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From principles to practice – Human rights demands on corporate impact assessment processes

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Abstract

The aim of this thesis is to analyze the effect of human rights demands on business activities, in particular corporate impact assessment processes. Over the last two decades the discussion of companies' responsibilities to protect human rights has significantly gained attention. Being the first globally accepted standards, the Protect, Respect and Remedy Framework and the subsequent UN Guiding Principles on Business and Human Rights developed by John Ruggie, represent milestone achievements within this discussion. Focusing on the second pillar of the framework, namely the corporate responsibility to respect human rights, the implications for corporations derived from the Guiding Principles will be presented. A widely adopted tool for identifying the future consequences of a current or proposed action is impact assessment. While there are various different areas of application, the Guiding Principles suggest for companies to implement human rights impact assessments as part of their human rights due diligence process. After covering the theoretical background as well as existing research findings, a proposed procedure for human rights impact assessments will be presented. The findings show that the integration of a human rights perspective in business is necessary and overdue but may also imply challenges such as an increased expenditure on resources as well as competitive disadvantages. While the Guiding Principles have led to significant progress in the human rights debate they are far from being obligatory and the implementation of human rights concerns into business activities may thus create an uneven playing field for stakeholders involved.

Keywords: Human rights, impact assessment, due diligence, business ethics

JEL Classification: A14, G32, J81, K38, L29

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III. List of abbreviations

EIA	Environmental Impact Assessment
HRIA	Human Rights Impact Assessment
HRIAM	Human Rights Impact Assessment and Management
IA	Impact Assessment
IAIA	International Association for Impact Assessment
IBLF	International Business Leaders Forum
IFC	International Finance Corporation
KPIs	Key Performance Indicators
NEPA	National Environmental Policy Act
OECD	Organization for Economic Co-operation and Development
PRRF	Protect, Respect and Remedy Framework
SRSG	Special Representative of the Secretary General (on the issue of human rights and transnational corporations and other business enterprises)
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Program
UNGPs	UN Guiding Principles on Business and Human Rights

1. Introduction

1.1 Research problem

This thesis examines the Protect, Respect and Remedy Framework (in the following 'PRRF'), the subsequent UN Guiding Principles on Business and Human Rights (in the following 'UNGPs'), endorsed in 2011, and how their resulting human rights driven demands on corporations affect their impact assessment processes.

In 2011 the United Nations Human Rights Council unanimously endorsed the UNGPs. These principles were developed by Professor John Ruggie, the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises (in the following SRSG) and were designed to operationalize the PRRF approved three years earlier. The UNGPs were the first globally accepted standard dealing with business-related human rights abuse and became a crucial point of reference in the discussion on how to best prevent businesses from causing or contributing to human rights violations.

Since then many in the business community are more focused than ever on how to withstand the growing legal pressure stemming from an increased level of social and political expectations for corporations. However, spectacular failures of human rights protection, such as the collapse of the Rana Plaza garment factory building killing more than 1,130 people in 2013, still claim headlines. Hence, the discussion on the limits, precise content, and legal status of companies' responsibility to respect human rights continues.

In order to make risks and compliance with the UNGPs measurable, tools such as human rights impact assessment processes can be implemented. Impact assessment is a widely adopted instrument mainly used for evaluating the effect of policies, programs and regulatory interventions across a wide range of different fields and has been used for more than half a decade. Unlike environmental or social impact assessment, the term 'human rights impact assessment' does not yet represent a clear and defined process but will undoubtedly be influenced and supported by the Guiding Principles.

This thesis aims to analyze the effect of human rights demands on corporate impact assessment processes. It focuses on the developments and implications derived from the PRRF as well as the UNGPs and the challenges and opportunities arising from integrating a human rights perspective into business. Building on this, the research question reads as follows: “How do human rights demands affect corporate impact assessment processes based on and in compliance with the 2011 UN Guiding Principles on Business and Human Rights?”.

1.2 Research methodology

For the sake of a logically structured thesis, a philosophical research approach will be applied using literature-based research. The literature-based research will serve as a basis for a critical reflection and analysis of the current state of knowledge on human rights protection measures in business and their growing significance and relevance. The research will focus on but will not be limited to the PRRF and UNGPs and their resulting effects on corporate impact assessment processes. Thus, the sourcing of academic literature is necessary focusing on factual sources. This is done in order to generate a comprehensive overview of existing literature relating to the topics mentioned previously. The thesis will be based on a theoretical solution-driven style, first identifying the research problem which the research question will be derived from thereafter. Subsequently, a theoretical analysis of the research question will take place and an explanation will be proposed which will finally be concluded with a summary and a discussion of the findings.

1.3 Course of investigation

Starting in chapter 2, the main body of the thesis aims at giving a comprehensive overview of human rights measures in business providing some background information on the growing significance of this issue. More particularly, the three pillars of the PRRF will be presented, covering the developments surrounding and leading up to the approval of the framework as well as the content and purpose of each pillar. In doing so, the focus will be put on the second pillar of the framework and its direct relation to and impacts on corporations, whereby pillar one and three will only briefly be outlined for the sake of completeness. Furthermore, subchapter 2.2 will cover the

background information, content and objective of the 2011 UNGPs. Additionally, the impact and examples of subsequent actions following the endorsement will be discussed.

In chapter 3 the term impact assessment will be introduced and defined. In order to provide a profound understanding of the underlying process and areas of application, two widespread variations of impact assessment will be presented in the subchapters. Those two are environmental and social impact assessment.

Bringing together the issues of the previous two main chapters, chapter 4 of the thesis will introduce the term human rights impact assessment and its delimitation from the impact assessment processes presented in chapter 3. Building the bridge to the effects of the previously discussed UNGPs, the requirements and specifications derived from the principles will be analyzed in subchapter 4.2. Based on those requirements, a procedure will be proposed introducing a draft of how human rights impacts could be assessed and how thereby corporations' compliance with the UNGPs could be made measurable. In the last subchapter the challenges and opportunities of integrating a human rights perspective into business will be critically reflected and contrasted. Finally, a summary, a critical acclaim and an outlook will be provided in chapter 5.

2. Human rights in business

2.1 The Protect, Respect and Remedy Framework

2.1.1 Background and objective

In the 1990s the debate concerning the responsibilities of business in relation to human rights violations became more and more prominent driven by multiple factors such as the expansion of oil, gas and mining companies into increasingly difficult areas (Ruggie, 2010, p. 1). Further, the off-shore production of clothing and footwear drew attention to poor working conditions in global supply chains (ibid). Over the last two decades the field of business and human rights has witnessed a drastic evolution, from a point where corporations and human rights activists were unable to agree, to one in which many stakeholders have begun to approach a common understanding of the risks, challenges as well as opportunities involved (The Economist, 2015, p. 4). One of the major drivers of this evolution were the efforts of the United Nations (ibid, p. 4).

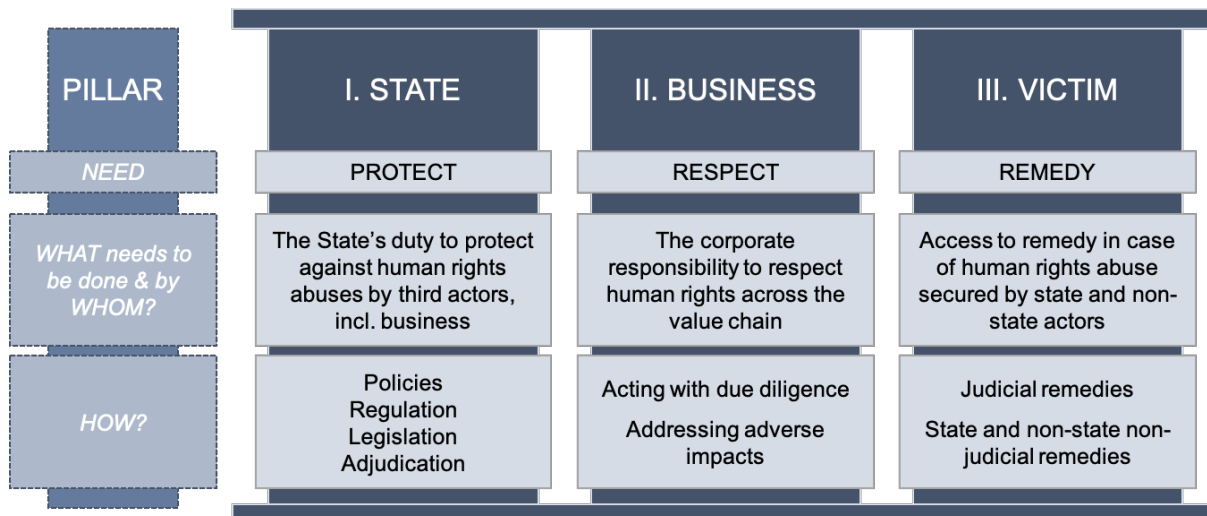
In 2004 a sub-commission of the UN Commission on Human Rights produced a first set of “Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” which were initially sought to impose as binding obligations on companies directly under international human rights law the same range of duties that States have accepted for themselves (Ruggie, 2010, p. 1). However, businesses were vehemently opposed to the Draft Norms which led the Commission on Human Rights to decline the adoption of the document and to appoint Harvard Professor John Ruggie to be the ‘Special Representative of the Secretary-General for Business and Human Rights’ instead (ibid, p.1).

After he was given the mandate in July 2005, Ruggie has worked on identifying, clarifying and researching key legal and policy dimensions of the business and human rights agenda (Ruggie, 2008c, p. 3). After three years of extensive research as well as consultations with businesses, governments and civil society all around the globe, the SRSG identified a lack of an authoritative focal point around which stakeholders’ expectations could converge (Ruggie, 2010, p. 1). He subsequently presented a framework that clarified the relevant actor’s responsibilities and provided the foundation on which thinking and action could build over time including recommendations on how to best move the business and human rights agenda forward as requested by the mandate (Ruggie, 2008a, p. 2). According to John Ruggie, there is no single silver bullet solution to the institutional misalignments in the business and human rights domain but that instead all social sectors – States, businesses and civil society – must learn to do things differently (Ruggie, 2008c, p. 4).

The framework rests on differentiated but albeit complimentary responsibilities. It comprises the following three core principles: the State’s duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies (ibid, p. 4). The three pillars, which shall be presented in greater detail in the following subchapters, form a complementary whole with each one supporting the other in achieving sustainable progress (Ruggie, 2008a, p. 2).

The figure below presents a comprehensive overview of Ruggie’s framework.

Figure 1: The Protect, Respect and Remedy Framework



Based on: (Lönn, 2017, p. 3)

2.1.2 Pillar One – The State duty to protect human rights

The first foundational principle of the framework is the State duty to protect human rights (Ruggie, 2010, p. 2). It claims that States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises, which requires effective policies, legislation, regulations and adjudication (Ruggie, 2011, p. 3). States have discretion to decide on the interpretation of how these duties apply but treaty-monitoring bodies generally recommend taking all necessary steps to protect against human rights violations such as the prevention, investigation and punishment of the abuse as well as access to remedy (Ruggie, 2008c, p. 7). Further, the framework suggests that the duty applies to the activities of all businesses, large and small, national and transnational, and to all rights private parties are capable of impairing (ibid, p. 7).

While some States are already moving in the right direction, overall State practice still exhibits substantial policy and legal gaps which often lead to severe consequences for victims, companies or States themselves (Ruggie, 2010, p. 2). One of the most common gaps is the failure to enforce existing laws, sometimes driven by a lack of institutional capacity or the concern of firms losing investment opportunities or relocating their headquarters elsewhere (Ruggie, 2008c, p. 6).

Although governments are supposed to be the appropriate entities to make difficult decisions balancing and reconciling different and sometimes opposing societal needs, Ruggie found their approach to managing the business and human rights agenda to be too narrow (Ruggie, 2008c, p. 8). According to the SRSG, human rights concerns are often kept apart from other policy domains shaping business practices and are kept within their own isolated, institutional box (Ruggie, 2008a, p. 3). Hence, the framework calls for governments to actively encourage a corporate culture that is respectful to human rights at home and beyond its borders and to consider human rights impacts when e.g. signing trade agreements and investment treaties or when providing export credit or investment guarantees, especially in high-risk territories (ibid, p. 4).

Experts are still in disagreement on whether States should be required by international law to prevent human rights abuses abroad by corporations based in their territory (Ruggie, 2008c, p. 7). There is, however, a greater consensus and increasing encouragement for home States to take regulatory action to prevent abuse by their companies overseas as long as they do not intervene with the internal affairs of other States (ibid, p. 7).

In summary, it can be said that the human rights regime rests upon the foundational role of States making the duty to protect a core principle of the framework (Ruggie, 2010, p. 2). However, meeting business and human rights challenges also requires active participation of businesses directly, which the second pillar discusses in greater detail (Ruggie, 2008c, p. 14).

2.1.3 Pillar Two – The corporate responsibility to respect human rights

2.1.3.1 Content and parameters

The second pillar of the framework addresses the corporate responsibility to respect human rights, meaning acting with due diligence to avoid infringing on the rights of others and addressing harms that do occur (Ruggie, 2010, p. 2). Since companies can effect virtually all internationally recognized rights, they should consequently consider the responsibility to respect all such rights (Ruggie, 2008c, p. 9). Although some situations may require greater attention in particular contexts, the responsibility to respect forms the baseline expectation for all companies in all situations (ibid. p. 9).

One of the main critical issues when it comes to the role of companies in respecting human rights was the identification of a limited set of rights for which they may bear responsibility (ibid, p. 14). The reports of alleged corporate human rights abuse cases reveal that there are only few if any internationally recognized rights business cannot impact, or be perceived to impact, in some manner, which is why all such rights should be considered by companies (ibid, p. 15). Table 1 illustrates some examples of labour as well as non-labour rights companies have tended to affect most often in particular sectors.

Table 1: Business impact on human rights

Labour rights	Non-labour rights
Freedom of association	Right to life, liberty and security of the person
Right to organize and participate in collective bargaining	Freedom from torture or cruel inhumane or degrading treatment
Right to non-discrimination	Equal recognition and protection under the law
Abolition of slavery and forced labour	Right to a fair trial
Abolition of child labour	Right to self-determination
Right to work	Freedom of movement
Right to equal pay for equal work	Right of peaceful assembly
Right to equality at work	Right to social security
Right to just and favorable remuneration	Freedom of thought, conscience and religion
	Right to hold opinions, freedom of information and expression
Right to a safe work environment	Right to political life
Right to rest and leisure	Right to privacy
Right to family life	Right to an adequate standard of living (including food, clothing, and housing)
	Right to physical and mental health; access to medical services
	Right to education
	Right to participate in cultural life, the benefits of scientific progress, and protection of authorial interests

Based on: Ruggie, 2008, pp. 15-16

Another important question raised in the human rights discussion was what precise responsibilities companies have in relation to rights (Ruggie, 2008c, p. 16). Because of the fact that corporations are specialized economic organs, not democratic public interest institutions, their responsibilities should not mirror the duties of States but rather the SRSG focused on identifying corporations distinctive responsibilities in relation to human rights independent from States (ibid, p. 16). These implications shall be presented in greater detail in the following subchapters.

2.1.3.2 Implications for corporations

In order to fulfil the responsibility to protect human rights, the concept of due diligence is required (Ruggie, 2008c, p. 17). It describes the process companies undergo to identify, prevent and address adverse impacts of their decisions and actions and are typically already embedded in their information and control system, most commonly to assess financial and/or related risks (ibid). In this particular context due diligence has to be carried out in order to measure adverse human rights impacts and should consider the following three main factors: Firstly, the framework conditions of the country the company operates in have to be acknowledged, highlighting specific conditions and context-related challenges (ibid). The second factor to be taken into account is what direct impacts the corporation's own activities may have, e.g. in their capacity as employers, service providers or producers (ibid). Finally, they should look into whether they might indirectly contribute to abuse through the relationships connected to their activities with e.g. business partners, State agencies or suppliers (ibid).

To make the content of their due diligence process comparable to other social actors, companies should at least benchmark it against the international bill of human rights as well as the core conventions of the International Labour Organization (ibid). Further, Ruggie established four main focal points that should be part of every corporation's human rights due diligence process (ibid, p. 18). Firstly, it is necessary for companies to adopt a human rights policy, not only showing commitment but also providing detailed guidance for various functional areas (ibid). Moreover, the integration of such policies is vital but challenging, since human rights considerations are often isolated within the company which may lead to inconsistent or even contradictory actions (ibid). According to Ruggie, leadership and training are essential in order to embed respect for human rights throughout the company and to ensure consistency and provide the capacity to respond appropriately to unforeseen situations (ibid).

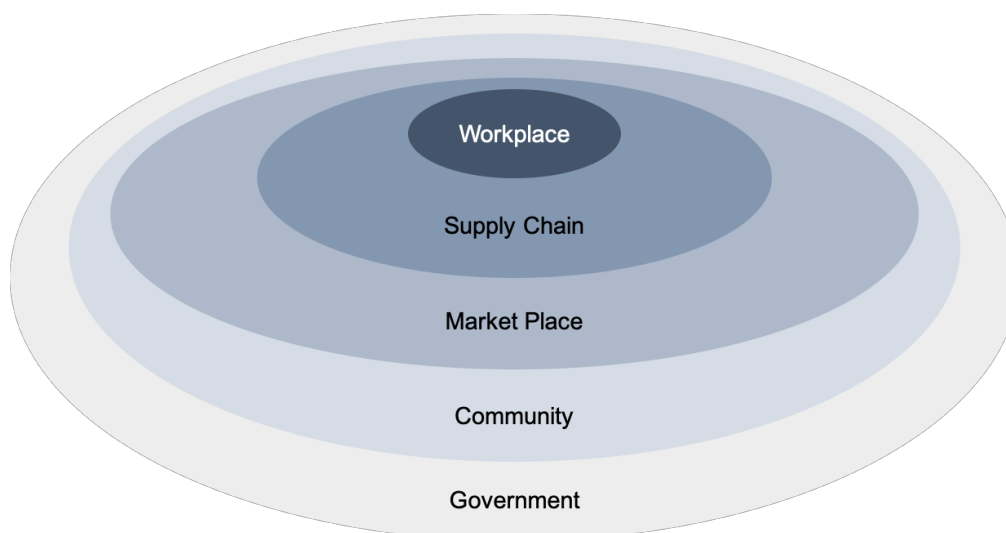
The third component of a successful due diligence process is impact assessment. Many business-related human rights issues arise from the failure to consider potential implications of corporation's actions and by not proactively taking the necessary steps to understand how proposed or existing activities affect human rights (ibid). While this process can be linked to other areas of application for impact assessment, it should

always explicitly include references to internationally recognized human rights (ibid). Chapter 3 and 4 of this thesis will look at this matter in greater detail.

Lastly, activities and developments should be tracked and monitored on an ongoing basis to generate information necessary to create incentives or disincentives for employees and ensuring continuous improvement (ibid, p. 19). This can also be supported by the implementation of feedback mechanisms to confidentially report non-compliance, so called whistleblowing, e.g. through hotlines (ibid).

In the second pillar of the framework Ruggie also clarifies the concept of corporate “sphere of influence”. This concept, presented in figure 2, was introduced by the Global Compact, the world’s largest initiative for responsible corporate leadership, and was intended as a spatial metaphor (ibid).

Figure 2: The sphere of influence



(Based on: Ruggie, Clarifying the Concepts of “Sphere of Influence” and “Complicity”, 2008, p. 4)

The concentric circles represent the influence, and thus the responsibility, of corporations declining from one circle to the next (Ruggie, 2008c, p. 19). The 2004 draft norms proposed the concept as a basis for attributing legal obligations to companies as though it were analogous to the jurisdiction of States (ibid). Although the sphere of influence is a useful metaphor for companies when assessing their human rights impact, limitations remain for today’s business and human rights agenda (Ruggie, 2008b, p. 5). The model compounds two very different meanings of influence,

one being impact, where the company's activities or relationships are causing human rights harm, the other being the leverage a company may have over actors causing harm (Ruggie, 2008c, p. 19). While the first most definitely falls under the corporate responsibility to respect, the second might not necessarily (ibid). Moreover, the emphasis on proximity in the model may be misleading since it does not determine whether or not companies can be held responsible for adverse human rights impacts, but rather the companies web of activities and relationships does (ibid, p. 20). In summary, the scope of due diligence to meet the corporate responsibility to respect human rights is not a fixed sphere but depends on the potential and actual human rights impacts resulting from the company's activities (ibid).

Finally, as mentioned previously, companies also need to be aware of their indirect involvement in human rights abuses, which is referred to as 'complicity' (Ruggie, 2008a, p. 5). In legal terms complicity is defined as "knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime" (ibid). In non-legal contexts, complicity represents a benchmark by which various social actors may judge corporations (ibid).

It can be concluded, that companies should strive to employ an effective due diligence process applying to not only their own activities but also the relationships connected with them, in order to avoid complicity (ibid, p. 6).

2.1.4 Pillar Three – Access to remedy

The third principle discusses the access to remedy which plays an important role in both previous pillars – the State duty to protect and the corporate responsibility to respect human rights (Ruggie, 2010, p. 3). Since disputes over adverse human rights impacts still occur even if institutions act optimally, victims seek redress and grievance mechanisms (Ruggie, 2008a, p. 4). Remedy may include judicial and non-judicial mechanisms with measures such as apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions, as well as the prevention of harm through e.g. injunctions or guarantees of non-repetition (Ruggie, 2011, p. 27).

Effective judicial mechanisms are the essence of ensuring access to remedy and their success mainly depends on their impartiality, integrity and ability to grant victims a due process (ibid, p. 28). The access to formal judicial systems, however, is often most difficult in areas where the need is disproportionately high as a result of both legal and practical obstacles (Ruggie, 2008a, p. 4). Therefore, non-judicial mechanisms play an important role alongside judicial processes and may provide a more immediate, accessible, affordable and adaptable point of regress (Ruggie, 2008c, p. 22). These non-judicial mechanisms include State-based mechanisms, such as e.g. publicly funded mediation services or health and safety agencies, and non-State mechanisms such as, for instance, project financiers requiring a certain standard for their clients (ibid). Both approaches, whether state-based or independent, should conform to principles of legitimacy, accessibility, predictability, rights-compatibility, equitability and transparency (Ruggie, 2010, p. 3).

As the preceding remarks show, there is a patchwork of grievance mechanisms at different levels and with different processes in place (Ruggie, 2008c, p. 27). However, there is still a considerable number of victims lacking access to any functioning source of remedy (ibid). This is partly caused by a lack of awareness and information about the location or function of these mechanism but also reflects intended and unintended limitations in the competence and coverage thereof (ibid).

2.2 The UN Guiding Principles on Business and Human Rights

2.2.1 Background and objective

After welcoming the PRRF in 2007, the Human Rights Council extended Ruggie's mandate until June 2011 and asked him to operationalize his framework and to provide concrete and practical recommendations for its implication in the form of 'Guiding Principles' (Ruggie, 2011, p. 4). Just like the framework, the UNGPs are based on extensive discussions with all stakeholder groups including business enterprises, Governments, individuals and communities directly affected by the activities of enterprises, civil society as well as law and policy experts (ibid). Further, a number of the Guiding Principles have been road-tested (ibid). Ten companies i.e. internally tested the workability of UNGPs human rights due diligence specifications and discussed them with corporate law professionals from more than twenty countries and

expertise in over 40 jurisdictions (ibid). The effectiveness criteria for non-judicial grievance mechanisms involving business enterprises and communities were also piloted in five different sectors and different countries (ibid).

Moreover, in October 2010 a commented outline of the Principles was extensively discussed with Human Rights Council delegations, business enterprises and associations as well as civil society groups (ibid, p. 5). The SRSG then developed a complete draft taking into account all diverse perspectives on the matter, which was sent to all member states a month later and posted online for public comment until the end of January 2011 (ibid). Within this period some 100 comments were submitted and concluded in the final version of the UNGPs forming the result of an extensive and inclusive, step-by-step process (ibid). Each of the 31 Principles is accompanied by a commentary to further clarify its meaning and implication (ibid).

The objective of the Principles was not to create new international law obligations but rather to elaborate the implications of existing practices and standards for States and businesses and identifying shortfalls and possible improvements (Ruggie, 2017, p. 2). However, while the UNGPs are universally applicable, their specific implementation depends on various factors and represents the high level of diversity between the 192 United Nations Member States and about 80,000 transnational enterprises (Ruggie, 2011, p. 5). The Guiding Principles will not end all business and human rights challenges but have established a common global platform for action without impeding any other promising developments (ibid). The six years leading up to the endorsement were about the convergence of positions into a single authoritative foundation (Bader, 2012, p. 11). In summary, they clarify the duties and responsibilities of both States and businesses on tackling human rights risks related to business activities and result from a six-year in-depth research and extensive multi-stakeholder consultations with a variety of actors from all continents (Faracik, 2017, p. 12).

2.2.2 Impact and subsequent action

The unanimous endorsement of the UNGPs in 2011 was a milestone achievement that led to major progress in the discussion about advancing human rights respect in the business context (Faracik, 2017, p. 59). A few of the major subsequent developments shall be presented in this subchapter.

After the endorsement in 2011, John Ruggie was asked to provide some recommendations for a follow-up process subsequent to his mandate which were needed to protect the substantial achievements realized by the SRSG and to advance practical progress (Ruggie, 2011, p. 5). Based on his experience over the course of nearly six years, he recommended a follow-up mandate consisting of the two following parts (ibid, p. 1). Firstly, the Guiding Principles should be embedded through efforts aimed at a. building capacities at national and local levels, b. pointing out the challenge posed by the current incomplete and flawed patchwork of non-judicial grievance mechanisms and c. an annual international stock taking of the Guiding Principles functionality (ibid, p. 2). According to Ruggie, the second part of the follow-up mandate should focus on clarifying international legal standards since national jurisdictions tend to have divergent interpretations of the applicability of business enterprises to international standards prohibiting gross human rights abuses which could potentially amount to the level of international crimes (ibid, p. 4).

Further, within the first year after the endorsement, various key standards were updated and aligned with the Guiding Principles (Faracik, 2017, p. 14). The Organization for Economic Co-operation and Development (in the following 'OECD') i.e. added a new chapter to their Guidelines for Multinational Enterprises focusing on human rights in the business context including due diligence recommendations (ibid). Other organizations whose standards were aligned with the UNGPs were the International Finance Corporation, the International Standard Organization, the International Labour Organization as well as the UN Global Compact (ibid). The exact content of the same shall not be discussed in greater detail here for the sake of clarity. Additionally, the 2015 G7 Summit Leaders (Canada, France, Germany, Italy, Japan, UK, US) reaffirmed their support of the UNGPs in the context of responsible supply chains and welcomed efforts to set up National Actions Plans (in the following 'NAP') (ibid).

NAPs are government-drafted policy documents that articulate state priorities and indicate future actions to support implementation of legal obligations or policy commitments on a given topic and may be viewed as a soft law tool (Methven O'Brien, et al., 2016, p. 118). As such, they promote convergence of state practice towards achievement of goals or standards where consensus on the need for legal obligations, or what their content should be, is lacking (ibid). The approach of setting up NAPs is considered to be an effective measure for Member States to implement the Guiding Principles (Neglia, 2014, p. 4). Although the European Commission had initially invited Member States to draft their NAPs until 2012, only twelve countries, ten of which are from Europe, have produced these until the end of 2016 (Faracik, 2017, p. 8). Despite the fact that the European Union is leading concerning the number of NAPs developed so far, many of these first plans lack future-oriented actions and merely provide an overview of existing activities by governments (ibid). However, as a result of their distinctively broad framing, the development of NAPs have the potential to empower rights-holders and generate space for dialogue and greater mutual understanding between stakeholders (Methven O'Brien, et al., 2016, p. 121).

In summary, it can be said that the UNGPs have majorly impacted the issue of integrating a human rights perspective into business and corporate human rights due diligence and impact assessment has become a norm of expected conduct for all business enterprises (UN Working Group, 2018, p. 24). However, according to the UN Working Group on the issue of human rights and transnational corporations and other business enterprises (in the following 'UN Working Group') considerable efforts are still needed as the majority of business enterprises around the world remain unaware, unable or unwilling to implement human rights due diligence as required of them in order to meet their responsibility to respect human rights (ibid). Thoughts and ideas on possible future developments will briefly be presented in the final chapter of this thesis.

3. Impact assessment

3.1 Definition

Impact assessment (in the following 'IA') is an increasingly widely adopted tool for evaluating the effect of policies, programs and regulatory interventions across a wide range of different fields (Harrison, 2010, p. 3). It can be defined as the process of identifying the future consequences of a current or proposed action (Partidário, 2012, p. 1). It has been recognized as a forward-looking instrument able to proactively advise decision-makers on what might happen (ibid). Impacts may be both positive or negative and can potentially affect the environment, communities, human health and well-being, desired sustainability objectives, or a combination of the aforementioned (IMPACT Project Consortium, 2013, p. 23). IA can help to design and implement better policies, plans, programs and projects and critically examines development actions while they are still being conceptualized (ibid). Further, it has the capacity to magnify the positive effects of developments by turning problems into opportunities and can help to develop proposals for action, for enhancing opportunities, avoiding risks and mitigating adverse effects (ibid, p. 2). In the context of this thesis we will consider IA as a part of corporate due diligence processes as described in the PRRF and the UNGPs. A proposed procedure will be presented in subchapter 4.3.

3.2 Areas of application

3.2.1 Environmental impact assessment

Environmental impact assessment (in the following 'EIA') is one of the most common and widest spread areas of application for impact assessment processes (Wathern, 2013, p. 19). It can be defined as the evaluation of the key effects likely to arise from a major project or other action significantly affecting the environment (Jay, et al., 2007, p. 289). It is a systematic process for considering possible impacts prior to a decision being taken on whether a proposal should be given approval to proceed or not (ibid). EIA requires consultation as well as public participation and is thus an anticipatory, participatory environmental management tool (ibid, p. 290).

Historically, EIA has a strong legislative basis beginning in the United States 1969 National Environmental Policy Act (in the following 'NEPA') (ibid, p. 289). The NEPA was enacted at a time when a wide range of human activities caused serious environmental damage and became subject to growing public concern and political activism, especially in western democracies (ibid, p. 290). It established an environmental policy to guide the activities of those Federal agencies whose actions had the power to affect people, communities and the natural environment in significant ways (Morgan, 2012, p. 5).

In summary, it can be said that EIA has become an internationally accepted and established tool for environmental management (Jay, et al., 2007, p. 299). Its procedures have been strengthened and adapted over time and the quality of decisions involving EIA has improved as a result of the increased use of modification or mitigation, the use of more stringent conditions upon permissions and, occasionally, the non-implementation of potentially environmentally damaging proposals which might previously have been approved (ibid). However, EIAs have had far less influence than their original supporters had hoped they would have in influencing project and plan decision making (Morgan, 2012, p. 4).

3.2.2 Social impact assessment

The International Association for Impact Assessment defines Social Impact Assessment (in the following 'SIA') as "the processes of analyzing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions. Its primary purpose is to bring about a more sustainable and equitable biophysical and human environment" (Vanclay, 2012, p. 6). Just like EIA, SIA is used as an impact prediction mechanism and decision-making tool in regulatory processes to consider the social impacts in advance of a permitting or licensing decision (Vanclay, et al., 2015, p. 6). However, the role of contributing to the ongoing management of social issues throughout the whole project development cycle as well as being a fundamental tool for accountability should be considered as equally important (Ricciuti & Calò, 2018).

SIA was developed simultaneously with EIA in the 1970s and originally attempted to emulate it as much as possible (ibid). It was often carried out as part of EIA but has diverged from it over time driven by the growing realization that social issues fundamentally differ from biophysical issues (ibid). However, it is still worthwhile to conduct integrated assessments due to the level of interconnectedness of environmental and social issues (ibid).

Although the formal requirement for SIA also arose from the NEPA, international legislation remains inconsistent and fails to provide detailed guidance on the requirements of SIA (Wilson, 2017, p. 2). The International Association for Impact Assessment (in the following 'IAIA') has, however, specified some key values and principles stating that the objective of SIA should be to contribute to the empowerment of vulnerable groups in the community, a gender lens should be applied in all assessments and that respect for human rights should underpin all actions (Vanclay, et al., 2015, p. 6). Chapter 4 will discuss the rise of human rights demands on impact assessment processes in greater detail.

The IAIA has identified four phases of SIA in their comprehensive guidance document (Wilson, 2017, p. 5). Phase one focuses on understanding the issues of the proposed project or action (ibid, p. 6). The main focus lies on identifying the preliminary social area of influence as well as understanding affected communities and informing its members about the project (ibid). In phase two, likely impact pathways have to be predicted, analyzed and assessed, considering impacts on host communities and anticipating their response (ibid). In the third phase, strategies for addressing potential negative impacts have to be developed and appropriate feedback and grievance mechanisms have to be implemented (ibid). Finally, design and monitoring programs are implemented in phase four in order to undertake evaluation and periodic reviews (ibid).

4. Human rights impact assessment

4.1 Definition and delimitation

Human rights are basic rights and freedoms that all people are born with and entitled to regardless of nationality, residence, gender, race, ethnicity, religion and cultural heritage (Abrahams & Wyss, 2011, p. 9). They should be treated as inalienable and should all - civil, political, economic, social as well as cultural - equally be considered (ibid). Further, they are interdependent and interrelated, meaning that the interference of one human right often negatively affects other human rights (ibid).

Concluding from the above as well as chapter 3, human rights impact assessment (in the following 'HRIA') is an instrument to simplify the complexity of managing human rights by providing companies with a consistent, efficient, and systematic way to identify, prioritize, and address human rights risks and opportunities at a corporate, country, site, or product level (Business for Social Responsibility, 2013, p. 5). Just as policymakers consider the social, environmental or economic impacts by conducting IA to explore these issues, HRIAs aim to make policymakers consider the human rights impact of their policies (Harrison & Stephenson, 2010, p. 14). It is defined in the UNGPs as a crucial part of human rights due diligence which is the term describing the overall process companies undertake to respect human rights (Business for Social Responsibility, 2013, p. 5).

Beginning in the late 1990s, a greater focus was put on human rights throughout the UN system which led to a rights-based approach to development (Harrison, 2010, p. 5). Subsequently, there were more concerted efforts by development organizations such as the United Nations Development Program (in the following 'UNDP') to measure human rights impacts, making HRIA an obvious policy instrument to use in the respective measuring process (ibid). The endorsement of the UNGPs in 2011 finally brought human rights due diligence to the center of SIA practice resulting in the evolution of HRIA as a distinct form of impact assessment (Wilson, 2017, p. 4).

Since HRIA is a policy tool which has largely arisen over the past two decades, it does not yet represent such a clear and defined process as the examples presented in the previous chapters, EIA or SIA (Harrison, 2010, p. 3). Due to the common foundation of the different IA processes, it is worth mentioning similarities and differences between

them (Ruggie, 2007, p. 4). Just like EIAs and SIAs, HRIAs should always consider the full business life cycle of a project and provide practical recommendations addressing the risks presented by the proposed business activity (ibid, p. 5). Those recommendations should be incorporated into a management plan for monitoring and revisiting the issues raised during the IA process (ibid). Chapter 4.3 will elaborate on a proposed HRIA procedure in greater detail.

Although most known IA processes are implicitly underpinned by human rights values, HRIA, EIA and SIA only overlap to a certain extent (The World Bank, Nordic Trust Fund, 2013, p. 10). Firstly, HRIAs differ from other types of IA on both the level of specificity and detail with which human rights issues are addressed and the comprehensive way in which they are covered (ibid). They typically cover economic, social and cultural aspects as well as civil and political ones in a cross-sectoral approach since they are based on a framework that includes all these rights (ibid). EIA as well as SIA tend to be more narrowly focused and can potentially fail to capture the full range of factors that might contribute to adverse human rights risks (ibid). Further, the fact that HRIAs are based on the normative framework of binding international human rights law to which governments have committed themselves, distinguishes them from other IA processes (ibid). Since the framework of international human rights law is being used as the objective standard of assessment, the process contains a high level of both moral legitimacy and legal accountability giving its recommendations a unique significance and force (ibid).

In his 2007 report, Ruggie also highlights the basis of the International Bill of Rights to be the clearest difference between HRIA and EIA or SIA (Ruggie, 2007, p. 6). According to the SRSG, HRIAs deviate from other IA processes by instead of only examining a project's direct impacts, rather considering how a corporation's action could possibly interact with each and every right (ibid). While there is currently no global consensus about the role and obligations of companies under international human rights standards, this process can be undertaken without any normative framework with exercises such as scenario planning (ibid).

While most companies do not use the language of 'human rights', many of them cover a number of human rights issues in some form through existing policies and procedures (Abrahams & Wyss, 2011, p. 9). Oftentimes corporations have

occupational health and safety policies and procedures which are supported by the guidelines of the Universal Declaration of Human Rights (in the following 'UDHR'), namely the right to life (UDHR 6), the right to just and favorable conditions of work (UDHR 23), and the right to health (UDHR 25) (ibid). Furthermore, an increasing number of companies have introduced statements into their contracts with third party suppliers prohibiting the use of child labour which is again covered by the UDHR (ibid).

4.2 Requirements and specifications from the UNGPs

With the endorsement of the 2008 PRRF as well as the UNGPs in 2011, businesses can demonstrate they are respecting human rights by ensuring their business policies and practices do not infringe the rights of others (Abrahams & Wyss, 2011, p. 11). As mentioned previously, in practical terms this means conducting human rights due diligence (The World Bank, Nordic Trust Fund, 2013, p. 10). The requirements stated in the UNGPs shall be presented in greater detail in the following, focusing on the second pillar of the framework which covers the corporate responsibility to respect human rights. Human rights due diligence is initially introduced in principle number 15 and defined as the main process to identify, prevent, mitigate and account for how businesses address their impacts on human rights (Ruggie, 2011, p. 16). Principle 17 then subsequently defines the parameters of human rights due diligence while principle 18 to 21 elaborate its essential components (ibid, p. 18).

According to Ruggie, the process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed (ibid, p. 17). As mentioned in the PRRF and chapter 2.1 of this thesis, human rights due diligence should cover adverse human rights impacts that the corporation may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships (ibid). It is likely to vary in complexity depending on the size of the business enterprise, the nature and context of its operations as well as the risk of severe human rights impacts and should be handled as an ongoing process (ibid).

The commentary of principle 17 specifies that while potential impacts should be addressed through prevention and mitigation, actual impacts which have already occurred are subject to remediation, defined in the third pillar of the framework (ibid, p.

18). The guidelines explain that human rights due diligence can be included within broader enterprise risk management systems but should, however, go beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders (ibid). With regards to timing, the process should be initiated as early as possible in the development of a new relationship or activity since human rights risks can already be increased or mitigated at an early stage (ibid).

It might be unreasonably difficult for a business enterprise to conduct due diligence for adverse human rights impacts for a large number of entities in its value chain (ibid). If this is the case, general areas where the risk of adverse human rights impacts is most significant should be identified (ibid). This can for instance be driven by certain suppliers' or clients' operating context, the particular operations or products or services involved (ibid). Principle 17 also discusses the question of complicity which may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties (ibid). As mentioned previously, in non-legal terms a business may be perceived as complicit if they are seen to benefit from an abuse committed by another party (ibid). As a legal matter, complicity in the commission of a crime is prohibited in most national jurisdictions and allows for criminal liability of business enterprises (ibid, p. 19). In such cases, complicity is defined as knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime (ibid).

Showing that they took every reasonable step to avoid involvement with human rights abuse by conducting appropriate human rights due diligence can help companies address the risk of legal claims against them (ibid). Conducting such due diligence should, however, not by itself be assumed to absolve a company from any responsibility in contributing to or causing human rights abuses (ibid).

In principle 18, Ruggie elaborates that HRIA as an essential part of the human rights due diligence process should be participatory, revert to internal and external human rights expertise and involve consultation with potentially affected groups as well as other appropriate stakeholders (Ruggie, 2011, p. 19). How this should be done is further explained in the commentary section of the principle.

As an initial step of the process, the nature of the actual and potential adverse human rights impacts should be identified and assessed in order to understand the specific impacts on people within a context of operations (ibid). This step typically includes assessing the human rights context prior to a business activity, identifying who may be affected, cataloguing the relevant human rights standards as well as projecting how the proposed activity may impact the identified stakeholders (ibid). It should be mentioned that companies should pay special attention to individuals, groups or populations which could be at heightened risk of marginalization or vulnerability and to gender specific differences in risks (ibid, p. 20).

HRIA can be incorporated in existing processes such as risk assessment or social and environmental IA but should always reference internationally recognized human rights (ibid). Further, HRIA should be undertaken at regular intervals to serve the dynamic nature of human rights situations (ibid). Reasonable examples for such intervals could be prior to a new project or activity, in anticipation or as a response to changes, prior to major decisions in the operation as well as periodically throughout the project or activity lifecycle (ibid). For an accurate assessment of their human rights impact, companies need to understand the concerns of affected stakeholders through direct consultation (ibid). Wherever this is not possible or feasible, alternatives such as consulting expert resources should be established (ibid).

Principle 19 subsequently discusses how companies can effectively integrate their HRIA findings across relevant internal functions and processes (Ruggie, 2011, p. 20). The UNGPs recommend to assign the responsibility for addressing such impacts to the appropriate level and function of an enterprise and ensure effective responses to such impacts by internal decision-making, budget allocations and oversight processes (ibid). Moreover, the respective action may vary according to the question of whether a company causes or contributes to an adverse impact directly or solely because it is linked to its operations or relationships with business partners (ibid, p. 21).

In order to horizontally integrate HRIA findings and ensure that these are properly understood, given due weight and acted upon, a company's human rights policy commitment has to be embedded in all relevant business functions (ibid). Further, the commentary states that corporations should take the necessary steps to cease or prevent impacts that they have caused or which they have contributed to (ibid). If a

business enterprise has only indirectly contributed to adverse human rights impacts by its operations or business relationships with other parties, various factors influence the appropriate action to be taken (ibid, p. 22). Generally speaking, a business which has the ability to prevent or mitigate the impact, it should exercise it or, in case it does not, try to increase its leverage (ibid). If however, both of the before mentioned options are not available, enterprises may consider ending the respective relationship (ibid). Even if the relationship is crucial to the corporation and essential to its business, it should be prepared to accept any reputational, financial or legal consequences as long as the abuse and connection continues (ibid).

The subsequent principle, number 20, states that companies should track the performance and effectiveness of their response to adverse human rights impacts in order to verify whether its policies are being implemented optimally (Ruggie, 2011, p. 22). The tracking should be based on appropriate qualitative and quantitative indicators and draw feedback from internal as well as external sources such as affected stakeholders (ibid). Moreover, it is advised to be part of other internal reporting processes so that existing tools can be employed (ibid, p. 23).

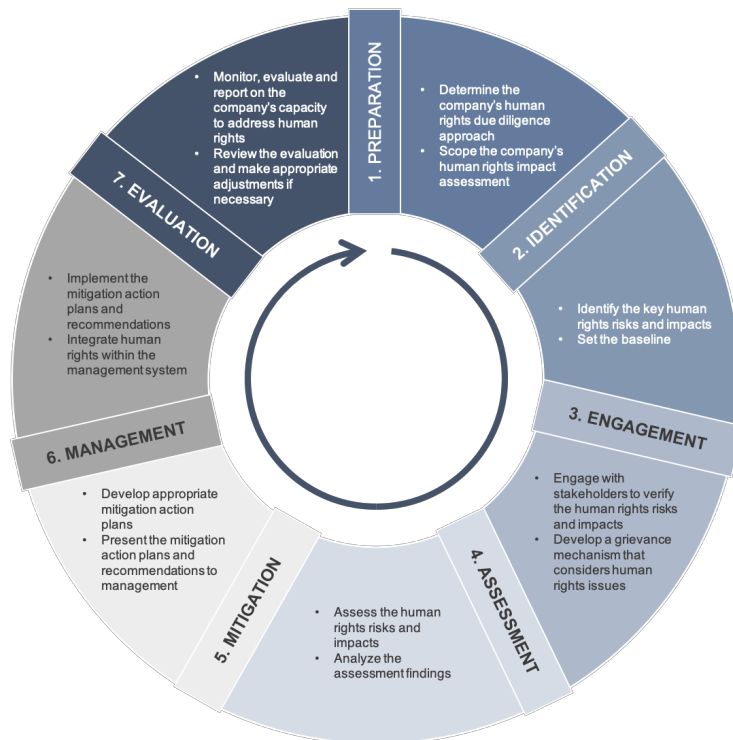
Finally, as postulated in principle 21, business enterprises should have policies and processes in place through which they can both know and show that they respect human rights in practice (ibid, p. 24). Showing involves accounting for how they address their human rights impacts, especially if concerns are raised by affected stakeholders in order to provide a measure of transparency and accountability (ibid, p. 23). The information provided should be sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact it is involved in and be of a form and frequency accessible to intended audiences and reflecting its impacts (ibid). Forms of communication can vary between e.g. in-person meetings, online dialogues, consultation with affected stakeholders or formal public reports (ibid, p. 24). The latter is expected where risks of severe adverse human rights impacts exist and can range from traditional annual reports and corporate responsibility reports to online updated and integrated financial and non-financial reports (ibid).

4.3 Proposed procedure

As with all types of IA processes, it is not possible or meaningful to define a uniform process for all HRIAs (Harrison, 2010, p. 5). The appropriate model will thus depend on various factors such as e.g. the nature of what is being assessed, who undertakes the assessment and when, as well as strategic decisions made about the process (ibid). For the sake of clarity however, the thesis will focus on a proposed HRIA procedure postulated by The International Business Leaders Forum (in the following 'IBLF') and International Finance Corporation (in the following 'IFC'), in association with the UN Global Compact in 2013. Their 'Guide to Human Rights Impact Assessment and Management' elaborates how corporations can assess and manage HRIAs within the due diligence process as described in the UNGPs.

The Guide to Human Rights Impact Assessment and Management (in the following 'HRIAM') provides guidance on how to assess risks and impacts related to human rights violations through an interconnected, dynamic process divided into seven stages (Abrahams & Wyss, 2011, p. 12). The seven stages are presented in the figure below.

Figure 3: HRIAM process



(Based on: Abrahams and Wyss, IBLF, IFC in association with the UN Global Compact: Guide to Human Rights Impact Assessment and Management (HRIAM), 2011, p. 12)

The process will help the company to consolidate its understanding of its human rights risks and impacts and subsequently use the acquired information to inform future decisions and actions (ibid).

Starting with **stage one**, the preparation phase of the HRIAM process, the company's human rights due diligence approach should be determined (ibid, p. 15). This important first step will help to identify how the company affects, both positively or negatively, human rights of their stakeholders, the potential or actual human rights risks that may affect their business operations as well as the processes in place to address the respective risks and impacts (ibid). The IBLF and the IFC have developed two interactive tools, the Human Rights Identification Tool and the 'Human Rights Due Diligence Mapping Tool', to help companies determine their human rights due diligence approach (ibid). Both of which are framed within fictitious human rights scenarios to provide relevant context and sensitize users to a range of situations that could potentially have repercussions on the human rights of their stakeholders (ibid).

The first stage of the guide also defines the business case for which HRIA should be conducted which should always consider both the challenges as well the opportunities arising from the (mis-)management of human rights risks and impacts (ibid, p. 16). To take some examples, the mismanagement of human rights impacts could lead to reputational and financial risks as well as legal claims (ibid). The opportunities arising from proactively managing business activities, however, are manifold and often overlooked (ibid, p. 17). Useful business intelligence on a company's human rights risks can for example help the company to understand potential shortcomings in relation to human rights due diligence or develop appropriate policies, systems and processes to add to an existing approach (ibid). Another question raised in the first stage of the process is whether the HRIA should be established as a standalone process or whether it should be integrated within a corporation's existing due diligence tools and processes (ibid, p. 19). As elaborated in chapter 4.1, there can be significant overlaps between HRIA and other IA processes which would lead to duplications of efforts if companies were to consider a standalone approach (ibid). On the other hand, while other risk and impact assessments focus on some human rights concerns, they often do not address human rights issues in a comprehensive way which may leave the company exposed to hidden human rights issues (ibid, p. 20). If corporate entities

still decide to pursue an integrated approach, it should consider all relevant human rights derived for the International Bill of Human Rights, stakeholder engagement through prior and informed consultation as well as internal and external human rights expertise (ibid).

Finally, companies also have to decide whether the coordination of their HRIA should be done by an individual or a team in-house or managed externally by a third party (ibid). This decision mainly depends on factors such as the availability of expertise and resources (ibid, p. 21). If the preceding issues are resolved, the company can then move to stage two, identification.

In order to respond appropriately to adverse human rights risks, a company first has to identify any key risks or potential impacts associated with their business activity (ibid, p. 25). This is the main purpose of **stage two** of the proposed HRIAM process. To achieve this, it is useful to understand the activity in context, in particular factors such as the industry sector and country in which the company operates, its business relationships or existing policies, procedures and commitments (ibid). The information collected with the 'Due Diligence Mapping Tool' as well as accumulated knowledge from various company functions engaging with the business activity should be drawn upon to derive a profound understanding of potential human rights impacts (ibid). Further, corporations should identify the applicable human rights legal framework in which they operate since there is a significant body of international and national conventions, laws, regulations and guidelines on human rights (ibid, p. 26). In order to avoid indirect contribution to adverse human rights impacts, companies also need to be mindful of associations with other actors they might have a business relationship with, which might have a bad record and could expose them to complicity charges (ibid, p. 27). This implies that assessing the policies and practices that relate to human rights issues of any potential partners or suppliers and contractors, might at least be necessary where the company has direct control (ibid).

Other factors considered in the identification stage, are the industry sector, the country of operation and its inherent civil and political as well as economic, social and cultural rights (ibid, p. 29-31). A thorough analysis of these factors is crucial to understand the challenges that a company may face (ibid, p. 31).

During **stage three** of the HRIAM process, companies should engage with stakeholders in order to verify their human rights risks and impacts (ibid, p. 35). Stakeholder engagement should be a two-way, iterative and integral process which lasts for the life of the respective business activity (ibid). To make this part of the process effective, a stakeholder management strategy should be developed consisting of key activities such as stakeholder identification, - analysis and engagement as well as grievance management (ibid). Firstly, legitimate stakeholders which are either directly or indirectly affected by the business activity, should be identified (ibid, p. 36). Secondly, corporations may want to prioritize their interaction with key stakeholder groups by analyzing their interests in relation to the business activity (ibid, p. 37). This may be done with tools such as a power/interest grid which identifies the stakeholders most cooperative, influential and informed, in addition to those who may be hard to reach or challenging (ibid). The third step, stakeholder engagement, should follow the principles of accessibility, inclusivity and transparency to develop a constructive and trusting relationship with stakeholders (ibid, p. 40). Lastly, companies are encouraged to develop a grievance mechanism considering human rights issues and addressing the root cause early on to prevent it from escalating into a major problem (ibid, p. 42). These mechanisms should be proportionate, culturally appropriate, transparent and accessible (ibid, p. 43).

At **stage four**, the assessment, companies should assess their human rights impacts and consequences exploring a range of different techniques and potentially engaging with human rights practitioners (ibid, p. 45). During this part of the process, past environmental and/or social IA studies may be compared and employees who have worked on a similar business activity before can be consulted (ibid). As mentioned previously, there is no uniform procedure on how to assess human rights risks and impacts (ibid). There is, however, a consensus that HRIA should be carried out against internationally agreed human rights standards such as the International Bill of Human Rights (ibid). When conducting the assessment, companies should expose any unintended consequences arising from the business activity and look beyond the short-term, direct impacts (ibid). Further, an understanding for trends unique to the location of industry sector of the business activity should be developed (ibid, p. 46). Corporations should also consider the source of the risks and impacts, the stakeholders who are subject to these and the stage of the business activity's lifecycle

(ibid). For the purpose of analyzing the before mentioned issues, the 'Human Rights Impact Assessment Tool' has been developed (ibid). The resulting information can be used in stage five and six of the HRIAM process (ibid).

The purpose of **stage five** is to develop an appropriate mitigation action plan (ibid, p. 48). During this phase, companies are supposed to mitigate existing or potential adverse human rights impacts and improve existing or potential positive benefits associated with the business activity (ibid). The resulting mitigation and improvement action plans should be culturally acceptable and feasible to affected stakeholders who should be engaged in developing them (ibid). Companies may consider to address the identified risks and impacts in relation to a mitigation hierarchy with the severity and magnitude determining which type of mitigation approach to pursue (ibid, p. 49). Furthermore, in order to critically reflect on a corporation's success implementing these mitigation measures, key performance indicators (in the following 'KPIs') may be used (ibid, p. 50). Following the SMART criteria, these KPIs should be specific, measurable, achievable, relevant and time bound (ibid). To help companies with the issues addressed at this stage of the process the 'Human Rights Impact Mitigation and Management Tool' has been developed by the IBLF and the IFC (ibid).

Another topic addressed in stage five, is the development of appropriate improvement action plans (ibid). These plans are designed to ensure that positive benefits associated with the business activity are built upon enhancing positive human rights impacts (ibid, p. 51). Together with the mitigation actions plans, HRIAM project managers are encouraged to present these proposed measures to the management of the company to obtain approval and buy-in (ibid).

To successfully implement the mitigation and improvement action plans and recommendations established in stage five, human rights should be integrated within a management system, which is the core of **stage six**, the management stage (ibid, p. 53). This will help the corporation to anticipate any risks and impacts on human rights in its future operations and, hence, make their approach to human rights more sustainable and cost effective (ibid). Operational policies, processes and practices should be integrated into the management system to enable the company to be aware of, understand the impact of, and be prepared to respond to human rights challenges effectively (ibid). Since human rights issues are diverse and cross-cutting, these

practices should be integrated and addressed in various company functions (ibid, p. 54). While for some functions, such as health and safety, this consideration may already be self-evident and directly relevant, others may not be aware of their human rights implications and will require a certain adaptation and commitment (ibid). To successfully integrate human rights within a corporation's management system, it is crucial to develop a workplace culture that openly considers human rights (ibid). This can be achieved by raising awareness for human rights issues and promoting feedback from stakeholders (ibid, p. 55). Finally, a human rights policy statement helps to align the different functions with regard to their objectives and commitments concerning human rights issues (ibid).

Stage seven, the last stage of the proposed HRIAM process, is the evaluation stage (ibid, p. 57). It should be approached as a continuous learning exercise consisting of three main tasks (ibid). Firstly, a monitoring process highlighting the company's mitigation and improvement measures and how the company has incorporated human rights issues (ibid). In order for this process to be effective, corporations should actively supervise the human rights performance of each business activity and require frequent reports on any significant incidents (ibid). Existing and potential human rights risks and impacts should be monitored as well as all relevant stakeholders or reoccurring grievances (ibid). Monitoring may also include supervision site visits to the location of the business activity and independent human rights audits potentially involving external consultants (ibid).

Secondly, an external and internal reporting process showing the company's capacity to address these issues should be implemented (ibid, p. 58). Regular updates on lessons learnt will signal a genuine commitment to stakeholder engagement from the company and, therefore, reinforce trust (ibid). It is recommended to enclose as much information as possible to be transparent about all relevant information on the processes addressing human rights risks and impacts (ibid). According to the IBLF and the IFC, there are certain elements a human rights report should contain. It is important to consider how the company addressed all positive and negative human rights risks and impacts associated with the business activity, with its operations as well as the indirect impacts arising from the operations of business partners (ibid, p. 59). Further, their grievance mechanisms and stakeholder engagement process should be

addressed as well as the mitigation and improvement action plans established in stage five (ibid). Finally, the report should elaborate on how the company measures its human rights impacts (ibid).

The third task of stage seven is an evaluation identifying the obstacles faced by the relevant company functions (ibid, p. 57). This task should evaluate any human rights related KPIs, the stakeholder engagement process, the company's grievance mechanism, the level of human rights integration in the management system as well as any mitigation or improvement action plans (ibid). To ensure continuous improvement, the monitoring, evaluation and reporting process should be reviewed to enhance the company's human rights due diligence process if necessary.

At which of the seven stages companies should enter the HRIAM process depends on different factors (Abrahams & Wyss, 2011, p. 13). Since stage one, the preparation phase, provides guidance on how to define the scope of the human rights impact assessment, it might be reasonable to start the process at stage two (identification), in case the company is already aware that a human rights impact assessment for a specific business activity is necessary (ibid). Both the first as well as the second stage may be skipped if identification, as described in the guide, has already been completed as part of another impact assessment or due diligence process (ibid). Lastly, if corporations have already carried out a HRIA but are unsure about how the identified risks should be addressed appropriately, the process should be entered at stage five, mitigation.

4.4 Challenges and opportunities of human rights integration

Taking on a human rights perspective by conducting HRIAs as part of a company's due diligence process helps to demonstrate that its business activities and operations are not only fiscally sound but also socially acceptable (Abrahams & Wyss, 2011, p. 16). However, the findings presented in the previous chapters show that the commitment to and the implementation of a HRIA process also entail some challenges and costs.

Although a number of corporations expressed support for the UNGPs after the endorsement in 2011, some remained critical and rather unenthusiastic (Aaronson & Higham, 2014, p. 17). One major problem, standing in the way of the principles to be aspirational rather than operational, could be the lack of uniform and legally binding regulations for all actors (ibid, p. 18). If early adopters were to face an uneven playing field, the establishment of a human rights due diligence process could come at considerable cost and a competitive disadvantage (ibid). Further, the UN Working Group has pointed out the key difference between human rights due diligence and traditional corporate due diligence to be that one emphasizes risks to people whereas the other addresses risks that are a concern for business, generally of financial nature (UN Working Group, 2018, p. 6). While in some cases these perspectives might be viewed as contradictory, research shows that not implementing a human rights due diligence process may just as well lead to reputational harm and eventually to financial damage or even legal claims (Aaronson & Higham, 2014, p. 16). If companies, however, operate with a mindset of risk to the business instead of risk to the rights holders, such as workers, communities or consumers, this misconception of risk could lead to a weak risk management approach and, hence, to an unsuccessful integration of human rights risk and impact assessment (UN Working Group, 2018, p. 8).

Another challenge in current practice arises from too many HRIAs being done as exercises to tick the box without meaningful engagement with stakeholders such as at-risk groups or human rights defenders (ibid). Besides the lack of engagement, there is also a shortcoming with regards to timing since most business enterprises still act in a reactive manner instead of proactively trying to identify potential human rights impacts before they arise (ibid). Moreover, the implementation of human rights due diligence processes currently tends to be limited to tier-one companies rather than corporations requesting assessments from business partners throughout their whole supply chain (ibid, p. 9). Such efforts only tend to be made as soon as human rights violations have occurred and been brought to light by the media or non-governmental organizations (ibid).

These gaps show that there is still a general lack of knowledge and understanding of the corporate responsibility to respect human rights and that many business enterprises, especially small and medium-sized ones, view due diligence exercises as

a burden (ibid). The opportunities arising from a proactive integration of a human rights agenda, however, are often overlooked (Abrahams & Wyss, 2011, p. 17). A genuine attempt to assess human rights impacts can yield useful business intelligence and lead to positive spin-offs (ibid). In particular, a human rights integration helps companies to develop e.g. concepts for mitigating problems as well as a systematic approach to the management of human rights impacts (ibid). Further, early adopters may not only be able to amortize the additional cost incurred but also use their support of human rights as a marketing and public relations tool (Aaronson & Higham, 2014, p. 24). The integration of human rights standards also enables companies to retain employees, consumers, and investors by publicly articulating their commitment to respective issues through a policy or statement (Lee & Vali, 2018). Yet, despite the extraordinary progress made in recent years, there continue to be challenges and threats to human rights, some longstanding, some newly emerging (ibid). It is obvious that since 2011, a range of companies have taken steps to implement human rights due diligence, and good practices have evolved. However, considerable efforts by different actors are still needed to make human rights due diligence as well as HRIA a part of standard business practice (UN Working Group, 2018, p. 3).

5. Conclusion

5.1 Summary

The debate concerning businesses' responsibilities to respect human rights has been a long-standing issue which gained further importance as poor working conditions in global supply chains drew attention in the 1990s. After the first response by the UN to these developments, a set of 'Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights', was vehemently rejected by business, the Commission on Human Rights declined to adopt the document. Instead, in 2005 John Ruggie was appointed by the then UN Secretary General Kofi Annan to be the Special Representative of the Secretary General on the issue of human rights and to clarify the roles and responsibilities of States and companies in the business and human rights sphere. Three years later, after extensive research, Ruggie presented a three pillar framework consisting of the following main principles: the State's duty to protect human rights, the corporate responsibility to respect human rights and greater access to effective remedy. The proposal was

unanimously welcomed and the Special Representative was asked to operationalize the framework leading to the endorsement of the 'UN Guiding Principles on Business and Human Rights' in 2011.

Being the first globally accepted standard dealing with business-related human rights abuse, the UNGPs were a milestone achievement. The first pillar elaborates on the State's duty to protect against human rights abuse by third parties, including business, within their territory or jurisdiction. The framework requires governments to actively encourage a corporate culture which is respectful to human rights at home but also beyond its borders. Meeting these demands also requires active and direct participation of corporations which are the focal point of the second pillar. Ruggie defined the corporate responsibility to respect human rights as acting with due diligence to avoid infringing on the rights of others and addressing harms that do occur. Due diligence is a process companies undergo to identify, prevent and address adverse impacts of their decisions and business activities and is most commonly used to assess financial risks. In the context of the UNGPs, however, companies are required to carry it out in order to measure adverse human rights risks and impacts and should consider the business activity's framework conditions and its potential direct and indirect impacts through human rights impact assessment. Finally, the third pillar discusses the access to effective remedy, which plays an important role in both previous pillars. Although a patchwork of different grievance mechanisms already exists, there are still victims without access to functioning and effective sources of remedy.

Returning to the second pillar of the framework, which is the focal point of this thesis, the UNGPs encourage companies to establish a human rights due diligence process with human rights impact assessment at its core. Impact assessments have been used in different areas of application, such as environmental or social impact assessment, for more than half a decade and are a well-known tool employed to identify the future consequences of a current or planned business activity. The term 'human rights impact assessment', however, does not yet represent such a defined and well-known process. To clarify any ambiguities, a 'Guide to Human Rights Impact Assessment and Management' was developed by The International Business Leaders Forum and International Finance Corporation in association with the UN Global Compact based

on the UNGPs. It comprises a seven-stage process offering guidance and management tools to companies of any size, location or industry sector and provides recommendations to either establish a standalone HRIA process or integrate it into other existing impact assessment processes. The guide outlines advantages and disadvantages for both options as well as key components and general framework conditions of the process.

It becomes clear that the discussion of integrating human rights into business has significantly gained importance through the efforts of the UN and in particular John Ruggie. Starting with the unanimous endorsement of the UNGPs in 2011, important steps have been made in establishing common goals and guidelines regarding human rights demands, moving toward legally binding standards beginning with the implementation of e.g. NAPs. These developments put increasing pressure on corporations to raise resources to expand existing impact assessment processes or establish new ones which consider the human rights perspective. However, critical voices have also been raised pointing out the remaining lack of bindingness and the potential competitive disadvantage resulting from an uneven playing field and the increased costs caused by the implementation of a HRIA process. Hence, human rights demands increasingly affect business operations, in particular IA processes. The UNGPs call for corporations to integrate a human rights perspective into business by implementing HRIAs as part of their human rights due diligence process.

5.2 Critical acclaim

The findings of the preceding chapters are kept fairly general since they do not refer to any specific country or region nor to a specific industry sector. In order to not go beyond the scope of this thesis, the results and explanations are generalized to a certain extent. The framework conditions and parameters need to be defined more precisely in order to establish a less universal and more specific HRIA process matching the respective industry sector or even one particular corporation. Further, reliable information about the effects of implementing a HRIA process, such as the costs incurred, can only be obtained when examining a particular case or corporation which has already introduced this form of impact assessment into their operations.

Only then could the gains arising from integrating a human rights perspective into business activities be contrasted to the actual amount of additional costs.

Another limitation should be noted with regards to the proposed procedure of a HRIA presented in chapter 4.3. Since there is not one defined uniform process, multiple similar alternatives were found conducting the literature research in preparation of writing this thesis. However, the seven stage process chosen to be outlined displays a strong linkage to the UNGPs, not least because the respective guide was composed in association with the UN Global Compact. Although this process can be adapted to fit various different companies, multiple variables and framework conditions need to be taken into account in order to establish an effective and appropriate HRIA procedure.

5.3 Outlook

The findings show that there is no doubt about the increasing importance of integrating a human rights perspective into business activities. The positive results achieved from establishing a HRIA process as well as the growing pressure stemming from negative publicity demonstrate the need for more drastic changes in the human rights debate. Although the responsibility of businesses to respect human rights seems to generally be acknowledged, the exact realization of the UNGPs currently remains rather theoretical. Hence, the lack of bindingness is an issue that has often been criticized when discussing the UNGPs. Although their unanimous endorsement was a milestone achievement, the Guiding Principles in themselves are far from being obligatory. In recent years, however, the first signs of a transition from soft law to legally binding regulations have started to appear. Starting in 2015, to date there have been four sessions of the UN intergovernmental working group tasked with developing a binding treaty on business and human rights. Together with 94 states and 400 civil society organizations, the working group has created a draft treaty which has been published in July last year. Despite the high number of participants though, western states such as the European Union, the United States and Australia were either absent or disassociated themselves from the results of the most recent session. The European Union in particular was said to have backed out of the proposed binding UN treaty on business and human rights in order to protect economic interests. These developments prove that there is still a long way to go to close the gap between the business and

human rights perspective. More companies need to establish a human rights due diligence and a corresponding HRIA process into their business activities. In order to achieve a level playing field for all actors, it seems to be necessary to not only provide recommendations in form of the 2011 UNGPs, but also establish a legally binding common ground. As a result of that all stakeholders would be able to operate under the same conditions instead of suffering from competitive disadvantages. Therefore, there is still considerable work to be done or, to put it in the words of John Ruggie: “The UNGPs are a floor, not a ceiling”.

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VI. Declaration of originality

I hereby confirm that this thesis is my own work and that I have clearly referenced all sources used in this work. I have not made use of any other sources that are not cited in the text or bibliography. In addition, I understand that any false claim in respect of this thesis will result in disciplinary action in accordance with University regulations.

Frankfurt, 16.04.2019

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Place and date

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Signature