiding Principles were not binding standards nor did they wish to be'.[226] The United Kingdom also raised concerns, noting that it did not recognised 'a general duty of a State to protect under international law or international customary law'.[227] Seen from this angle, the language of endorsement did important legitimating work as it allowed

[222] SRSG, 'Opening Remarks at Mandate Consultation with Civil Society' (Geneva, 11–12 October 2010) 7.
[223] López (n 200) 69-70.
[224] Eva Krick, 'The Myth of Effective Veto Power under the Rule of Consensus: Dynamics and Democratic Legitimacy of Collective Decision-Making by "Tacit Consent"' (2017) 27 *Négociations* 109, 116-124.
[225] López (n 200) 71.
[226] HRC, 'Council establishes Working Group on human rights and transnational corporations and other business enterprises | OHCHR' (OHCHR, 16 June 2011) accessed 13 June 2026.
[227] HRC (n 226).

formal non-objection within a limited institutional forum to appear as broader agreement around the UNGPs.

The effect of a consensus-based process was also visible in the substantive narrowing of the UNGPs. Questions more amenable to agreement, and more likely to secure corporate assent, remained within the framework, while more controversial issues were bypassed so as not to destabilise the fragile 'consensus'. To illustrate, the possibility of sanctions for companies that failed to respect human rights, or the creation of an international complaint mechanism through which affected individuals or communities could bring claims against corporations, were sidelined.[228] Deva also highlights the case of the parent-company liability for harms committed through subsidiaries and related legal entities — the so-called 'extraterritorial jurisdiction' — which was avoided in the UNGPs text.[229] In particular, the Commentary to Principle 2 of the UNGPs establishes that 'States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so …'. Without entering the detailed debate on whether international human rights law already permits or requires such extraterritorial regulation, the point is that Ruggie's apparent neutrality still produced a regulatory effect. By refusing to affirm stronger home-State obligations, the UNGPs made it more difficult for those who had argued that international human rights law already required such obligations to rely on the framework in support of that claim. This can be read as an example of what Coglianese identifies as one of the negative outcomes of a consensus-based approach — the lowest common denominator acceptable — where the final outcome tends to reflect the least disruptive result, often the one preferred by powerful actors. Citing Caldart and Ashford's study of negotiated rulemaking, Coglianese states that 'because industry representatives will not likely "sign on" to any regulation that would force dramatic changes upon business, "negotiated rulemaking's focus on consensus can effectively remove the potential to spur innovation".'[230] This captures how consensus operated as a boundary-setting device in the construction of the UNGPs, narrowing corporate accountability to forms that could be accommodated within the existing organisation of corporate power.

Martens's work suggests that corporate groups tend to be motivated to prevent three forms of regulation: (1) the adoption of legally binding international rules to prevent TNCs' human rights violations; (2) the

[228] Deva (n 200) 86-87.
[229] Deva (n 200) 86-87.
[230] Coglianese (n 214) 118.

introduction of monitoring and accountability mechanisms for TNCs; and (3) the establishment of an international system through which victims could obtain reparations where national legislation is insufficient or inadequately implemented.[231] The final architecture of the UNGPs largely corresponded to these preferences. The framework did not create binding international obligations for corporations, did not establish an international monitoring or accountability body, and did not provide victims with an international mechanism for obtaining reparations. The convergence between the UNGPs' final form and the central preferences advanced by corporate actors should not be treated as a merely contingent outcome of consultation. It reflects the unequal power relations through which the framework was produced.

Following Birchall's analytical framework,[232] the UNGPs process can be read as an example of corporate power over institutions. Corporate actors entered the process with resources, legal expertise, policy capacity, privileged access, and repeated presence within institutional forums. Their participation therefore cannot be viewed as an ordinary procedural contribution to a neutral deliberative space; it operated as a medium of power. This influence was visible in formal consultations, lobbying interventions, corporate legal expertise, and the routinisation of corporate presence within decision-making spaces, where business actors came to be perceived as legitimate interlocutors in the construction of human rights standards. However, corporate influence cannot be reduced to these visible forms of participation. Strange's account of structural power clarifies the point further. Structural power is not limited to direct coercion, or to the visible capacity of one actor to compel another; it refers to the power to shape the frameworks within which other actors operate. In this sense, corporate influence also operated through the increasing dependence of global governance institutions on business cooperation, technical expertise, implementation capacity, and claims of market realism. In this context, business actors did not need formally to control the UN process to shape its limits. Their power lay in the fact that any framework perceived as unacceptable to major corporate actors could be framed as politically unworkable or insufficiently consensual to secure its effective implementation. The corporate agenda could thus operate as a limiting horizon for the possible, reconfiguring the regulatory tools available to the UNGPs process at the level of imagination.

[231] Martens (n 130) 27.
[232] See ch 1, section 1.3.

Moreover, Ogunranti argues that business influence also involved advancing an alternative normative project.[233] Corporate actors promoted a vocabulary of voluntarism, partnership, best practices, managerial learning, and gradual convergence, while presenting stronger regulatory approaches as unrealistic or counterproductive. Returning to Birchall's framework, corporate participation in the production of human rights standards may also shape the epistemic framework through which those standards are later understood. Power over knowledge therefore concerns the capacity to influence the categories, priorities, exclusions, and assumptions through which corporate responsibility is made intelligible.

In the UNGPs process, this power operated through discursive practices of translation of corporate accountability into a vocabulary compatible with business practice. Responsibility became distinct from legal obligation; human rights impacts were reorganised through risk-based assessment; accountability was channelled through due diligence, leverage, disclosure, stakeholder engagement, and grievance mechanisms; and the corporation was positioned as both a potential violator and a necessary partner in governance. In this sense, the participation of TNCs helped stabilise a language in which some regulatory possibilities appeared legitimate and natural. Institutional power became knowledge power by transforming a contingent political settlement into the conceptual grammar of the field. Once embedded in that grammar, corporate preferences become part of what Business and Human Rights itself takes to be reasonable and possible. The following Chapter 4 examines how the concepts consolidated by the UNGPs carry forward this accommodation of human rights critique within a managerial and market-compatible form of legality, particularly through the HRDD.

3.6. Conclusion

The birth of the UNGPs marked the moment when BHR acquired its dominant institutional form. What had begun as an open conflict between competing projects of corporate accountability was channelled into a framework that could be endorsed precisely because it did not demand a fundamental reorganisation of corporate power. This chapter has shown that this outcome depended on a particular way of framing the problem. The language of 'governance gaps' allowed corporate harm to be understood as a failure of coordination between global markets and public regulation, rather than as a consequence of the legal and political arrangements that had expanded corporate authority in the first place. Ruggie's

[233] Ogunranti (n 200).

response was therefore not to confront corporate power directly, but to organise it within a polycentric model in which States, companies, investors, civil society, consumers, and affected communities would operate through dispersed forms of pressure and adjustment.

The result was a field that appeared to move beyond CSR while retaining much of its political imagination. The UNGPs gave BHR a common vocabulary, but that vocabulary was constrained by the conditions under which consensus became possible. More demanding forms of accountability that asked for legal duties, international monitoring, and avenues for remedy remained at the margins, while due diligence was placed 'at the heart' of the UNGPS.[234] Chapter 4 turns to that grammar by examining the conceptual vocabulary and regulatory techniques consolidated by the UNGPs, with particular emphasis on HRDD as the regulatory form through which this accommodation of corporate accountability was carried forward.

Chapter 4: The Tools For Business and Human Rights: The HRDD Case

The previous chapter showed that the UNGPs emerged from a particular settlement within the BHR field. This chapter turns to the concept that came to organise the corporate responsibility to respect human rights: HRDD. The concept acquired a central position since it offered a way of translating the responsibility to respect into a set of corporate processes. In Duval's words, 'HRDD came to dominate the business and human rights imaginary', becoming 'now a touchstone for advocates of businesses' human rights responsibilities'.[235] The chapter begins by examining due diligence before its incorporation into BHR, differentiating between due diligence as a standard of conduct in legal doctrine and due diligence as a process used in corporate governance and risk management. The subsequent section then describes the incorporation of due diligence into Ruggie's Framework, where it becomes the central mechanism through which companies show they respect human rights. The final part of the chapter follows the diffusion of HRDD after the UNGPs, demonstrating how rapidly it became hegemonic within the field.

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[234] Bonnitcha and McCorquodale (n 16). For a rebuttal, see John Gerard Ruggie and John F Sherman, 'The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale' (2017) 28 EJIL 921.
[235] Duval (n 19) 285.

4.1. Due Diligence: A Brief Overview of its Origins

4.1.1. Due Diligence In International Law

Due diligence can be traced back to domestic law, where it operates as a standard for assessing whether an actor has exercised the care required to avoid foreseeable harm.[236] The concept is commonly associated with the figure of the *bonus paterfamilias* in Roman law, whose conduct provided a measure against which fault could be assessed when harm resulted from a failure to exercise appropriate care.[237] Modern civil and common law systems later developed the same logic through negligence: a person may be held liable where they fail to act with the care that a reasonable person would have exercised in comparable circumstances. The concept entered international law through the writings of Grotius in the 17th century, where it was used to assess the conduct of 'the sovereign' in relation to harm caused by private actors.[238] During the following two centuries, the standard moved from notions of individual responsibility to nation responsibility, where private misconduct could not be attributed to a state, but the latter could nevertheless incur responsibility if it was reasonably expected to know of a certain risk of harm or to prevent it. The concept was initially developed through cases concerning neutrality, injuries caused by individuals, and the protection of aliens,[239] and later travelled across different fields of international law, including environmental law, diplomatic protection, investment law, and international human rights law.[240] In the human rights field, due diligence became particularly relevant in cases involving harm committed by non-State actors.[241] Given a State's obligation to protect human rights, it became established that a State may be held liable when it fails to take reasonable measures to prevent foreseeable violations, investigate abuses, punish those responsible, or provide redress to victims.[242]

This tradition gives due diligence two features that are important for the later development of HRDD. First, it is an 'open-ended standard', a 'technique of proceduralisation', where the question is not about the substantive rules, but 'less controversial questions relating to informed decision-making and process'.

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[236] Maria Monnheimer, *Due Diligence Obligations in International Human Rights Law* (CUP 2021) 78-115.
[237] Bonnitcha and McCorquodale (n 16) 902.
[238] Monnheimer (n 236).
[239] Monnheimer (n 236).
[240] Olga Martin-Ortega, 'Human Rights Due Diligence for Corporations: From Voluntary Standards to Hard Law at Last?' (2014) 32 NQHR 44, 53.
[241] Martin-Ortega (n 240).
[242] Martin-Ortega (n 240) 54; See arts 2(e), (f) and 5(a) of CEDAW, art 7(b) of the Convention of Belém do Pará where due diligence is explicitly mentioned as a way to prevent, investigate and address violence against women. See also HRC GC No. 31 regarding the State's obligation to conduct due diligence. ECtHR case-law likewise uses due diligence to assess state compliance with the ECHR in cases of harm by private actors.

[243] This means its content depends on a case-by-case analysis. Second, it is generally understood as an obligation of means, rather than an obligation of result. This means that the State is not required to guarantee that harm will not occur, being instead sufficient to demonstrate that it acted with the vigilance reasonably required in the circumstances.[244] In international law, due diligence remains fundamentally State-centred, and does not, by itself, create a framework for the direct international responsibility of corporations. The later emergence of HRDD therefore required a further conceptual movement, through which due diligence was detached from its classical State-based setting and reworked through the language of corporate process.

4.1.2. Due Diligence In Corporate Governance

Long before it became associated with BHR, due diligence was already familiar in corporate governance. One of its most cited legal origins lies in US securities regulation after the Great Depression, particularly the Securities Act of 1933.[245] To ensure that information disclosed to investors was reliable, financial institutions were incentivised to conduct due diligence on corporate prospectuses. The Act provided that, where institutions had conducted a reasonable investigation and had reasonable grounds to believe that the relevant statements were true, they could invoke due diligence as a defence against legal claims.[246] Due diligence therefore emerged in the corporate setting both as an investigative process and as a defensive argument. It enabled enterprises to show that they had acted with sufficient care while also managing future legal risks. From securities regulation, due diligence spread into broader corporate practice, becoming routine in mergers and acquisitions, joint ventures, financing operations, business-partner selection, and other pre-contractual enquiries.[247] In these settings, it refers to the structured investigation that allows one party to verify information, assess value and identify liabilities before deciding whether to proceed, renegotiate, allocate risks contractually, or abandon the transaction.[248] Due diligence later extended beyond specific transactions into broader governance and risk-management practices, including areas such as anti-money laundering, tax, intellectual property, antitrust, labour law,

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[243] ILA, 'Due Diligence in International Law' (Second Report, July 2016).
[244] Tineke Lambooy, 'Corporate Due Diligence as a Tool to Respect Human Rights' (2010) 28 NQHR 404, 418.
[245] Linda S Spedding, *The Due Diligence Handbook: Corporate Governance, Risk Management and Business Planning* (CIMA Publishing 2008) 41-64; Mark B Taylor, Luc Zandvliet and Mitra Forouhar, 'Due Diligence for Human Rights: A Risk-Based Approach' (2009) CSRI Working Paper No 53, 2.
[246] Martin-Ortega (n 240) 51; Bonnitcha and McCorquodale (n 16) 906.
[247] Spedding (n 245).
[248] Spedding (n 245); Martin-Ortega (n 240) 51.

data protection, and supply-chain management, through audits, compliance programmes, internal controls, and financial analysis.[249]

Due diligence tends to involve two core steps: (i) identifying relevant facts and (ii) analysing them through a risk-based approach. In this sense, it functions primarily as a corporate risk-management technique, aimed at protecting the company from risk exposure rather than addressing harm as such.[250] This genealogy differs from the international human rights law account discussed above, where due diligence derives from the state's own obligation to protect human rights. Nevertheless, the two areas share a procedural logic in which responsibility is assessed by reference to inquiry and the adequacy of steps taken. In both contexts, due diligence operates as an obligation of means and as a 'container concept',[251] capable of adapting to different legal and institutional settings. Finally, due diligence may have in both fields a defensive function: in international law, the State may rely on reasonable preventive measures to resist responsibility for harm caused by private actors; in corporate practice, companies may rely on investigation and documentation to limit liability, justify decisions, or protect itself against claims arising from a transaction or commercial activity. This dual genealogy is significant because HRDD draws on both traditions: from international human rights law, the idea that reasonable preventive steps can assess responsibility for third-party harm; from corporate practice, a managerial language of risk assessment, internal procedures, compliance, monitoring and reporting systems, and documentary proof. This double inheritance explains part of the ambiguity that later surrounds HRDD, as the concept emerges as a human rights standard while taking the form of a corporate process.

4.2. The Business Tools For Human Rights: The HRDD

The central mechanism of Pillar II of the UNGPs is HRDD. Although the concept had already appeared in earlier documents and debates, it was only through the 2008 Framework and the UNGPs that HRDD acquired the status of *lingua franca*[252] that it holds today in BHR. Alongside HRDD, the UNGPs also present two further elements through which companies are expected to meet their responsibility to respect human rights: adopting human rights policies and establishing processes to enable remediation of adverse human rights impacts corporate-related. In this sense, Ruggie relied heavily on the logic of corporate self-transformation, whereby businesses are expected to internalise human rights and build a human

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[249] Spedding (n 245).
[250] Taylor, Zandvliet and Forouhar (n 245) 3; Bonnitcha and McCorquodale (n 16) 902.
[251] Lambooy (n 244) 409.
[252] Deva (n 18).

rights-respecting culture from the inside. Within this framework, HRDD emerges as the device *par excellence* through which companies acquire the internal capacity to address their own social externalities.[253] It is a process-centred tool through which companies can demonstrate they 'know and show' their respect for human rights.[254] For Ruggie, the shift from 'naming and shaming' to 'knowing and showing' meant that respect for human rights would be internalised through HRDD, while the ability to demonstrate such respect required a degree of transparency and accessibility to stakeholders.[255]

Ruggie and Sherman rejected the view that HRDD in the UNGPs should be interpreted through the earlier history of due diligence as a state-based legal standard of conduct. For them, the corporate responsibility to respect is grounded in a 'transnational social norm', rather than in an international legal obligation,[256] and HRDD operates as the process through which companies identify and address risks to people. However, the concept did not emerge in a vacuum. Its traction can arguably be attributed to its ability to translate human rights concerns into vocabularies already familiar to both traditions. This move was possible precisely because due diligence is an adaptable concept. Drawing from the genealogy discussed above, it is flexible enough so that its content remain open to interpretation by scholars and policy-makers; elastic enough to be adjusted to the size, sector, operating context, and structure of each company; and broad enough to reach human rights impacts connected to the company through its business relationships.[257] However, it is clear that the concept, as conceived by Ruggie, [258] was intended to align more closely with the version familiar to corporations: 'an impact management framework'.[259] The OHCHR Interpretive Guide captures this managerial dimension by defining HRDD as an 'ongoing management process that a reasonable and prudent enterprise needs to undertake, in light of its circumstances (including sector, operating context, size, and similar factors) to meet its responsibility to respect human rights'.[260] In this sense, the UNGPs translated the responsibility to respect into a 'risk

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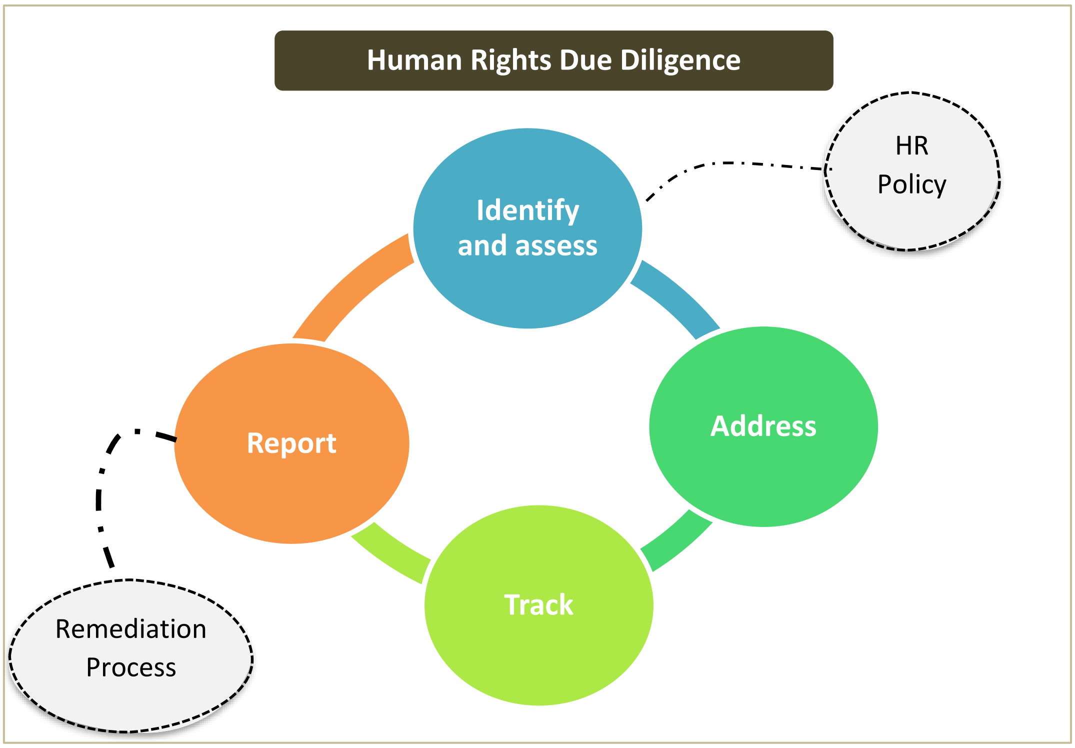
[253] Ruggie (n 51) 77-78.
[254] Ruggie (n 104) 99; John Gerard Ruggie, Caroline Rees and Rachel Davis, 'Ten Years After: From UN Guiding Principles to Multi-Fiduciary Obligations' (2021) 6 BHRJ 179, 185.
[255] SRSG, 'Business and Human Rights: Further Steps towards the Operationalization of the "Protect, Respect and Remedy" Framework' (9 April 2010) UN Doc A/HRC/14/27, paras 80, 84.
[256] Ruggie and Sherman (n 234) 923-924.
[257] Chiara Macchi and Claire Bright, 'Hardening Soft Law: The Implementation of Human Rights Due Diligence Requirements in Domestic Legislation' in Martina Buscemi and others (eds), *Legal Sources in Business and Human Rights: Evolving Dynamics in International and European Law* (Brill Nijhoff 2020) 218, 220.
[258] Ruggie, Rees and Davis (n 254) 186.
[259] Holly Cullen, 'The Irresistible Rise of Human Rights Due Diligence: Conflict Minerals and Beyond' (2016) 48 George Washington International Law Review 743, 751; Ben Grama, 'Process or Performance? Corporate Due Diligence and the Translation of Soft Law into Binding Obligations' (2026) NJHR 10.
[260] OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (HR/PUB/12/02, 2012) 6.

management' dynamic process, aimed at process of assessment, internal response, verification, and disclosure.[261]

4.2.1. HRDD: A Risk Management Process

Under Principle 17, HRDD is a continuous, four-step process requiring companies to: (i) identify and assess human rights impacts; (ii) integrate and act upon the findings; (iii) track the effectiveness of their responses; and (iv) communicate externally how impacts are addressed. This structure helps explain why HRDD could travel so easily across the field. It translated the responsibility to respect into a sequence of corporate practices that could be incorporated into existing policies, compliance systems, risk procedures, and reporting frameworks.

Figure 1: Overview of the HRDD Process



Source: the author

The first step of HRDD, set out in Principle 18, concerns the identification and assessment of actual and potential adverse human rights impacts. In practice, although Ruggie does not explicitly mention it, this

[261] Fasterling (n 16) 809; Duval (n 19) 286. See as well Björn Fasterling, 'Human Rights Due Diligence as Risk Management: Social Risk Versus Human Rights Risk' (2017) 2 BHRJ 225 and Radu Mares, 'Securing Human Rights Through Risk-Management Methods: Breakthrough or Misalignment?' (2019) 32 LJIL 517.

is often conducted through Human Rights Impact Assessments (HRIAs), although companies may also rely on social audits, saliency assessments, or sector-wide impact assessments, depending on the activity, sector, and depth of analysis required. The assessment should be context-specific and examine risks connected to the company's own activities, as well as to its operations, products, or services through business relationships. Within this process, companies are expected to identify their salient human rights issues, meaning the most severe risks to people, assessed according to scale, scope, and remediability.[262] The more serious the impact, the wider the group affected, and the harder it is to restore the victim to their previous position, the more salient the risk becomes. Principle 18 also requires companies to involve human rights expertise and to consult potentially affected groups, usually framed as 'meaningful stakeholder engagement'. [263] This marks one of the main differences between HRDD and traditional corporate due diligence, the process is not meant to be limited to the company's internal assessment of risk, but should incorporate the experiences of the rights-holders. Another key distinction is the focus that HRDD focuses on risks to people instead of risks to the enterprise. The second step, developed in Principle 19, requires companies to integrate the findings across relevant internal functions and processes, and to take appropriate action according to their connection to the harm. Where a company causes or contributes to an adverse impact, it must cease, prevent, or mitigate that impact; where the impact is directly linked to its operations, products, or services through a business relationship, the company is expected to use, and where necessary increase, its leverage over the entity causing the harm. Leverage, understood as the company's 'ability to effect change in the wrongful practices of an entity that causes a harm,[264] becomes central in supply chains and other commercial relationships where the company may not be the immediate source of the abuse but remains connected to it through its business structure. The third step, under Principle 20, is to track the effectiveness of the company's response. The company must verify whether the measures adopted are preventing or mitigating adverse impacts, relying on qualitative and quantitative indicators as well as stakeholder feedback. The fourth step, established in Principle 21, is communication. Companies should explain how they address their human rights impacts, particularly where concerns are raised by, or on behalf of, affected stakeholders. Communication may take different forms, from meetings and online updates to formal public reporting, including annual, sustainability or integrated reports. HRDD therefore also requires the company to render its process visible to external audiences.

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[262] Principle 24.
[263] Martin-Ortega (n 240) 44; Quijano and Lopez (n 18).
[264] See Commentary to Principle 19.

4.3. From Soft-Law to Mandatory Human Rights Due Diligence

In his final report to the HRC, Ruggie described the UNGPs as marking 'the end of the beginning', signalling that the framework was not intended to exhaust the regulatory possibilities of BHR.[265] Commenting on this, Rodríguez-Garavito argues that the UNGPs should be assessed not only through their static dimension, understood as their content and operative standards, but also through their dynamic dimension, namely 'their capacity to push the development of new norms and practices that go beyond the initial content of the GPs and improve companies' compliance with human rights standards'.[266] This section examines precisely that dynamic dimension in relation to HRDD.

The institutional influence of HRDD did not remain confined to the UNGPs. Once due diligence became the operational language of the corporate responsibility to respect, it began to travel across the wider BHR field, first through soft-law instruments and guidance, and later through domestic and regional legislation. Within only 15 years of the adoption of the UNGPs, HRDD has been repeatedly adapted and reproduced by international organisations, states, companies, civil society actors, and legal scholar as the common framework through which corporate human rights responsibility could be expressed. As Quijano and Lopez put it, HRDD became the 'buzzword' of the field.[267] This development is striking when placed against Ruggie's own presentation of the UNGPs that there is no 'silver bullet' for corporate abuse in global supply chains.[268] Yet, the post-UNGPs trajectory shows that HRDD became the primary regulatory endeavour through which the field seeks to govern corporate conduct.[269]

4.3.1. The Expansion of Due Diligence through Soft-Law

After the endorsement of the UNGPs in 2011, BHR became increasingly institutionalised and HRDD began to appear across other international instruments concerned with responsible business conduct. The same resolution that endorsed the UNGPs also established the UN Working Group on Business and Human Rights, with a mandate to disseminate and implement the UNGPs worldwide.[270] States were

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[265] SRSG, 'Presentation of Report to United Nations Human Rights Council' (Speech to UNHRC, Geneva, 30 May 2011).
[266] Rodríguez-Garavito (n 93) 11.
[267] Quijano and Lopez (n 18).
[268] 2008 Framework (n 153) para 7.
[269] Ingrid Landau, 'Human Rights Due Diligence and the Risk of Cosmetic Compliance' (2019) 20 Melb J Intl L 221; Duval (n 19).
[270] UNHRC Res 17/4, 'Human rights and transnational corporations and other business enterprises' (6 July 2011) UN Doc A/HRC/RES/17/4.

subsequently encouraged to adopt National Action Plans on BHR,[271] many of which identified HRDD as a key element of corporate human rights responsibility. The OECD played a particularly significant role in this expansion. Shortly before the endorsement of the UNGPs, the OECD revised its MNE Guidelines to include a human rights chapter aligned with the 2008 Framework and the emerging UNGPs. These Guidelines called on enterprises to respect human rights and to carry out due diligence across their supply chains and business relationships. The OECD later reinforced this approach through cross-sectoral and sector-specific due diligence guidance, including for minerals, agriculture, and garment and footwear.[272] Through the creation of National Contact Points, the OECD promoted these guidelines, supporting policy efforts on responsible business conduct. The ILO MNE Declaration similarly incorporated HRDD language into labour-rights framework through its 2017 revision.

As these instruments multiplied, HRDD gradually exceeded the UNGPs as a single text and started to operate as a broader method for articulating responsible business conduct. This soft-law expansion was accompanied by the development of toolkits, methodologies, and standards by civil society organisations, as well as multi-stakeholder initiatives on how HRDD should be carried out in practice. At the same time, older CSR tools remained relevant,[273] particularly audits, certification schemes, corporate disclosure, and social reporting. In 2010, the ISO 26000 was also adopted, creating the first standard for social responsibility developed by the International Organisation for Standardization, against which companies could assess their performance. The International Finance Corporation, the 'private sector arm of the World Bank', also incorporated HRDD into its Performance Standards in high-risk circumstances, which, Ruggie stressed, was significantly influential since it both affected 'clients' access to its capital, and because its criteria are tracked by private sector banks that account for three-quarters of all project lending in the world'.[274]

These developments reflected Ruggie's broader idea of a 'distributed network' approach, whereby the UNGPs would generate a 'norm cascading' beyond the UN system.[275] As a result, HRDD became increasingly embedded in the language and practice of responsible business conduct, with companies

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[271] Ramasastry (n 82) 248; Florian Wettstein, 'Betting on the Wrong (Trojan) Horse: CSR and the Implementation of the UN Guiding Principles on Business and Human Rights' (2021) 6 BHRJ 312, 314; Schrempf-Stirling, Buren III and Wettstein (n 141) 1287.
[272] Respectively: OECD (n 17); OECD/FAO, *OECD-FAO Guidance for Responsible Agricultural Supply Chains* (OECD Publishing 2016); OECD, *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* (OECD Publishing 2018).
[273] Schrempf-Stirling, Buren III and Wettstein (n 141) 1288.
[274] Ruggie (n 51) 81.
[275] Ruggie (n 51) 84.

adopting human rights policies, publishing human rights reports, and conducting HRIAs or other HRDD processes as part of their corporate governance systems.[276]

4.3.2. The 'Hardening' of Soft-Law

The Rana Plaza collapse in 2013[277] intensified scrutiny of private regulation, particularly certification schemes, social audits, and multi-stakeholder initiatives that had long promised to manage human rights risks in global supply chains.[278] The problem was not simply that companies lacked public commitments, since many had already adopted codes of conduct, supplier standards, and sustainability reporting practices. However, these tools relied on weak implementation and lack of meaningful enforcement. As Bright notes, studies of corporate human rights performance repeatedly revealed poor implementation of HRDD. The Corporate Human Rights Benchmark, for instance, found that a significant share of assessed companies failed to score any points on HRDD, even where they had public commitments or management systems in place.[279] This gap strengthened the argument that HRDD should move beyond voluntary guidance and be translated into binding obligations capable of delivering corporate accountability and access to remedy. Macchi and Bright describe this movement as a process through which soft law begins to acquire harder legal edges.[280]

The 'hardening' of soft law did not occur in a single form. Since the concept of HRDD has always been open to different interpretations by scholars, policymakers, civil society actors, and business stakeholders, its legalisation has produced different regulatory models.[281] The first generation of legislative measures focused on transparency and reporting, using disclosure as a way to encourage companies to examine their supply chains without imposing a substantive duty to conduct HRDD.[282] As Landau argues, these measures were 'predicated on the assumption that transparency will empower and lead market actors to reward and sanction companies for their human rights performance.'[283] The second

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[276] Schrempf-Stirling, Buren III and Wettstein (n 141) 1289.
[277] In 2013, visible cracks appeared in Rana Plaza, a commercial building in Bangladesh that housed banks, shops, and garment factories. Although the banks and shops were evacuated, garment workers were ordered to continue working. The building collapsed shortly afterwards, killing more than 1,000 people.
[278] Dupont, Pietrzak and Verbrugge (n 18) 133.
[279] Claire Bright, 'Mapping Human Rights Due Diligence Regulations and Evaluating Their Contribution in Upholding Labour Standards in Global Supply Chains' in Guillaume Delautre, Elizabeth Echeverría Manrique and Colin F Fenwick (eds), *Decent Work in a Globalized Economy: Lessons from Public and Private Initiatives* (ILO 2021) 76.
[280] Macchi and Bright (n 257).
[281] OHCHR, 'Issues Paper on Legislative Proposals for Mandatory Human Rights Due Diligence by Companies' (June 2020); Quijano and Lopez (n 18) 246-248; Grama (n 259).
[282] Bright (n 279) 77; Dupont, Pietrzak and Verbrugge (n 18) 134.
[283] Landau (n 269) 231.

generation corresponds to mandatory HRDD ('mHRDD').[284] These laws go further than reporting regimes by imposing explicit duties on companies to undertake due diligence exercises. This category includes laws focused on specific sectors, such as minerals or batteries; laws addressing narrower categories of human rights violations, such as child labour or forced labour; and laws imposing broader HRDD obligations that are not limited to a single sector or human rights issue.

The French Duty of Vigilance Law,[285] adopted in 2017, is usually treated as a turning point in this trajectory as it was the first comprehensive domestic mHRDD law. It requires large French companies to establish and implement a vigilance plan containing reasonable measures to identify and prevent serious harms to human rights and the environment arising from their own activities, the activities of companies they directly or indirectly control, and those of subcontractors and suppliers with which they maintain an established commercial relationship, where those activities are linked to that relationship.

At EU level, the pivotal moment occurred with the adoption of the Corporate Sustainability Due Diligence Directive ('CSDDD'),[286] which translated HRDD into a legal obligation for companies falling within its scope. The Directive entered into force on 25 July 2024 and requires in-scope companies to identify and address actual and potential adverse human rights and environmental impacts in their own operations, those of their subsidiaries, and their chains of activities, supported by complaints and notification procedures, monitoring, and public communication. In 2025, however, an 'Omnibus' simplification process began which postponed the application dates of the CSDDD.[287] Directive (EU) 2026/470[288] later introduced substantive amendments, narrowing the Directive's scope to very large companies and on the areas where adverse impacts are most likely and severe, removing the obligation to adopt a climate transition plan, deleting the EU-harmonised civil liability regime, and capping pecuniary sanctions for the most serious infringements at 3% of net worldwide turnover.[289] The CSDDD nevertheless remains in force. Member-States must transpose the amended rules by 26 July 2028, with

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[284] Landau (n 269) 231; Bright (n 279) 77; Dupont, Pietrzak and Verbrugge (n 18) 134.

[285] Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, JORF n°0074 du 28 mars 2017 texte n°1.

[286] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [2024] OJ L 2024/1760.

[287] Directive (EU) 2025/794 of the European Parliament and of the Council of 14 April 2025 amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements [2025] OJ L 16.4.2025.

[288] Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements [2026] OJ L 26.2.2026.

[289] Axel Marx, 'Withering Sustainability? The Rise (and Fall?) of Sustainability Due Diligence' (2026) 9 J Intl Bus Policy 267, 272-273.

application from 26 July 2029. This remains one of the most significant developments in the dissemination of HRDD, as the Directive will produce extraterritorial reach, since its obligations are likely to cascade through chains of activities, including towards suppliers and business partners located in the Global South.[290]

This is also being achieved through EU's market power in trade law, particularly through the inclusion of Trade and Sustainable Developments ('TSD') Chapters in free trade agreements,[291] and import-ban regimes.[292] Neither instrument directly impose HRDD obligations on companies, but both contribute to its indirect dissemination: TSD Chapters require parties to promote responsible business conduct in line with international standards such as the MNE Guidelines or encourage, while import-ban regimes encourage HRDD as evidence that goods entering or leaving the market comply with the relevant human rights standards.

Lastly, the binding treaty process is worth mentioning as part of the broader landscape of attempts to give BHR greater teeth. In 2013, Ecuador called for the negotiation of a legally binding instrument on business and human rights within the UN framework, in a context marked by dissatisfaction with the limits of voluntary standards and soft-law approaches.[293] This initiative led, in 2014, to the adoption of HRC Resolution 26/9, which established an open-ended intergovernmental working group mandated to elaborate such Treaty. This resolution was only adopted with the support of twenty Council members, mainly from African and Asian states, as well as Russia, Cuba, and Venezuela,[294] while European states, the US, Japan and South Korea opposed to it.[295] The process remains ongoing and contested, as negotiations continue and core issues of scope, liability, jurisdiction, and access to remedy remain unresolved.[296] Nevertheless, HRDD has occupied an important place in the draft Treaty process.[297]

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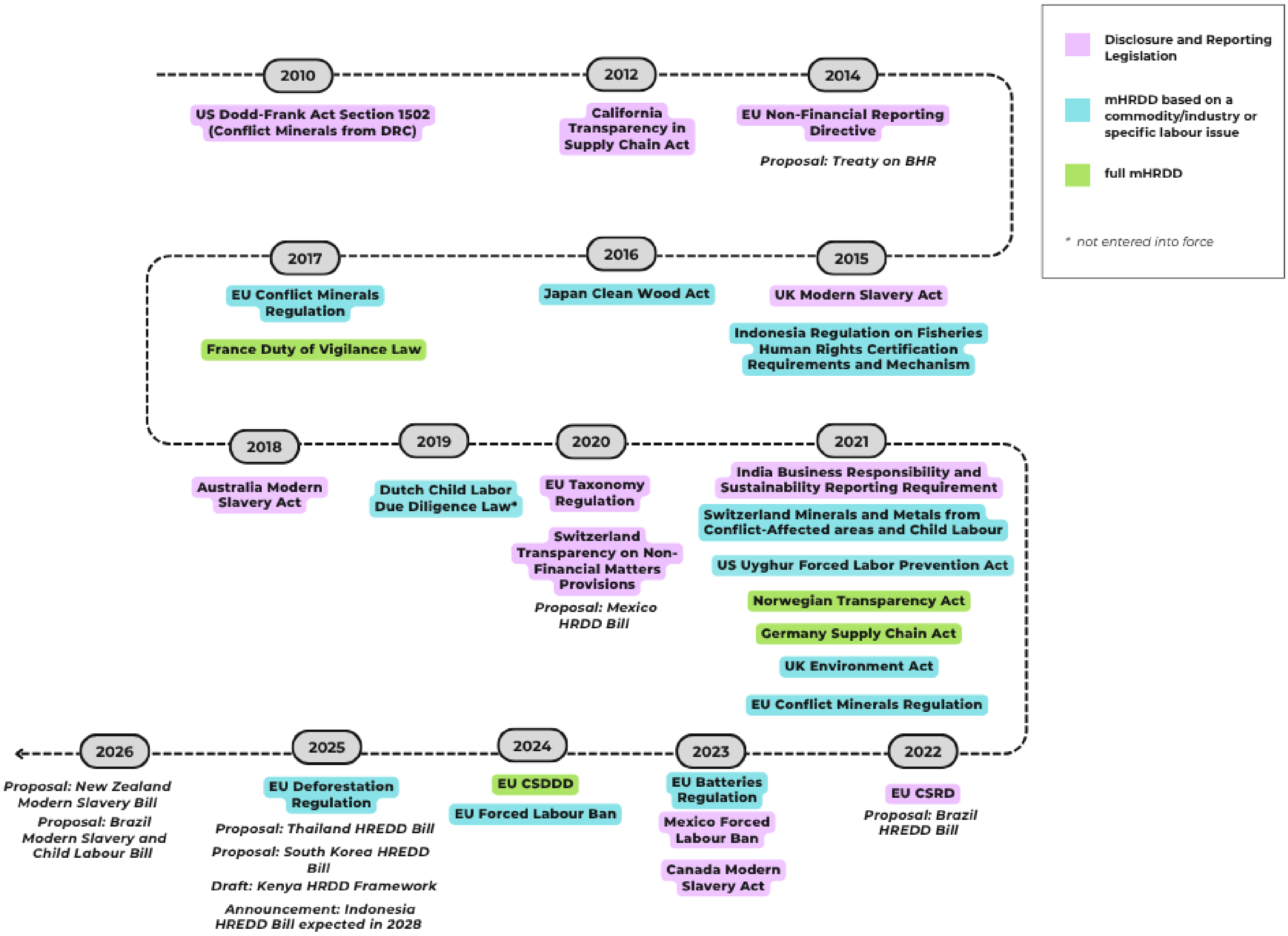
[290] Caroline Omari Lichuma, '(Laws) Made in the "First World": A TWAIL Critique of the Use of Domestic Legislation to Extraterritorially Regulate Global Value Chains' (2021) 81 ZaöRV 497; Leonard Feld, 'Leading the Way or Crossing the Line? The Extraterritorial Dimension of the EU Directive on Corporate Sustainability Due Diligence' (2026) 11 BHRJ 23.
[291] See eg the EU-Kenya Economic Partnership Agreement, annex V; the EU-New Zealand Free Trade Agreement, ch 19; and the EU-Mercosur Partnership Agreement, ch 18.
[292] The EU Forced Labour Regulation, expected to be enforced on 14 December 2027, prohibits products made with forced labour from being placed or made available on the Union market.
[293] Wettstein (n 54) 29. Ramasastry (n 82) 248.
[294] Ramasastry (n 82) ?
[295] Ramasastry (n 82) 248.
[296] UNHRC, 'Report on the Eleventh Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights' (24 October 2025) UN Doc A/HRC/61/39.
[297] Article 6 of the Third Revised Draft requires States to ensure that businesses conduct effective HRDD.

Figure 2 provides a non-exhaustive mapping of the proliferation of HRDD-related legislation over a relatively short period of 16 years, illustrating how rapidly HRDD has become embedded as a dominant regulatory framework within BHR. In sum, HRDD's trajectory reveals a striking process of legal consolidation, whereby a soft-law standard has become the primary language for governing corporate human rights responsibility.

Figure 2: non-exhaustive mapping of the mHRDD legislation



Source: the author

4.4. Conclusion

Before its incorporation into BHR, due diligence already moved between two registers: a legal register, concerned with reasonable care, and a corporate register, concerned with risk assessment and managerial control. The UNGPs drew on this dual inheritance by placing HRDD at the core of Pillar II. In doing so, they recast the responsibility to respect as a set of repeatable corporate practices: assessing impacts, integrating findings, tracking responses, and communicating outcomes. This made respect for human rights legible within corporate systems, capable of travelling across institutional settings and easily adaptable to existing governance structures.

The diffusion of HRDD after the UNGPs confirmed this centrality. Through the OECD guidelines, National Action Plans, corporate policies, and later mHRDD legislation, HRDD moved from a soft-law expectation into the main regulatory model for governing corporate human rights impacts. This chapter therefore concludes that HRDD became hegemonic in BHR by becoming the common grammar through which corporate accountability is imagined, operationalised, and increasingly legalised. Chapter 5 turns to the question that follows from this dominance: why this particular form became so acceptable and what its procedural structure reveals about the neoliberal accommodation of corporate power.

Chapter 5: hrdd, Neoliberalism, and Corporate Power: The Three Mousquetaires?

This chapter brings together the institutional history and theoretical framework developed in the preceding chapters in order to answer the central research question of this thesis. The first sections trace how HRDD expanded tools already familiar from CSR and corporate risk management, and explain how parts of the corporate sector came to accommodate mHRDD legislation. The final sections then explore the structural reasons behind HRDD's dominance and its relationship with corporate power. In particular, the chapter focuses on HRDD's reproduction of the neoliberal public/private division, its self-regulatory structure, and its capacity to incorporate human rights into the market-oriented and procedural forms of governance.

5.1. HRDD and CSR: two peas in a pod?

The dominance of HRDD within BHR can be explained, at least in part, by its capacity to enable companies to translate and extend CSR and corporate risk management tools into the language of human rights. Although, rather surprisingly, neither the 2008 Framework nor the UNGPs refer explicitly to CSR, many of the techniques through which corporate responsibility was operationalised were already familiar within that field, including human rights policies, impact assessments, monitoring practices, reporting schemes, and benchmarking exercises. This trend predated the UNGPs: the SRSG's 2006 questionnaire to Fortune Global 500 companies found that many companies already had human rights policies, include human rights in their broader codes of conduct, or incorporated human rights factors into risk assessments.[298]

Focusing on the first step of HRDD, fully developed HRIAS were still rare within internal corporate systems in 2008.[299] Nevertheless, companies were already using more limited forms of HRIAS to address human rights concerns arising from their activities. Illustratively, in 2001, BP commissioned the first-recognised HRIA concerning the Tangguh project in Indonesia.[300] In 2009, Green Resources, a Norwegian forestry company, conducted an HRIA of its plantation activities in Tanzania through the

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[298] John G Ruggie, 'Human Rights Policies and Management Practices of Fortune Global 500 Firms: Results of a Survey' (2006) CSRI Working Paper No 28 10-14.
[299] SRSG (n 153) para 77.
[300] World Bank, *Study on Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development* (February 2013) accessed 8 July 2026.

NGO NomoGaia;[301] the following year, NomoGaia conducted a HRIA for Dole Fresh Fruit regarding a pineapple plantation in Costa Rica.[302] Nestlé was also conducting HRIAs in 2010 to assess its human rights impacts in 'Colombia, Nigeria, Angola and Sri Lanka'.[303] Similarly, Goldcorp, a large Canadian gold-mining company, conducted an 18-month HRIA of the Marlin Mine in Guatemala.[304] It is possible to locate this practice to an even longer institutional history. Since 1991 the World Bank had promoted the inclusion of impact assessments concerning Indigenous Peoples within large-scale projects affecting their rights, particularly extractive and mining projects.[305]

The third element of HRDD, tracking the effectiveness of corporate responses, also drew on techniques already familiar within CSR. Guiding Principle 20 requires companies to use 'appropriate qualitative and quantitative indicators' and feedback from internal and external sources. Its Commentary further suggests that companies may 'employ tools they already use in relation to other issues', including 'performance contracts and reviews as well as surveys and audits'. In this sense, the UNGPs incorporated into HRDD a performance-management architecture already used in corporate practice. At the same time, with the consolidation of neoliberalism, human rights institutions had also moved increasingly towards indicators designed 'to measure human rights performance and to monitor the implementation of human rights at the national level'.[306] Without entering the broader debate on whether human rights can be translated into measurable data,[307] the prior familiarity of metric-based approaches among both corporate and human rights institutions helped make HRDD a plausible and manageable framework for corporate human rights responsibility.

Beyond corporate practice, the language of HRDD had also begun to circulate within international organisations and UN-linked initiatives as a means of promoting business respect for human rights. Both the Norms and the UN Global Compact, discussed in Chapter 3, anticipated this trend, albeit in different ways. As Deva observes, already in 2003 the Norms relied on 'internalization' tools aimed at 'developing

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301 NomoGaia, *Green Resources Human Rights Impact Assessment* (29 October 2009) accessed 8 July 2026.
302 NomoGaia, *Dole Human Rights Impact Assessment: El Muelle Pineapple Project of Cutris District* (December 2010) accessed 8 July 2026.
303 James Harrison, 'Establishing a Meaningful Human Rights Due Diligence Process for Corporations: Learning from Experience of Human Rights Impact Assessment' (2013) 31 Impact Assess Proj Apprais 107, 111.
304 Goldcorp, *Goldcorp's First Update to the Marlin Mine Human Rights Assessment Report* (18 October 2010) accessed 8 July 2026.
305 Galit A Sarfaty, 'The World Bank and the Internalization of Indigenous Rights Norms' (2005) 114 Yale LJ 1791, 1801.
306 Harrison (n **Error! Bookmark not defined.**) 110.
307 For a critical account, see AnnJanette Rosga and Margaret L Satterthwaite, 'The Trust in Indicators: Measuring Human Rights' (2009) 27 Berkeley J Intl L 253.

a corporate culture of respect to human rights'.[308] That is visible in the Commentary to Norm No 1, which provided that TNCs should use due diligence to ensure that their activities did not contribute to human rights abuses and to inform themselves of the human rights impacts of their principal activities.[309] The UN Global Compact, on the other hand, introduced the Communication on Progress in 2003, requiring companies to report publicly on the steps taken to implement the Compact's Principles and encouraging them to adopt Global Reporting Initiative indicators, which, to some extent, resembled aspects of a HRIA.[310] Later, the UN Global Compact published its 'Guide to Human Rights Impact Assessment and Management', which had been road-tested between 2008 and 2010 with companies such as Nokia, Marathon Oil, and Sedex.[311] These initiatives show that, by the time HRDD was formulated in Ruggie's framework, international organisations had already begun to promote human rights through tools that could be incorporated into corporate management systems.

This further demonstrates that, although debates in BHR have often been organised around a binary opposition between binding and voluntary measures, with the Norms and Ruggie's Framework usually understood in those terms, this opposition risks overstating the rupture between them. Miretski and Bachmann observe that a 'more thorough analysis of the Guiding Principles … suggests that the difference between the two documents is only a matter of nuance and that their principles', since 'the essential rules and principles set up in the Norms have remained the same in Ruggie's framework'.[312] In fact, both instruments relied on the idea that human rights could be internalised within corporations through policies and due diligence techniques, while leaving the core problem intact. This logic also applies to mHRDD. Although mandatory due diligence is often presented as a decisive move beyond CSR voluntarism, its operational content remains largely built around familiar tools. This helps explain why certain corporate actors were able to accommodate mHRDD, particularly where it preserved risk-based discretion and avoided more direct forms of corporate liability.

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[308] Surya Deva, 'UN's Human Rights Norms for Transnational Corporations and Other Business Enterprises: An Imperfect Step in the Right Direction?' (2004) 10 ILSA J Intl & Comp L 493, 515.
[309] Norms (n 135)
[310] Tarek F Massarani, Margo Tatgenhorst Drakos and Joanna Pajkowska, 'Extracting Corporate Responsibility: Towards a Human Rights Impact Assessment' (2007) 40 Cornell Intl LJ 135, 154-155.
[311] IBLF and IFC, *Guide to Human Rights Impact Assessment and Management* (HRIAM) (2010, updated September 2011) accessed 8 July 2026.
[312] Miretski and Bachmann (n 140) 35, 37.

5.2. From Opposition to Accommodation: Corporate Responses to mHRDD

Corporate responses to mHRDD have been more ambivalent than a simple opposition between business and binding regulation would suggest. Many enterprises have historically resisted legal rules that directly constrain their operations or expose them to liability. Yet parts of the corporate sector have also come to recognise that HRDD preserves considerable managerial discretion while occupying a regulatory space that might otherwise be filled by more radical approaches to corporate accountability.

Evidence increasingly suggests that some TNCs have supported mHRDD, especially where they are able to influence and determine its legal architecture. In 2020, several large companies, including Nestlé, H&M, and Unilever, publicly welcomed EU-level mHRDD legislation.[313] The European Commission's study on due diligence requirements through the supply chain similarly found that a majority of business respondents considered EU-level due diligence regulation beneficial.[314] Respondents emphasised, in particular, the value of a single harmonised EU standard, a level playing field, greater legal certainty, and improved leverage over third parties.[315] Similar statements were made in national debates in the Netherlands, Germany, and Finland.[316] For instance, the CEULA Report, which assessed the impact of five different EU sustainability instruments on Finnish companies, concluded that there was generally express support for the legislation within the textile sector.[317] Hence, under certain conditions, binding HRDD can fall within corporate preference and become part of a regulatory settlement that companies are willing to accept.

Corporate actors have generally been more receptive to mHRDD where it operates as a predictable framework for internal management, and more resistant when it threatens to impose liability, stronger enforcement, or obligations extending too deeply into value chains. This pattern is documented in Gustafsson, Schilling-Vacaflor, and Lenschow's discourse analysis of mHRDD laws.[318] Their study

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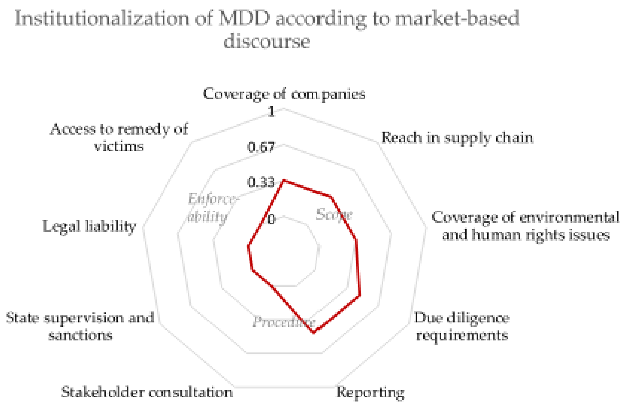
[313] See 'Support for EU Framework on Mandatory Human Rights and Environmental Due Diligence' (2 September 2020) accessed 7 July 2026.
[314] Lise Smit and others, *Study on Due Diligence Requirements Through the Supply Chain: Final Report* (Publications Office of the European Union 2020).
[315] In particular, 75.37% pointed to the value of a single harmonised EU-level standard, 71.64% to levelling the playing field, 66.42% to legal certainty, and 61.19% to facilitating leverage with third parties.
[316] Wettstein (n 271) 324.
[317] Dorothée Cambou and others, *The Cumulative Effects of EU Sustainability Legislation (CEULA): Impacts on Finnish Firms* (Ministry for Foreign Affairs of Finland 2025) 47. Connected to the point made in the previous section, the study also concluded that firms have a 'significant reliance on external certifications, standards and third-party auditing'.
[318] Maria-Therese Gustafsson, Almut Schilling-Vacaflor and Andrea Lenschow, 'Foreign Corporate Accountability: The Contested Institutionalization of Mandatory Due Diligence in France and Germany' (2023) 17 Regul Gov 891.

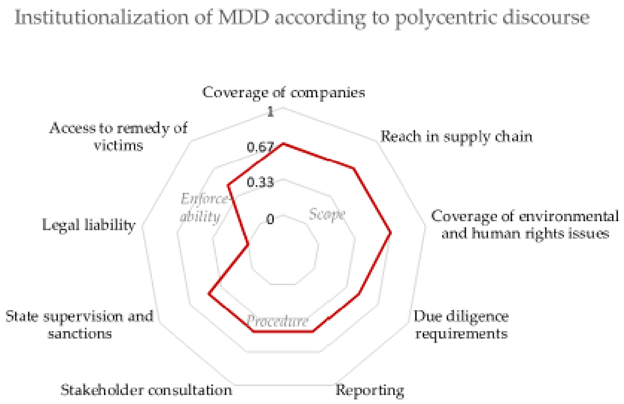
concludes that corporate actors supported HRDD while trying to restrict the scope of the legislation and the obligations it could impose. As discussed in Section 3.5, corporate power over institutions has likewise remained central to the 'hardening' of HRDD.

The authors distinguish between two discursive positions through which business preferences are articulated.[319] While market-based discourse seeks to preserve self-organising markets and narrow due diligence, especially through limits on company size and suppliers tiers, polycentric discourse accepts a broader regulatory compromise, combining binding duties with voluntary tools such as certification and industry schemes.[320] These positions differ in degree, but both confirm that corporate actors can engage with mHRDD not by opposing it outright, but by moulding its legislative features. The schematic representation reproduced below reveals that corporate actors were consistently resistant to civil liability, stronger sanctions or exclusion from public procurement, while being more receptive to weaker, guidance-oriented supervision.[321]

Figure 3: Institutional design preferences by the two discourses (schematic representation)

[319] For accuracy, the authors identify three discourses, however the 'state-centered discourse' is excluded here as it mainly reflects the institutional design preferences of 'broad coalitions of civil society organizations' and 'representatives from leftist and green parties'.
[320] Gustafsson, Schilling-Vacaflor, Lenschow (n **Error! Bookmark not defined.**) 898.
[321] Gustafsson, Schilling-Vacaflor, Lenschow (n **Error! Bookmark not defined.**) 900-901.





The same preference structure resurfaced in the Omnibus simplification package amending the CSDDD. Although the reform has been presented as a significant reversal, it is better understood as a continuation of tensions that have long accompanied the translation of HRDD into hard law. The significance of the reform for this thesis lies in the way it illuminates the forms of corporate power at work in the legalisation of HRDD. At the discursive level, the amendments were justified through the language of simplification, burden reduction, and competitiveness.[322] This vocabulary reframed stronger due diligence duties as administrative burdens, positioned corporate constraint as a threat to economic efficiency, and placed market-based discourse at the centre of the debate. At the institutional level, corporations mobilised relational power through intensive lobbying, translating this discourse into legal amendment.[323] The

[322] Marx (n 289) 274-275.

[323] See BUND, Corporate Europe Observatory and Friends of the Earth Europe, *Inside Job: How Business Lobbyists Used the Commission's Scrutiny Procedures to Weaken Human Rights and Environmental Legislation* (June 2022); Jana Hoess, Dakota Anton and Kiara Brodie, *The Lobbying Effect: How Corporate Influence Shaped the EU's Sustainability Omnibus Proposal* (EIRIS Foundation 2025); David Ollivier de Leth, '[The Secretive Cabal of US Polluters That Is Rewriting the EU's Human Rights and Climate Law]' (SOMO, 3 December 2025) accessed 3 July 2026; European Coalition for Corporate Justice, *From Ambition to Erosion: How Omnibus I Rolls Back the CSDDD: Preliminary Legal Analysis* (February 2026); Corporate Europe Observatory, *This Is What Corporate Capture Looks Like! How Corporations Run the EU Deregulation Agenda* (March 2026).

problem, however, exceeds the Omnibus reform and lies in the mechanism itself. Whether voluntary or binding, strengthened or weakened, HRDD remains a regulatory tool compatible with existing corporate power. As Dupont and others stress, excessive enthusiasm for binding HRDD regulation as ‘a shift from private towards public governance in GVCs’ may, in fact, merely conceal ‘an implicit continuation of a private governance logic’.[324] The legalisation of HRDD therefore does not displace corporate power so much as reorganise it through procedures that preserve corporate influence over the design, interpretation, and implementation of responsibility.

5.3. Neoliberal Governance, Corporate Power and HRDD

5.3.1. Neoliberal Orthodoxy and Corporate Power

As explored in Chapter 3, Ruggie entered the BHR field at a moment marked by growing contestation of TNCs and demands for stronger corporate accountability. His response, however, was to organise the BHR predicament around a particular frame, grounded in embedded liberalism and oriented towards pragmatic consensus. Goffman’s seminal work understands framing as an active process through which individuals ‘locate, perceive, identify, and label’ events, thereby giving meaning to social experience.[325] Snow and Benford extend this concept to collective action frames, arguing that frames construct shared interpretations of reality through three core tasks: diagnostic framing, which identifies the problem and attributes responsibility; prognostic framing, which proposes a solution and the strategies to pursue it; and motivational framing, which provides a rationale for collective engagement.[326]

The UNGPs can therefore be read as the product of a successful framing exercise. In diagnostic terms, ‘governance gaps’ were presented as the explanation for corporate-related harm. As already explored,[327] this diagnosis located the problem less in the structural organisation of the economy around corporate power than in the failure of governance to keep pace with economic globalisation. As Karp argues, ‘[i]t takes for granted the structural features of disembedded liberalism’.[328] Ruggie’s proposed solution was a polycentric governance model built through consensus and principled pragmatism, which meant narrowing the space for more confrontational approaches while remaining permeable to corporate

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[324] Dupont (n 18) 136.
[325] Erving Goffman, *Frame Analysis: An Essay on the Organization of Experience* (Harvard University Press 1974).
[326] Robert D Benford and David A Snow, ‘Framing Processes and Social Movements: An Overview and Assessment’ (2000) 26 Annu Rev Sociol 611.
[327] See ch 3, section 3.
[328] Karp (n 19) 143.

influence. The motivational frame was provided by re-embedded liberalism, through which enterprises were encouraged to respect human rights as part of a broader effort to make 'markets work optimally'.[329]

This justificatory framework rests on what Bilchitz describes as a 'libertarian conception of the corporation'.[330] It reflects Friedman's neoliberal understanding of firms as private economic actors, free to pursue profit within the boundaries of law and minimal social expectations. The corporation becomes 'a vehicle designed to enable individuals to express their economic interests in conducting business profitably'.[331]. The economy is thereby treated as a sphere separate from politics, a domain of market rationality in which state intervention is justified chiefly where it preserves market order or prevents the most severe forms of direct harm. Koskenniemi crucially writes,

> There is no more important convention in legal speech than the separation between public and private. That conventional analysis deals almost exclusively with what it imagines as "public" power … while liberating that which it labels "private" to take its natural course somewhere else is one of the most consequential choices made in the course of this history.[332]

Within the UNGPs, the artificial division between the state duty to protect and the corporate responsibility to do no-harm reinforces the public/private arrangements that 'have characterized neoliberal world order since the 1980s'.[333] This conception also helps explain why corporate human rights responsibility is framed primarily through negative duties. The public/private division accepts the corporation's underlying activity as legitimate and focuses instead on the management of its impacts. This allows HRDD to be used by corporations whose core business models may themselves produce human rights harm. Tobacco, gambling, skin-bleaching cosmetics, and fossil fuel companies may continue operating in the name of economic freedom, and may even make use of HRDD, even where their core activities sits in deep tension with human rights protection. Nevertheless, even if certain 'red lines'[334] were adopted and particular business models prohibited, the self-regulatory logic of HRDD, which enhances corporate power, would remain largely unchallenged.

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[329] See n 167
[330] David Bilchitz, 'Do Corporations Have Positive Fundamental Rights Obligations?' (2010) 57 Theoria 1.
[331] Bilchitz (n 330) 6.
[332] Martti Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power* 1300–1870 (CUP 2021) 8.
[333] Karp (n 19) 141.
[334] Dehm (n 157); Deva (n 18); Karp (n 19); Quijano and Lopez (n 18).

Although HRDD appears to 'publicise' the corporation through stakeholder engagement, transparency, and external accountability, the governance of global supply chains largely 'privatised'. Private power is protected through public law, while harms generated through market relations are left to be managed by private actors themselves. This reflects Ruggie's reliance on reflexive law and social constructivism. Reflexive law aims to 'create the structural premises for decentralized integration of society by supporting integrative mechanisms within autonomous social subsystems'.[335] In this sense, Ruggie believed that the UNGPs would trigger an 'iterative process of interaction' between governance systems, since no top-down command-and-control regulation could create such a process at the international level.[336] The problem, however, is that this model not only leaves corporate power intact but also strengthens it by allowing corporations to become decisive actors in processes concerning human rights harms, including through the exercise of leverage over business partners. Following Duval's reasoning, while States are assigned a 'back-seat' role focused on encouraging, requiring, and reviewing corporate processes, corporations become 'legitimized as enforcers of human rights'.[337] Enterprises thus become authorised actors in organising the conduct of others across the value chain. By preserving and extending private power in this way, HRDD provides a suitable terrain for businesses to exert discursive authority over human rights, extend market orthodoxy into the language of responsibility, and absorb stronger forms of critique into managerial processes.

5.3.2. Human Rights and Market Realism

Discursive power operates through the production of categories, assumptions, problem-framings, and vocabularies that determine what can be recognised as a human rights problem. Market realism is one effect of this discursive work, making market compatibility appear as the measure of legal and political plausibility.[338] Within this frame, neoliberal orthodoxy directs attention towards how human rights can be fitted into existing market structures, rather than how those structures participate in the production of harm. As a result, political and legal alternatives are judged according to their compatibility with the existing market order.

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[335] Gűnther Teubner, 'Substantive and Reflexive Elements in Modern Law' (1983) 17 Law & Society Review 239, 255 cited in Ruggie (n 51) 77.
[336] Ruggie (n 51) 77.
[337] Duval (n 19) 10, 22.
[338] Mark Fisher, *Capitalist Realism: Is There No Alternative?* (Zero Books 2009).

In the context of HRDD, discursive power is visible in the grammar of responsibility through which corporate harm is translated into impact, risk, procedure, and competitiveness. The UNGPs already reflected this market-realist logic. As Deva observes, the term 'violation' is largely avoided in relation to companies, while 'impact' and 'risk' becomes central.[339] States violate human rights; companies can only cause, contribute to, or are directly linked to adverse impacts. Ruggie's account of corporate responsibility was also grounded in a market-oriented rationale, presenting respect for human rights as a way of improving the functioning of markets, responding to consumer expectations, and avoiding reputational repercussions.

This vocabulary of responsibility also made it easier to align human rights with business-case reasoning. As with CSR, human rights began to be translated into arguments about legal certainty, competitiveness, reputational exposure, and supply-chain resilience.[340] This was the same logic behind the Omnibus simplification process. Companies were increasingly encouraged to respect human rights through narratives of enlightened self-interest.[341] After the COVID-19 crisis, for example, HRDD was often presented as a tool enabling companies to make their supply chains more resilient to future disruption.[342] This narrative remains current. In its 2025 report, published as part of its *Business Case for Human Rights* project, UNDP argues that strong corporate human rights performance does not undermine business competitiveness.[343] A similar outlook can be seen in the justification of some mHRDD legislation through market stability and consumer protection. Bright notes, for instance, that the Dutch Child Labour Due Diligence Act was framed 'to ensure that goods and services brought onto the Dutch market are free from child labour so that consumers can buy them with "peace of mind"'.[344] The centre of legal concern is thereby displaced towards the ethical consumer in the Global North, whose purchasing choices should no longer be tainted by complicity in child labour, while invisibilising the children who experienced the harm.

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[339] Deva (n 200) 96-97.
[340] David Bilchitz, 'A Chasm between "Is" and "Ought"? A Critique of the Normative Foundations of the SRSG's Framework and the Guiding Principles' in Deva and Bilchitz (n 93) 107, 120.
[341] Wesley Cragg, 'Ethics, Enlightened Self-Interest, and the Corporate Responsibility to Respect Human Rights: A Critical Look at the Justificatory Foundations of the UN Framework' (2012) 22 Bus Ethics Q 9.
[342] European Parliament, 'EU Coordinated Action to Combat the COVID-19 Pandemic and Its Consequences' [2021] OJ C316/2, para 68.
[343] UNDP, *Human Rights vs Competitiveness: A False Dilemma? Data on the Financial Implications of Corporate Human Rights Performance* (2025).
[344] Bright (n 279) 85.

The movement from rights-holder protection to consumer reassurance and fair competition is also visible at the institutional level. Although the literature on this institutional dimension remains limited, the tendency is increasingly visible. In Germany, supervision of the Supply Chain Act is entrusted to the Federal Office for Economic Affairs and Export Control ('BAFA'). In the Netherlands, the Child Labour Due Diligence Act designated the Authority for Consumers and Markets as supervisory authority. In Norway, compliance with the Transparency Act is monitored by the Consumer Authority and the Market Council. These institutional choices reveal the market realism embedded in HRDD, where human rights concerns are recast as a matter of economic order protection. Recent enforcement practice illustrates this. In 2024, the Italian Competition Authority investigated Giorgio Armani and Dior group companies for alleged unfair commercial practices linked to ethical and social responsibility claims, after both groups had presented themselves as committed to sustainability and ethical supply chains while benefiting from exploitative labour conditions.[345] In 2025, Armani was fined €3.5 million,[346] while the Dior case was closed after the acceptance of commitments, including a financial contribution of €2 million contribution to initiatives supporting victims of labour exploitation.[347] A similar logic appears in the Dutch lawsuit filed against two Levi's companies by the Clean Clothes Campaign and individual consumers in April 2026, concerning allegedly misleading claims about labour conditions in Levi's supply chain.[348] In both cases, the harm placed at the centre of legal assessment is not the exploitation suffered by workers but the injury to consumers who may have made commercial decisions on the basis of statements that did not correspond to reality. In sum, the language of human rights becomes 'privatised' through the mediation of marked-based rationale.

A further consequence of this discursive power concerns the construction of harm itself. As Fasterling points out, HRDD demands a 'normative judgment about whether such harm qualifies as a human rights violation'.[349] This judgment is assigned to corporations, allowing them to determine 'what *counts as* harm, what *counts as a* "human rights impact", and why'.[350] Corporations are in a particular powerful position as they can select indicators, determine the scope of assessment, classify risks according to

[345] AGCM, 'Italian Competition Authority: investigation launched against Armani and Dior group companies for alleged unfair commercial practices' (17 July 2024) accessed 7 July 2026.
[346] AGCM, 'Fine of €3.5 million to Giorgio Armani S.p.A. and G.A. Operations S.p.A. for unfair commercial practice' (1 August 2025) accessed 7 July 2026.
[347] AGCM, 'Thanks to the action of the Authority, Dior will award 2 million euros over 5 years for victims of exploitation at work' (21 May 2025) accessed 7 July 2026.
[348] Aintzane Márquez, 'Levi's Sued over Misleading Claims on Labour Conditions' (SOMO, 21 April 2026) accessed 7 July 2026.
[349] Fasterling (n 261) 231.
[350] Karp (n 19) 144.

severity or salience, and decide what counts as an adequate response, thereby framing the problem from the outset.

Under market realism, harm often becomes visible only when attached to failures of risk identification, procedural adequacy, reporting, or internal management systems. This makes it harder to capture the underlying conditions that sustain exploitation. The Yves Rocher litigation illustrates this limitation.[351] The company was found liable under the French Duty of Vigilance Law in relation to labour rights violations connected to its Turkish subsidiary, particularly for failing to identify that human rights risk as part of its vigilance obligations. In this sense, the legal fault was procedural, tied to the (in)adequacy of the corporate process rather to the harm itself. This raises a broader question: how will courts decide cases where companies identify and address risks, but not sufficiently to prevent harm? The answer remains uncertain precisely because HRDD is an obligation of means, dependent on case-by-case interpretation of what counts as adequate vigilance. At the same time, the case illustrates how harm is tied to a notion of punctual violations, sidelining the structural system that allows such harm to occur. Economic and social rights are not perceived as possible violations, as well as the system harm, such as systemic racism, ableism, and so on. Are all rendered invisible forms of harm. Even the relationship between employer-employee from where precarious forms of labour may emerge within the legal edges.

The proceduralisation of harm brings the analysis back to the earlier critique of CSR as co-optation.[352] CSR absorbed human rights criticism into voluntary codes, reporting, and reputational narratives; HRDD appears to move beyond that history by turning due diligence into a legal obligation. Legalisation can nevertheless reproduce the same accommodation when responsibility is assessed primarily through a procedural risk-management system. In this sense, HRDD carries into law the self-regulatory logic that Arat associates with 'neoliberalism with a human face'.[353] Rather than challenging corporate power over human rights, it preserves and reinforces that private power. At the same time, stronger claims of accountability remain constrained by this market realism, which defines the limits of legal imagination around what can be made compatible with existing corporate and market structures.

[351] *Association Sherpa and others v Laboratoires de Biologie Végétale Yves Rocher SA* Tribunal judiciaire de Paris, 34th Chamber, Judgment of 12 March 2026, RG No 22/04017

[352] See ch 2, section 2.6.

[353] See n 116.

5.4. Conclusion

This chapter has argued that HRDD's dominance in BHR cannot be understood simply as the triumph of human rights over corporate voluntarism. Its success lies in its capacity to translate corporate accountability into a regulatory form compatible with existing structures of corporate power. By drawing on tools already familiar from CSR, HRDD allowed human rights responsibility to be absorbed into corporate policies and risk-management procedures. Its later legalisation through mHRDD did not fundamentally break with this trajectory, with corporate actors often accommodating binding HRDD where it offers harmonisation and managerial discretion, while resisting stronger forms of liability and enforcement. Read through the broader political-economy of neoliberal governance, HRDD appears as an ambivalent settlement. It expands the language of corporate responsibility to respect human rights, but it does so through a process-based model that preserves the corporation as the central interpreter and manager of harm. Rather than unsettling the institutional, discursive, and material conditions through which corporate power is produced, HRDD dominance narrows the political imagination of BHR, making corporate self-governance appear as the natural horizon of human rights regulation.

CONCLUSION

This thesis began from a problem that has become increasingly difficult to ignore within BHR: HRDD now operates as the dominant legal response to corporate-related human rights harm, particularly through the UNGPs and the recent movement towards mandatory HRDD. The aim of this thesis was not to understand whether HRDD can improve corporate conduct in particular cases, or how it can be, or is being, implemented in practice by corporations or through litigation, but how this regulatory form acquired authority as the most reasonable response to human rights violations, and what its dominance means for the possibility of regulating corporate power.

The central argument developed throughout the thesis is that HRDD became dominant through a hegemonic political-economic settlement: neoliberalism. Within that settlement, corporate accountability was translated into a form of legal and political accommodation. The research further argues that HRDD's dominance reveals how corporate accountability has been made governable within a neoliberal legal imagination, capable of recognising narrower forms of corporate harm while leaving corporate power substantially intact.

The genealogy of CSR, explored in Chapter 2, showed that corporate responsibility was historically constructed through a vocabulary that preserved the corporation as a private economic actor while allowing it to respond to social criticism. From philanthropy to voluntary codes, reporting, auditing, certification, and multistakeholder initiatives, corporate social engagement developed largely through mechanisms that allowed companies to define the scope, meaning, and visibility of their own responsibility. The neoliberal reconfiguration of the global political-economy intensified this trajectory. The expansion of TNCs, the fragmentation of production across global supply chains, and the separation between economic control and legal responsibility strengthened the capacity of corporations to shape the conditions under which states, workers, consumers, and affected communities act. More ambitious attempts to discipline corporate power were displaced or absorbed into softer and more market-compatible forms of governance. This displacement reflected a broader shift in the balance of power, through which corporate authority became increasingly embedded in the organisation of global production and in the legal forms that protected corporate autonomy. At the same time, corporate power was present throughout the BHR history: power over discourse, through the framing of responsibility as voluntary; power over institutions, through influence over regulatory processes; and power over materialities, through the organisation of production, labour, land, water, and other conditions on which rights depend.

The emergence of BHR appeared to move beyond the CSR framework by placing human rights, responsibility, and remedy at the centre of the debate. Yet the institutional settlement produced through the UNGPs carried forward many of the assumptions that had already structured CSR. As argued in Chapter 3, corporate-related harm was framed primarily through governance gaps: a problem of misalignment between global markets and public regulation, rather than a problem rooted in the legal, material, and institutional organisation of corporate power. This framing made HRDD particularly attractive. It offered a way of translating human rights into corporate processes, while leaving largely intact the structures through which corporations exercise leverage, organise supply chains, influence institutions, and shape the terms of human rights knowledge itself. This was accompanied by due diligence double inheritance: a legal vocabulary of reasonable care and a corporate vocabulary of risk assessment. As Chapter 4 explains, the UNGPs drew on both traditions and transformed the responsibility to respect into a procedural sequence that made human rights legible within corporate systems and adaptable across different settings. The movement from the UNGPs into OECD standards, National Action Plans, corporate policies, and mHRDD legislation confirmed HRDD as the common grammar through which corporate accountability is now imagined.

Chapter 5 showed that mHRDD does not itself break with this settlement. Legalisation changes HRDD's formal status, but leaves largely intact the distribution of authority embedded in the tool. Companies remain central to the human rights process, authorised to translate rights into internal procedures and management systems. mHRDD therefore hardens corporate responsibility while preserving the managerial structure through which that responsibility is exercised, giving legal form to techniques inherited from CSR and stabilising corporate self-governance as the practical infrastructure of accountability. HRDD's dominance should thus be understood as a neoliberal accommodation of corporate accountability: it moves beyond voluntarism, but not beyond the political-economic conditions that make corporate harm possible. It brings human rights into corporate governance while preserving the public/private divide on which corporate autonomy depends, expanding legality through procedures that keep the corporation in the position of interpreter of risk and responsibility. In this sense, HRDD confronts corporate power only within limits that corporate power itself helped to shape, revealing capitalism's capacity to absorb critique by translating structural demands into self-regulation and managerial control.

Although beyond the scope of this analysis, the limits identified in Chapter 5 also allow to imagine the direction reforms beyond HRDD would need to take. If corporate-related human rights harm is rooted in the political-economic structures through which corporate power is produced and reproduced, then accountability cannot remain confined to procedural systems for managing risk. A stronger response would have to move beyond the symptoms that HRDD is able to identify and address the conditions that make those harms recurrent: the organisation of global production around extraction and competitiveness, the subordination of labour and nature to accumulation, the dependence of rights enjoyment on market-mediated access to material conditions, and so on. This would require shifting authority away from corporations as the primary managers of their own responsibility and towards affected workers, communities, and rights-holders. It would also require situating corporate accountability within broader projects of political-economic transformation, such as a rights-based economy, doughnut economics, or degrowth perspectives, which begin from social and ecological limits rather than from the preservation of corporate competitiveness. These frameworks are not developed here as alternative models, but they mark the horizon that HRDD alone cannot reach. They clarify the thesis's central implication: regulating corporate power requires more than improving HRDD. It requires questioning the political-economic structures — or 'the moving train' — that enable corporations to organise production, externalise harm, disperse responsibility, and preserve control over the conditions in which rights are realised or denied.

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UNHRC, 'Text of the 3rd Revised Draft Legally Binding Instrument with Textual Proposals Submitted by States during the 7th and 8th Sessions of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights' (23 January 2023) UN Doc A/HRC/52/41/Add.1

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UNCTC, 'The United Nations Code of Conduct on Transnational Corporations' (September 1986) UN Doc ST/CTC/SER.A/4

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SRSG, 'Business and Human Rights: Further Steps towards the Operationalization of the "Protect, Respect and Remedy" Framework' (9 April 2010) UN Doc A/HRC/14/27

SRSG, 'Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises' (22 February 2006) UN Doc E/CN.4/2006/97
SRSG, 'Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts' (19 February 2007) UN Doc A/HRC/4/35
SRSG, 'Protect, Respect and Remedy: A Framework for Business and Human Rights' (7 April 2008) UN Doc A/HRC/8/5
UNGA Res 3201(S-VI) (1 May 1974) UN Doc A/RES/3201(S-VI)
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UNHRC, 'Land and the Right to Food' (7 January 2026) UN Doc A/HRC/61/51
UNGA Res 80/250 (25 March 2026) UN Doc A/RES/80/250
UNHRC Res 17/4, 'Human Rights and Transnational Corporations and Other Business Enterprises' (6 July 2011) UN Doc A/HRC/RES/17/4
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Directive (EU) 2025/794 of the European Parliament and of the Council of 14 April 2025 amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements [2025] OJ L 16.4.2025.
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