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TESI DI DOTTORATO DI RICERCA:

"Reshaping the Right to Health in a Post-Pandemic Era:

The Role of Enterprises and the Health& Sustainability Nexus"

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Chapter 1.

"Health as a Guiding Principle of Corporate Conduct: Research Overview and Methodology"

1.1. Rethinking Corporate Governance Post-Covid-19: "*Health for All*" and the 2030 Agenda

The Covid-19 pandemic has reshaped global priorities and revealed significant gaps in global governance, underscoring the critical need to elevate health as a multidimensional and cross-sectoral concern. Health, in this sense, extends beyond individual well-being to encompass broader societal, environmental, and economic systems. This dissertation posits that health must be understood by public actors and Enterprises not only as a fundamental human right but also as a global common good—a concept crucial to the sustainability of societies and the planet itself.

As we explore throughout this work, health as a human right is deeply intertwined with social justice, and its recognition as a global common good implicates all actors—both public and private—in ensuring its protection and promotion. The intersection of health and governance has never been more prominent, particularly within the framework of the 2030 Agenda for Sustainable Development. The Sustainable Development Goals (SDGs) underscore the need for collaboration between governments, Corporations, civil society, and international organizations to meet collective goals. Within this context, SDG 3, which seeks to "ensure healthy lives and promote well-being for all at all ages", highlights the essential role that health plays in achieving social stability, economic prosperity, and environmental resilience.

The recognition of health as a human right has been enshrined in international legal frameworks, such as the Universal Declaration of Human Rights[1] and the International Covenant on Economic, Social, and Cultural Rights.[2] Moreover, as a global common good, health transcends national boundaries and is vital to social stability, economic prosperity, and environmental resilience. However, despite its centrality, significant disparities in health outcomes across regions and populations persist. These disparities

[1] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III).
[2] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966) UNGA Res 2200 A (XXI).

prompt renewed scrutiny of the roles and responsibilities of public actors and Corporations in safeguarding public health. Transnational Corporations (TNCs), as key players in the global economy, increasingly shape the conditions under which health can flourish or be compromised. From pharmaceutical companies developing life-saving medicines to manufacturers whose operations pollute air and water or fail to ensure workplace safety, the private sector's influence on public health is paramount. Thus, the question of corporate responsibility in this context is not merely a matter of ethical obligation but also a legal and practical necessity for safeguarding "health for all" as a critical issue of social justice.

Building on these observations and the recent recognition of the human right to a healthy, clean, and sustainable environment,[3] this dissertation critically examines the evolving role of corporate governance. It argues that health should become a guiding principle in reshaping governance and accountability duties. The dissertation underscores that it is the intrinsic nature and paramount importance of health—what we refer to in Chapter 2 as "the moral value of health"—that should position it as a central principle of conduct across various sectors, from public law policies to corporate strategies. While the realms of public and corporate governance may not always harmoniously coexist—due to competing interests and priorities—health can serve as a common language that facilitates dialogue and collaboration.

The intersection of health with business operations brings critical discussions to the domains of both Business and Human Rights (BHR) and Corporate Social Responsibility (CSR). These fields, while distinct in their objectives, can converge around the concept of health. BHR, traditionally focused on preventing corporate harm to human rights, and CSR, which promotes ethical corporate behavior for broader stakeholder welfare, both find common ground in the prioritization of health. Health, as an issue of social justice intertwined with environmental resilience, directly affects the well-being of various stakeholders. Therefore, placing health at the forefront of corporate strategies is not just a moral imperative but a practical one that aligns with both BHR and CSR objectives.

In the realm of BHR, the United Nations Guiding Principles on Business and Human Rights (UNGPs) have established a framework for corporate responsibility in protecting

[3] UN Human Rights Council, 'The Human Right to a Healthy Environment: Resolution 48/13' (8 October 2021) UN Doc A/HRC/RES/48/13.

human rights.[4] These principles emphasize the responsibility of businesses to avoid infringing on human rights and to address negative impacts that they may cause or contribute to. In this context, health emerges as a critical human right, directly affected by business operations, whether through environmental degradation, unsafe working conditions, or inadequate access to essential services.

On the other hand, CSR, which promotes the idea that Corporations should not only focus on profit but also on their impact on society, the environment, and the economy, provides another avenue through which health can be prioritized. CSR encourages companies to proactively engage in practices that enhance public health, whether by reducing their environmental footprint, ensuring fair labor practices, or supporting community health initiatives. Through CSR, businesses can contribute to the well-being of society in a manner that goes beyond mere compliance with legal requirements, fostering trust and goodwill among stakeholders.

By emphasizing health within the frameworks of BHR and CSR, this dissertation contends that Enterprises can play a pivotal role in advancing global health outcomes. In doing so, they not only fulfill their ethical and legal responsibilities but also contribute to the broader goals of Sustainable Development. Health, therefore, serves as a unifying concept that bridges the gap between BHR and CSR, offering a comprehensive approach to corporate governance that benefits both individuals and society at large.

At the core of this dissertation are several key arguments: First, health is proposed as a unifying principle or common language for public and private actors, facilitating dialogue and collaboration across sectors. Second, health serves as a critical connector between BHR and CSR, fostering a more cohesive and effective approach to corporate governance. Moreover, this work approaches health in a systemic manner, considering it not only as an individual human right that facilitates the enjoyment of other rights but also as a crucial element of human development. It recognizes health as a human right to a healthy, clean, and sustainable environment, positioning it as a global common that is both a means and an end in itself.

Additionally, strategic litigation has emerged as a powerful tool in advancing public health and raising awareness about health-related issues. Recent legal battles against

[4] UN Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011).

Corporations responsible for environmental harm or public health risks, exemplify how citizens and communities are increasingly mobilizing to demand accountability and justice. This rising wave of public awareness signals a growing recognition that health is vital and should be prioritized in both corporate policies and public governance. Our interdisciplinary analysis in law and business ethics and the case studies provided illustrate various aspects of health: for example, the case of 'Nestlé' addresses nutrition and child development with undetermined harm; the 'Forever Chemicals' case highlights severe environmental damage and irreversible public health risks; and the 'Royal Dutch Shell' case examines the impact on well-being as an aspect of private life, all from both international and EU perspectives.

In conclusion, this dissertation investigates the ways in which health can reshape corporate accountability, foster collaboration between public and private actors, and serve as a guiding principle for achieving sustainability. The aim of this research is to investigate how Enterprises can operationalize their responsibility towards health in alignment with both BHR and CSR frameworks, while also contributing to the fulfillment of the SDGs. By prioritizing health considerations within corporate governance, we can create a more just and resilient global community. Through a detailed analysis of case studies and theoretical perspectives, our work aspires to offer actionable insights for promoting health as a shared value and common good.

1.2. Research Questions & Guiding Framework

Based on the aforementioned, our Research Questions are formulated as follows:

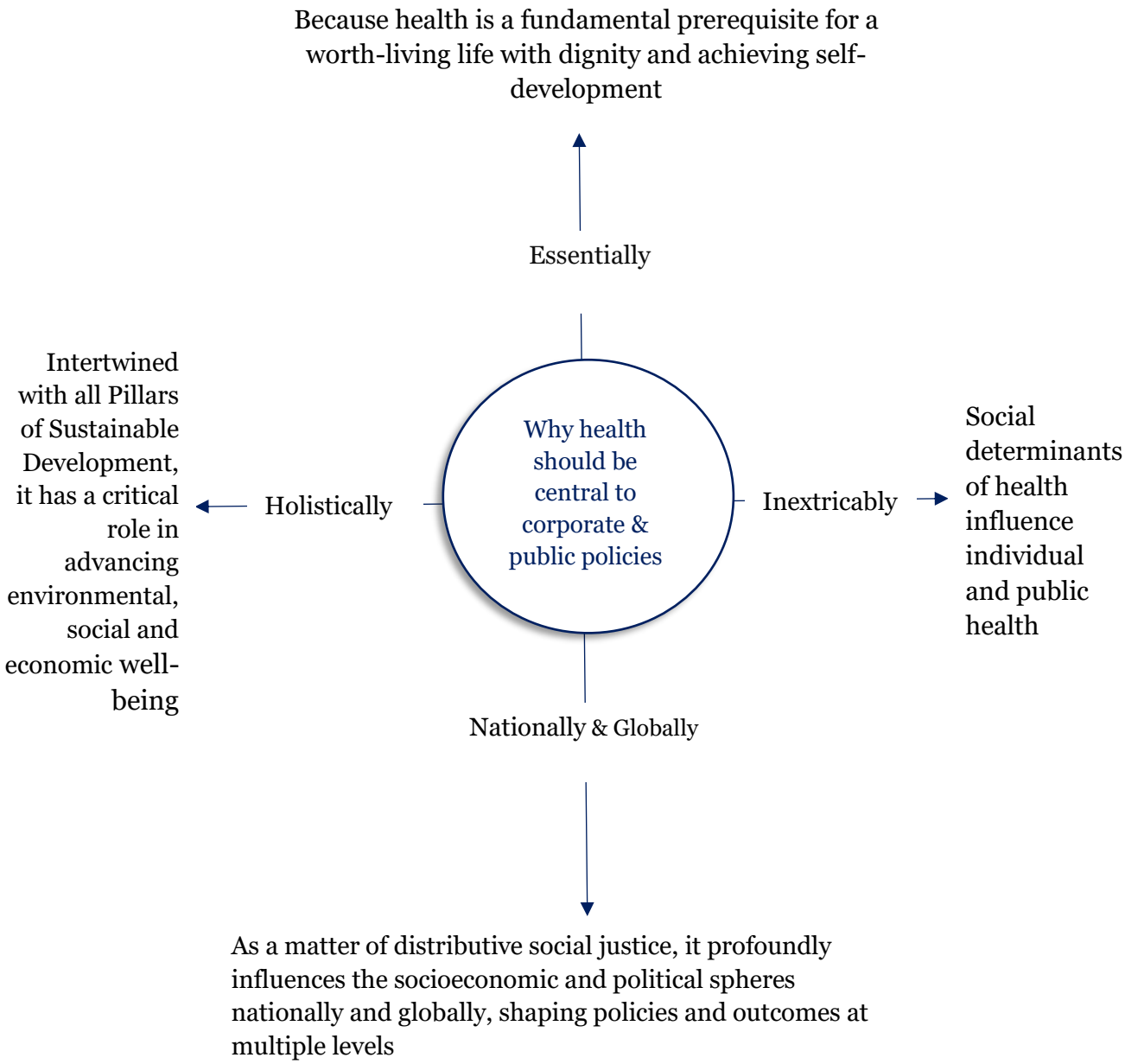
- *Why should health be a guiding principle of corporate accountability reform?* (*1st Research Question)*:

  To answer this, we first explore what the right to health actually means, since many scholars confuse it, or limit it, to simply the right to being healthy. We argue that health should guide corporate accountability reform, as it is closely tied to ethical governance, requiring businesses to prioritize public well-being and assume responsibility for their health impacts.

- *What is the nexus between health and sustainability, considering the social determinants of health?* (*2nd Research Question)*:
  Our analysis of the social determinants of health, i.e. the non-medical factors that affect health outcomes, such as socioeconomic status, education, and environmental conditions, results in the following conclusions: If social determinants of health are linked to specific primary goods, then health is fundamentally a matter of distributive social justice, as equitable access to these goods is essential for ensuring economic, social and environmental well-being. Moreover, this strengthens our argument that health unites the three interconnected Pillars of Sustainable Development.
- *How can health bridge the gap between Business & Human Rights (BHR) and Corporate Social Responsibility (CSR)? (3rd Research Question):*
  Through analyzing the interplay among public and private actors and its impact on health, we argue that health acts as a 'mediator' between BHR and CSR. Despite their conceptual differences, health refines their approaches to responsible business conduct and helps reconcile their respective weaknesses.
- *What initiatives are currently underway to enhance health and sustainability, especially in the context of strategic litigation? (4th Research Question):*
  This involves a comparative analysis of case studies, e.g. the 'Nestlé Baby Formulae', the 'Forever Chemicals' and the 'Royal Dutch Shel' cases, each illustrating different corporate impacts on health, i.e. nutrition and children's development, severe environmental and public health risks and impact on well-being as an aspect of the right to private life, respectively. These cases essentially exemplify how strategic litigation and stakeholder inclusion can catalyze meaningful change in public and corporate governance policies, especially as we approach 2030, the target year for achieving the SDGs.

As outlined in Figure 1, placing health, both as a human right and a global common at the forefront of corporate conduct and public policy reforms, is essential for fostering equitable and Sustainable Development. This framework underscores the interconnectedness of individual and collective well-being with broader societal, environmental and economic systems.

Figure 1. The Guiding Framework



1.3. Interdisciplinarity & Methodology

This thesis embodies an interdisciplinary approach, aligning it with the aims of the Academic Program "*International Law, Ethics and Economics for Sustainable Development*". The primary aim is to analyze the intersection of the right to health with BHR and CSR, while also elucidating the concept of health itself from a philosophical standpoint. This interdisciplinary perspective enables a comprehensive examination of how health can serve as a unifying principle across public and private sectors,

emphasizing the need for collaborative strategies that address social, economic, and environmental challenges.

The dissertation follows a threefold structure: first, a philosophical inquiry to ground the conceptual understanding of health; second, a legal and normative analysis to assess State and corporate obligations; and third, an empirical examination through case studies to reveal how corporate practices impact the right to health in real-world contexts. Aiming to explore what the concept of health truly means, we start by drawing insights from major philosophical perspectives. We notice that health is an under-theorized concept, with Aristotle being the first to explicitly link it to eudaimonia and human flourishing. Through this lens, health is considered not just the absence of disease -a definition confirmed by the WHO's constitution- but a balanced state that enables individuals to fulfill their natural purpose, *τέλος*, by engaging in rational activity and pursuing virtue, *αρετή*. Contemporary philosophical theories, including those by John Rawls, Norman Daniels, and Sen's and Nussbaum's Capability Approach, will be examined to frame health as both a personal and social good, integral to justice, equity, and human development. This inquiry provides a foundation for understanding health not merely as a biological condition but as a precondition for well-being and human flourishing. Moreover, it is crucial for contextualizing health within social justice and understanding how health inequalities impact individual capabilities and societal structures.

The second stage focuses on legal and normative frameworks, particularly international human rights law and BHR instruments. This involves the review of key legal instruments, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), General Comment No. 14 of the UN Committee on Economic, Social and Cultural Rights, and relevant WHO resolutions. The methodology applies doctrinal legal analysis to understand how these documents conceptualize and protect the right to health, and how they impose obligations on both States and businesses. Within the BHR framework, we analyze the UNGPs to understand the evolving nature of corporate obligations concerning health. The analysis will critically assess how the UNGPs impose duties on businesses to respect the right to health, and how they relate to State duties to protect and fulfill this right.

Third, a critical review of CSR will examine how businesses conceptualize their ethical behavior. In describing the emergence of CSR, we briefly refer to Stakeholder Theory,

which illustrates how stakeholder claims influence both legal accountability and corporate governance practices in health-related matters. This outline is essential for understanding the dynamic relationship between business and stakeholders and the complexities of corporate accountability in promoting the right to health.

The methodology employed in this dissertation is primarily qualitative, synthesizing findings from the philosophical, legal, and practical case study analyses to propose normative recommendations. These recommendations aim to bridge the gaps between State obligations and corporate responsibilities concerning the right to health, focusing on policy measures that enhance corporate accountability and address negative environmental and health externalities. Through normative analysis we suggest improvements to existing legal frameworks and corporate governance models, emphasizing the role of law and policy in promoting both individual well-being and social justice.

Moreover, in reflecting the practical implications of our theoretical framework, we conduct three (3) selected case studies from various sectors, e.g. the food industry, chemical companies and the energy sector. Their tripartite comparison highlights how corporate conduct shapes different aspects of the right to health, revealing gaps in regulatory enforcement. Moreover, it demonstrates how strategic litigation and stakeholder engagement can enhance the effectiveness of existing regulatory and monitoring frameworks.

While our methodology provides an interdisciplinary analysis of the right to health, certain limitations must be acknowledged. Firstly, the philosophical analysis, while essential for grounding the legal and normative discussions, is inherently interpretive and subjective. Secondly, the interdisciplinarity of our research means that not all areas can be explored in equal depth, particularly the complex socio-economic determinants of health. Finally, while the selected case studies provide valuable insights, they cannot fully capture the complexity of corporate influence on health across all sectors or legal systems. This limitation is particularly evident as the first case study has not been officially brought to court, while proceedings for the second one remain pending.

1.4. Overview of the Chapters and the selected Case studies

Our dissertation is structured as follows:

Chapter 2 "*The Essence of Health and why it should be Placed at the Forefront"* explores the notion of health from a philosophical and human rights perspective. The Chapter draws insights from Aristotle, Rawls, Daniels, and the Capability Approach of Sen and Nussbaum. After critiquing their theories, we analyze the human rights dimension, addressing arguments against recognizing health as a standalone human right. We provide our counterarguments, while describing health's normative dimensions in international treaties and case-law.

Chapter 3 "*The Interplay of Private and Public Actors in the Promotion of Health"* describes the interaction among States and Corporations through the BHR framework. The Chapter traces the emergence of BHR from the pre-UNGPs, UNGPs and post-UNGPs era. A fundamental concept of this Chapter is the principle of human rights due diligence, which in our opinion, constitutes the extension of the principle of *bona fides* in BHR law. Our analysis concludes that BHR alongside CSR can facilitate Multistakeholder Partnerships in the achievement of the SDGs.

Chapter 4 "*Applying Corporate Social Responsibility to Health and Sustainability: An Interdisciplinary Perspective"* shifts the focus from BHR to CSR, providing a broader interdisciplinary perspective. While recognizing that Stakeholder Theory has long influenced our understanding of corporate responsibility and stakeholders interests, CSR offers a more concrete and actionable framework for achieving tangible outcomes. The Chapter critiques that the misconception regarding CSR's 'voluntariness' is a structural shortcoming that reduces its effectiveness. We endorse Sacconi's theory, which views CSR as a peculiar social norm, or as a multistakeholder model of corporate governance, in which stakeholders' interests should be considered analogous with shareholders' interests. We suggest that 'voluntariness' could be better described as 'endogeneity', reflecting an internal, governance-driven commitment. In conclusion, we describe a theoretical development elaborated by Fia and Sacconi, that reframes CSR as an expanded social model of corporate governance that integrates Sen's capabilities and Rawls's primary goods. Integrating Sen's capabilities into CSR enables companies to prioritize health through safe working conditions and well-being initiatives, while limiting managerial authority by discouraging harmful practices. Nonetheless, we

highlight that practical challenges remain, particularly in measuring and prioritizing capabilities where regulatory systems are weak.

In conclusion, Chapter 5 "*The Case studies of "Nestlé baby formulae', 'Forever Chemicals' and 'Royal Dutch Shell': A Critical Examination of Public Health Risks and Corporate Responsibility'*, describes how Companies in the food, chemistry and energy sector impact health in diverse ways. For instance, the 'Nestlé' case discusses the investigation by Public Eye and IBFAN, according to which the Company sells baby food products with excessive sugar intakes in low and middle-income countries in Asian and Latin America. The investigation shows that the same products, when sold in European markets or high-income countries, are deprived of added sugars. Although the case has not yet escalated to legal proceedings, we highlight how market prioritization poses long-term risks to children's health.

The second case study, i.e. 'Forever Chemicals', examines the irreversible damage caused by 3M, Chemours and DuPont through the use of PFAS-substances. These chemicals, often termed 'Forever Chemicals', are exceptionally resistant and hazardous. The case is particularly important because it describes one of the many lawsuits that have been filed in the US by Attorneys General, seeking to hold these Corporations accountable for the damage they consciously provoked. Our analysis shows the main arguments of the lawsuit filed by AG Tong against the aforementioned Corporations in the beginning of 2024. The case also shows the simultaneous evolutions in the promotion of public health by movements of stakeholders engagement in the US, such as the 'Safer States' organization, advocating for stricter monitoring mechanisms.

The last case study, i.e. 'Royal Dutch Shell', is a landmark in climate litigation. The Dutch Court's 2021 ruling ordered Shell to reduce its greenhouse gas emissions by 45% by 2030, recognizing the company's role in climate change and the associated risks to human rights and public health. However, in November 2024, the Hague Court of Appeal partly overturned the 2021 ruling. While the appellate Court reaffirmed that Shell holds a specific duty of care to protect people from dangerous climate change, it concluded that no legal framework, such as the CSRD and CSDDD, nor the broader scientific consensus impose specific reduction rates on individual companies or sectors. This case reflects not only the evolving legal landscape for corporate accountability in health and environmental protection, but also the complexities of corporate

responsibility, legal enforceability and the limits of judicial intervention in global sustainability goals.

1.5. Contribution to Academic Discourse and Social Benefit

This dissertation presents an innovative approach by bridging the gap between health, CSR, and BHR within the framework of the 2030 Agenda; an intersection that remains underexplored in existing literature. By synthesizing diverse theoretical perspectives, it creates a cohesive framework that deepens the understanding of the interconnections among these domains. This integration fosters dialogue among stakeholders, including policymakers, Corporations, and civil society, encouraging a collective approach to addressing health inequities and promoting sustainable practices.

One of the key contributions of this work lies in its practical implications. Through the analysis of case studies, the dissertation offers actionable insights into how Corporations can integrate health-centered approaches in their operations. These examples not only provide a "roadmap" for companies seeking to enhance their social responsibility but also underscore the importance of recognizing health as a critical component of corporate strategy. By emphasizing the role of businesses in respecting their employees' right to health and the right to a clean, healthy and sustainable environment, the dissertation advances the conversation on corporate accountability and the need for socially responsible practices.

Furthermore, we advocate for health to be recognized as a guiding principle in public and corporate conduct. By elevating health within the frameworks of BHR and CSR, the thesis calls for a collective commitment to improving health outcomes for all individuals, particularly those in marginalized communities. This focus on health as a social good aligns with global efforts to reduce health disparities and promote social welfare, contributing directly to the goals of Sustainable Development.

Another distinctive contribution is the emphasis on strategic litigation as a means of promoting health and sustainability-an underexplored area in both legal and corporate studies. By illustrating legal mechanisms as tools for social change, we shed light on how strategic litigation can drive corporate accountability, transparency, and improve public health objectives. The case studies illustrate the potential of legal actions to enforce health-centered policies, pushing both public and private actors towards more sustainable practices.

Chapter 2.

"The essence of health and why it should be placed at the forefront"

Keywords: Capability Approach, Human Rights, Intrinsic Values, Right to Health, Human Flourishing

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Introduction

The Chapter describes the nature of health from a philosophical and legal perspective. For the purposes of this project, health is described as a 'multilayer concept' because it inherently constitutes a condition per se (whether internally or externally, environmentally speaking), a fundamental human right and a global common good. To substantiate why health should be prioritized by both public and private sectors, the Chapter first clarifies what health truly means. Should it be described, for instance, in practical terms, as a condition in which there are no signs or symptoms of disease? Or should it be approached in a more concrete, holistic way, emphasizing its actual protection and improvement?

In defining and understanding the right to health, we will primarily focus on the mission of the World Health Organization (WHO) as the main regulator of global health law.[5] The WHO first articulated the concept of health in its 1946 Constitution,[6] stressing that "*the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.*" The WHO Constitution defines health as *"[…] a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity*."[7] This seminal definition paved the way for the acknowledgment

[5] For a thorough analysis, see Gian Luca Burci and Brigit Toebes (Eds) *Research Handbook on Global Health Law* (Edward Elgar Publishing, 2018); Brigit Toebes, *The Right to Health: A Multi-Disciplinary Approach* (Kluwer Law International 2011); Brigit Toebes, 'The Right to Health and the Role of the State: Recent Developments in International Law' (2006) 18 Health and Human Rights Journal 32.
[6] World Health Organization, *Constitution of the World Health Organization* (adopted 22 July 1946, entered into force 7 April 1948) 14 UNTS 185.
[7] Ibid.

of the right to health in numerous subsequent human rights treaties, including the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR),[8] which recognizes health as a fundamental prerequisite for safe labor (Article 7b),[9] essential for the social protection of families and children's development (Article 10 para 3),[10] while stressing the responsibility of States in achieving the highest attainable standard of physical and mental health (Article 12).[11]

The WHO definition and the 2030 Agenda for Sustainable Development along with the ever-increasing health and environmental emergencies underscore the necessity of actively promoting health and well-being, since health is not merely the absence of diseases. It is precisely this 'active promotion' that distinguishes our thesis from other works on the right to health. While scholars primarily focus on health as a human right

[8] *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

[9] Article 7: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
(a) Remuneration which provides all workers, as a minimum, with:
(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
(b) Safe and healthy working conditions;
(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

[10] Article 10: The States Parties to the present Covenant recognize that:
1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

[11] Article 12: 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
(b) The improvement of all aspects of environmental and industrial hygiene;
(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

through public policy, we shift, or more precisely, extend the focus to corporate responsibilities in health and sustainability.

Our analysis, grounded on the disciplines of BHR and CSR, advances two main arguments:

1) Health as a unifying force among the three interdependent and mutually reinforcing Pillars of Sustainable Development: Corporate conduct and governance significantly impact health, as well as environmental and social sustainability. We highlight that prioritizing health can harmonize environmental stewardship, economic stability and social equity, ultimately leading to a more resilient global community. Specifically, in relation to health and the environmental Pillar, we argue that addressing environmental issues through resilient policies can significantly improve public health outcomes. The Covid-19 pandemic and other health crises of the past have underscored the importance of maintaining healthy ecosystems to prevent disease outbreaks.

   Health equity is a prerequisite for the social Pillar of Sustainable Development, since health is an issue of social justice, intrinsically linked to human rights, equality and resources distribution. Social justice in health ensures that all individuals, regardless of their socio-economic status, have access to the necessary resources for maintaining good health. As previously emphasized, health is directly affected by social determinants, i.e. the external, non-medical conditions that affect someone's well-being such as the environment, workplace and education. Enterprises play a vital role in affecting health equity through their corporate conduct, such as ensuring workplace safety, providing fair wages to afford healthcare services, reducing environmental impact and maintaining corporate responsibility in their supply chains and operations.

2) Health as a convergence point for Business and Human Rights and Corporate Social Responsibility: Despite their teleological and normative differences, i.e. protecting human rights from the negative externalities of business conduct on the one hand, and promoting ethically responsible corporate behavior for the broader good of stakeholders on the other, health seems to bridge the gap between these disciplines, thanks to health's versatility. Given that corporate actions reflect on society and the environment, and since health is a matter of

social justice, linked with environmental resilience and social welfare, we emphasize that health should be prioritized in corporate governance frameworks.

Our analysis is structured as follows: To understand the meaning and value of health, we provide an overview of the major philosophical and legal streams. Starting with philosophy, we underscore that Aristotle was the first to underscore the importance of health and the environment in individual well-being.[12] Moreover, we critique Rawls for not explicitly addressing health in his works. By introducing the concept of primary goods, i.e. the resources that any rational individual would desire, regardless of their specific goals or aspirations,[13] he connects them to two fundamental moral capacities that make citizens equal and free in a just society: the effective sense of justice and the ability to form, revise, or pursue their conception of the good.[14] Although he identifies health, intelligence and imagination as natural primary goods, he stresses that they are influenced by 'natural lotteries' rather than by the distribution from social institutions. Due to the randomness of these natural lotteries, society is not obligated to redistribute such goods in the name of fairness. However, in his later works, he acknowledges that health is not solely determined by natural lottery, as social factors can significantly influence health. Despite this recognition, he still did not categorize health as a social primary good or as a matter for fair distribution.

Building on Rawls's framework, we turn to Norman Daniels, who explicitly views health as a matter of social justice, arguing that health is not merely a personal or random medical issue but a fundamental matter of social justice.[15] He points out that health disparities can lead to inequalities in other aspects of life, showing that health is a key concern for justice. Daniels' focus on health is in the context of public policy, stressing that a just society must strive to reduce health inequalities that hinder people from fully participating in social, economic, and political life.

Daniels' approach leads us to the Capability Approach, developed by Amartya Sen and Marta Nussbaum.[16] In the Capability Approach, health plays a decisive role, serving

[12] Αριστοτέλους, *Ηθικά Νικομάχεια* II.6; Αριστοτέλους, *Πολιτικά* VII.13.
[13] John Rawls, *A Theory of Justice* (Harvard University Press, 1971); Peter Murray, 'Primary Goods' in Deen K. Chatterjee (Ed.) Encyclopedia of Global Justice (Springer, 2011).
[14] John Rawls, *Political Liberalism* (Columbia University Press, 1993).
[15] Norman Daniels, *Just Health: Meeting Health Needs Fairly* (Cambridge University Press, 2012).
[16] Amartya Sen, *Development as Freedom* (Oxford University Press 1999); Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard University Press 2011); Martha Nussbaum, 'Capabilities as Fundamental Entitlements: Sen and Social Justice' (2003) 9 Feminist Economics 33.

both as a means to achieve flourishing (capability) and as an end in itself (functioning). Moreover, the emphasis of the Capability Approach on human development entails two normative claims: First, that people should be enabled to lead the life they have reasons to value, and second, that human development and well-being are perceived based on the peoples' individual capabilities and functionings.[17] While the Capability Approach provides a comprehensive framework for understanding health, Liao's *Theory of Fundamental Goods, Conditions and Options*, offers a broader analysis by integrating health with other elements of human flourishing. As Liao underscores, health influences the achievement of the *highest social potential*, i.e. the conditions where individuals can fully develop their capabilities and desired functionings.[18] We notice that both the Capability Approach and Liao's Theory highlight health not only as a resource but as an outcome of a well-lived life. This philosophical background demonstrates health's moral and social importance, which we will further explore in relation to its status as a human right.

Following our philosophical analysis, we move to the human rights dimension, addressing several key questions: Should health be considered as a specific human right? If so, can health be subject to limitations and constraints?

Scholars such as Griffin and Sreenivasan, claim that health cannot be a standalone human right due to its vagueness, which might impose unbearable obligations to its holders. Sreenivasan suggests that access to healthcare services can be a right, but health itself is influenced by numerous factors beyond the control of legal mandates or policies, making it difficult to be classified as a standalone human right.[19] Griffin adds that health should be rather perceived as a specific capability, highlighting the challenges of recognizing health as a human right, particularly in resource-constrained settings.[20]

Our counterarguments are based on conceptual and moral grounds:

i) Regarding Sreenivasan's perspective, we recall that human rights derive from our inherent human dignity and are not contingent on the specific obligations

[17] Ingrid Robeyns and Morten Fibieger Byskov, 'The Capability Approach' in Edward N. Zalta and Uri Nodelman, *The Stanford Encyclopedia of Philosophy (*Summer 2023 Edition).
[18] S. Matthew Liao, Theory of Fundamental Goods, Conditions, and Options: A Systematic Approach to Ethics (Oxford University Press 2020).
[19] Gauri Sreenivasan, *The Right to Health: A Critical Review* (Oxford University Press 2008).
[20] James Griffin, *On Human Rights* (Oxford University Press 2008); James Griffin, 'Well-Being and Justice: A Moral Evaluation of the Right to Health' (2009) 11 *Journal of Human Rights* 67.

they entail. These rights create both positive and negative obligations towards others. For example, promoting public health might involve individuals supporting others, such as by wearing masks during pandemics or avoiding contact with vulnerable populations to protect them. While citizens may not bear the same duties as States or Corporations (as outlined in UNGPs 1 and 2) in promoting health, they can contribute in alternative ways, which do not constitute unbearable obligations. Human rights pertain to our treatment of others, driven by principles of personal autonomy, universality and non-discrimination.[21]

ii) On Griffin's argument regarding the lack of a specific standard of health universally guaranteed, we counter-reply that this 'vagueness' could be analogously applied to other human rights. Should the right to a fair trial be denied simply because of the challenges in quantifying fairness? The complexities and implications of drafting health policies should not be seen as reasons to diminish the social significance and legal value of health as a human right.

The philosophical and human rights dimensions enable us to interpret health in a systemic way. The synergy between philosophy and law could be summarized through the concept of 'intrinsic values', which plays an essential role for the development of human rights and Business Ethics.[22] Intrinsic values act as 'full-stop' explainers and refer to the *"[…] value that something has "in itself," or "for its own sake," or "as such," or "in its own right." […] For the moment, though, let us […] focus on what it means to say that something is valuable for its own sake as opposed to being valuable for the sake of something else to which it is related in some way.*".[23] Though we acknowledge that Donaldson's theory offers valuable insights, we highlight two main weaknesses: the vagueness concerning the resolution of conflicting intrinsic values and their interdependence on a company's corporate purpose.

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[21] For a thorough analysis on human rights literature, see Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press, 2013); Jack Donnelly, *The Role of Human Rights in the Global Order* (Princeton University Press 2007); Allen Buchanan, *The Heart of Human Rights* (Oxford University Press, 2013); David Miller, *National Responsibility and Global Justice* (Oxford University Press, 2007).

[22] Thomas Donaldson, 'How Values Ground Value Creation: The Practical Inference Framework' (2021) 2 Organization Theory 4.

[23] Michael J. Zimmerman and Ben Bradley, 'Intrinsic vs. Extrinsic Value' in Edward N. Zalta (Ed.) *The Stanford Encyclopedia of Philosophy* (Spring 2019 Edition) and the references cited therein.

In conclusion, we emphasize that prioritizing health in corporate actions—as a human right, a working condition, and a global common good linked to sustainability—can effectively address any gaps hindering the BHR and CSR domains. As such, we assert that health can serve as a unifying principle, integrating these theoretical frameworks alongside the 2030 Agenda and fostering consensus among public and private stakeholders. Health imposes different obligations on States, Enterprises, and citizens. A common alignment from private and private actors towards health protection can foster the achievement of other dimensions of Sustainable Development, given the equal importance and interconnectedness of the environmental, social, and economic pillars.

The instruments discussed clarify that health is an issue of social justice, closely tied to the principles of equity, non-excludability and non-discrimination. We conclude that the adoption of pertinent social policies, particularly those involving knowledge, technology, cooperation and effective legal protection, will strengthen the relationship between the right to health with the right to being healthy.

2.1. The concept of Health in Philosophy

2.1.1. Aristotelian eudaimonia, Rawls's Primary Goods, Daniels's Issues of Justice and Sen's Capability Approach

The concept of health has paradoxically not been explicitly analyzed in philosophy. However, Aristotle was the first philosopher to implicitly view health as intrinsically connected to *eudaimonia* and human flourishing. For Aristotle, health is not merely the absence of disease (a definition similar to that endorsed by the 1946 WHO Constitution), but rather a balanced state that allows individuals to perform their natural functions well, both physically and mentally.[24] He posits that health is a form of virtuous balance, where the body and mind are in an optimal state to achieve their purpose, *τέλος*, through rational activity and the pursuit of virtue (*αρετή)*. This concept of health as the golden mean reflects Aristotle's belief in maintaining balance between extremes, whether in diet, exercise, or other aspects of life.[25] Furthermore, Aristotle described the fundamental role of health in the full development of human potential, making it a prerequisite for *eudaimonia*. He emphasized that while personal

[24] Αριστοτέλους, *Ηθικά Νικομάχεια* II.6
[25] Ibid.

responsibility is key to maintaining health, society plays a crucial role by creating conditions that support health, such as good governance and education.[26] Thus, for Aristotle, health is both a personal and a social good, necessary for individuals to achieve their highest form of well-being.

Recent philosophers have approached health implicitly, primarily through their broader theories on justice and social equity. For instance, Rawls' *Theory of Justice* does not explicitly address health. In this work, Rawls introduces the concept of primary goods, defining them as the resources that any rational individual would desire, regardless of their aims or aspirations.[27] For Rawls, primary goods are essential for justice, including rights and liberties, opportunities, income and wealth, and the social bases of self-respect. These goods are essential for establishing a fair system of social cooperation, and especially in addressing global justice, Rawls highlights the significance of human rights as primary goods.[28]

In his later work, P*olitical Liberalism*[29]*,* he links the essence of primary goods to the two fundamental moral capacities that render citizens equal and free in a just society: The effective sense of justice and the ability to form, revise or achieve the good. He distinguishes them in natural or social by source,[30] with natural depending on 'natural lotteries' rather than distributions by social institutions. Therefore, due to the arbitrariness of natural lotteries, society is not obliged to redistribute such goods on the grounds of fairness.[31] Examples of natural primary goods are intelligence, health, imagination and vigor.[32]

However, in his later works he stressed that health is not determined strictly by natural lottery because social factors might significantly affect health, often more so than natural factors. Despite recognizing the importance of ensuring effective access to healthcare, Rawls still did not address health as a social primary good or as a subject of fair distribution.[33]

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[26] Αριστοτέλους, *Πολιτικά* VII.13
[27] John Rawls, *A Theory of Justice* (Harvard University Press, 1971); Peter Murray, 'Primary Goods' in Deen K. Chatterjee (Ed.) *Encyclopedia of Global Justice* (Springer, 2011).
[28] Ibid.
[29] John Rawls, *Political Liberalism* (Columbia University Press, 1993).
[30] Perihan Elif Ekmekci and Berna Arda, 'Enhancing John Rawls's Theory of Justice to Cover Health and Social Determinants of Health' (2015) 21 Acta Bioeth. 2, 227-236.
[31] Ibid.
[32] Ibid.
[33] Ibid.

Building on Rawls's framework, Norman Daniels elevates health from a peripheral concern to a core issue of social justice. He argues that health is not just a personal or random medical concern, but a fundamental matter of social justice. Health disparities can directly lead to inequalities in other areas of life, making health a critical factor in ensuring fair opportunities for all. Daniels extends Rawls' principle of fair equality of opportunity by emphasizing that because health affects an individual's ability to access and benefit from social, economic and political opportunities,[34] ensuring equitable access to healthcare is essential to uphold this principle.[35] Therefore, a just society must strive to reduce health inequalities that hinder people from fully participating in all aspects of life.

In addition, Daniels advocates for policies that address the social determinants of health, i.e. education, income, living conditions, as integral parts of a just healthcare system. By tackling these broader determinants, societies not only promote health but also enable individuals to pursue their life plans for self-development.[36] While he emphasizes the centrality of health to social justice, he recognizes that not all health inequalities can or should be corrected. For instance, some disparities are inevitable due to genetic differences or personal choices.[37] Nonetheless, he insists that a just society must prioritize addressing health inequalities rooted in social injustices or preventable causes, such as poverty, discrimination and lack of access to essential resources.[38]

This discussion naturally leads us to Amartya Sen's Capability Approach, a theoretical framework centered on human flourishing and well-being. According to this framework, the achievement of well-being, or even, having the substantive freedom of pursuing the goals that people have reasons to value, are matters of moral significance.[39] At the core of this approach towards well-being lie two fundamental concepts: capabilities and functionings. As defined by Robeyns and Morten, capabilities are "*the doings and beings that people can achieve if they so choose — their opportunity to do or be such*

[34] Norman Daniels, 'Justice, Health and Healthcare' (2001) 1 American Journal of Bioethics, 2-16; Norman Daniels, *Just Health: Meeting Health Needs Fairly* (Cambridge University Press, 2012).
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] Ingrid Robeyns and Byskov Fibieger Morten, 'The Capability Approach' in Edward N. Zalta and Uri Nodelman (Eds.) *The Stanford Encyclopedia of Philosophy* (Stanford, 2023).

things as being well-nourished, getting married, being educated, and travelling; functionings are capabilities that have been realized".[40]

Sen has repeatedly emphasized that capabilities represent the '*real freedom',* meaning, the opportunities that enable people to fulfill the life goals that they have reasons to value.[41] Robeyns stresses that "[…] *the 'having reason to value'- formulation of capabilities and functionings is widely regarded with the capability literature as the correct, only, or most popular definition'.*[42] This definition underscores the importance of considering what individuals themselves value in their actions and lifestyles when assessing their well-being. This perspective contrasts with more objective approaches, such as utilitarianism[43] or resourcism,[44] which assess well-being based on objective metrics, such as the resources one possesses, or the utility derived from them.

While Sen's approach foregrounds individual freedom, it has faced criticism for diverging from more subjective perspectives, which prioritize an individual's personal assessment of their well-being as the sole determining factor. However, Sen counters that people can be mistaken about their own well-being; for instance, a person living in poverty might report high levels of well-being due to adaptive preferences, or they might value behaviors detrimental to their health, such as smoking.[45] To avoid such paradoxes, Sen introduces the concept of reasonableness as an objective standard. He contends that personal values should undergo scrutiny and public reasoning, ensuring that only those capabilities that withstand this process are considered reasonable.

On the other hand, Nussbaum approached Capability Approach[46] with a focus on both the comparative quality of life and justice, mutually pointing up what humans can do

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[40] Ibid.
[41] Ibid.
[42] Ibid and the references cited therein.
[43] Utilitarianism represents the idea that the morally right action is the action that maximizes the overall good. Julia Driver, 'The History of Utilitarianism' in In Edward N. Zalta and Uri Nodelman (Eds.) *The Stanford Encyclopedia of Philosophy* (Winter 2022 Edition).
[44] Resourcism seeks to identify a neutral method for evaluating the relative advantages that different individuals experience in life. In the most straightforward version of resourcism, one might assess how well off someone is by focusing solely on their level of income and/or wealth. Stuart White, 'Social Minimum' in Edward N. Zalta and Uri Nodelman (Eds.) *The Stanford Encyclopedia of Philosophy* (Winter 2021 Edition).
[45] Ingrid Robeyns and Byskov Fibieger Morten, 'The Capability Approach' in Edward N. Zalta and Uri Nodelman (Eds.) *The Stanford Encyclopedia of Philosophy* (Stanford, 2023).
[46] According to Robeyns and Qizilbash there should be a distinction between the Capability Approach as a general, open-ended framework and the Capability Approach as more specific capability theories and applications, including, inter alia, Nussbaum's capability theory of justice, Crocker's capability of deliberative democracy. Robeyns and Morten, supra [33]; Mozaffar Qizilbash, *The Capability Approach: It Interpretation and 'Limitations'* (Routledge, 2012).

and become. The duality of "doing" and "becoming" is affected by the social conformity with five specific principles:[47] Namely, "[…] *treating each person as an end; focusing on choice and freedom rather than achievements; pluralism about values; being deeply concerned with entrenched social injustices; and ascribing an urgent task to government*".[48]

To operationalize these principles, Nussbaum lists ten central functional human capabilities (political entitlements)[49] that a fair society should provide its citizens: Life; bodily health; bodily integrity; senses, imagination and thought, emotions; practical reason; affiliation; play; and control over one's environment.[50] Among them, we see that health is listed second, reflecting its critical importance. For Nussbaum, the essence of these entitlements lies not only in their potential for individuals (interpreted here as what someone has the potential of doing and being), but in the practical imposition of *"[…] duties on governments, who must ensure that all people meet minimal thresholds of those capabilities"*.[51]

In our research we find that Sen consistently and explicitly rejects the idea of endorsing a single, fixed list of capabilities which is determined by theorists without broader social dialogue or public reasoning.[52] Moreover, another problem within the Capability Approach concerns not only the classification of capabilities, but also their aggregation. For instance, how should different capabilities be weighed to arrive at an overall evaluation? Scholars recognize that even with a list of relevant capabilities, such as Nussbaum's, the question remains how to counterbalance and aggregate capabilities, especially when diverse capabilities are impossible to be completely realized.[53] However, Nussbaum insists that her ten capabilities are incommensurable and cannot

[47] Robeyns and Morten, supra [50]; Ingrid Robeyns, 'Capabilitarianism' (2016) 17 Journal of Human Development and Capabilities: A Multi-Disciplinary Journal for People-Centered Development', 397-414.
[48] Nevertheless, only treating each person as an end and pluralism about values are inherent to other capability theories. For a comparative analysis, see Robeyns and Morten, supra [50].
[49] Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard University Press, 2011).
[50] Ibid.
[51] Ibid.
[52] Amartya Sen, 'Human Rights and Capabilities' (2005) 6 Journal of Human Development 2, 151–166; Ingrid Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (Cambridge: Open Book Publishers, 2017).
[53] Ibid; Robeyns and Morten, supra [50]; Erik Schokkaert, 'Capabilities and Satisfaction with Life' (2007) 8 Journal of Human Development 3, 415–30.

be weighed against one another, arguing that a just State must guarantee every citizen a minimum threshold for all these capabilities.[54]

This approach raises the question of whether functionings are seen merely as means to an end, such as happiness, or as ultimate goods or ideals in themselves. In our discussion, in that means and ends distinction, health is associated with both well-being and human flourishing (as an end) because it serves as a condition (means) whose instrumental value affects one's life plans. If an individual's right to health (capability or opportunity) is affected either externally, i.e. from social determinants or a State's failure, or internally, e.g. by suffering from a disease, then the prospects of fulfilling the life goals that someone has reasons to value, are directly affected (functioning).

Indeed, the pioneers of the Capability Approach, Sen and Nussbaum, viewed health as integral to human development.[55] Despite their different perspectives, they agreed that health transcends principles of equity and justice and is affected by individual and social factors.[56] In particular, Sen interprets health as a matter of justice and social equity, noting that health disparities are often the results of social determinants such as poverty.[57] As he stresses *"[…] health is among the most important conditions of human life and a critically significant constituent of human capabilities which we have reason to value. Any conception of social justice that accepts the need for a fair distribution as well as efficient formation of human capabilities cannot ignore the role of health in human life and the opportunities that persons, respectively, have to achieve good health – free from escapable illness, avoidable afflictions and premature mortality. Equity in the achievement and distribution of health gets, thus, incorporated and embedded in a larger understanding of justice. What is particularly serious as an injustice is the lack of opportunity that some may have to achieve good health because of inadequate social arrangements, as opposed to, say, a personal decision not* to worry *about health in particular*."[58] Notably, he emphasizes that health equity is not always an issue of healthcare distribution per se,[59] because it depends on various

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[54] Marta Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge University Press, 2000).
[55] Enrica Chiappero-Martinetti, Siddiqur Osmani and Mozaffar Qizilbash, *The Cambridge Handbook of the Capability Approach* (Cambridge University Press, 2020); Séverine Deneulin, *The Human Development and Capabilities Approach* (Earthscan, 2009).
[56] Amartya Sen, 'Why Health Equity?' (2002) 11 Health Economics, 659-666; Amartya Sen, 'Well-being Agency and Freedom: The Dewey Lectures 1984' (1985) 82 Journal of Philosophy, 169-221.
[57] Ibid.
[58] Ibid.
[59] Which is mostly associated with public health policy; Ibid.

circumstances and factors, such as individual incomes, nutrition, genetics, working and environmental conditions.[60]

2.1.2. Critique on the Capability Approach: Is health an end or a means towards human flourishing?

An overview of the Capability Approach –either seen as a general framework or as a sum of specific capability theories and applications- results in the following observations:

i) Despite criticism[61] for its perceived narrowness and subjectivity,[62] particularly regarding Nussbaum's list of capabilities or Sen's normative claim about connecting capabilities with the 'reasons to value', health remains an objectively necessary condition for individual well-being and self-development, irrespective of one's personal values. This objective dimension of health transcends subjective preferences, as it underpins the basic capacity to pursue and achieve valuable life goals. Without a baseline of physical and mental health, individuals are inherently limited in their ability to convert capabilities into functionings. This makes health both a prerequisite for and an outcome of human flourishing.

ii) Although the Capability Approach extensively focuses on the distinction between means and ends,[63] capabilities and functionings respectively, we argue that health occupies a unique position within this distinction.

In our view, health plays a dual role in human flourishing: it functions both as a capability (a means) and as a functioning or realized capability (an end). For example, an individual's flourishing depends on factors such as access to quality healthcare, environmental conditions, and genetic predisposition (health as a capability). Simultaneously, the Capability Approach underscores the normative assertion that the freedom to achieve well-being is of primary moral importance. The inherent, self-

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[60] Ibid.

[61] Milad Karimi, John Brazier and Hasan Basarir, 'The Capability Approach: A Critical Review of its Application in Health Economics' (2016) 19 Value in Health, 795-799; Christopher Lowry, 'Sen's Capability Critique' in John Mandle and Sarah Roberts-Cady (Eds.) *John Rawls: Debating the Major Questions* (Oxford University Press, 2020).

[62] Particularly, "*[…] the ultimate ends of interpersonal comparisons are people's capabilities.".* In so doing, people should make clear distinctions: Do they value something as a means to a specific end, or as an end itself?

[63] Nussbaum explicitly stresses the normative distinction between means and ends, as stated afore supra [54].

evident value of health, whether considered as a condition per se or as a human right, shows that it can function as an end per se and as a means for human flourishing. When health exists as a condition, such as living in a healthy environment, it enables individuals to pursuit their capabilities and functionings.

However, we notice that the Capability Approach focuses on the instrumental value of health, particularly because its proponents emphasize health insofar as people are capable of being healthy.[64] Their concerns are largely related to the existence of adequate resources, such as sanitation, healthy environment, sufficient protection from diseases, as well as basic knowledge of health issues.[65]

iii) Therefore, listing bodily health (without any explicit reference to mental health) as one of the ten ideal political entitlements in Nussbaum's approach, falls short of highlighting the importance of health as both a human right and a global common.[66] It also overlooks its inextricability with well-being, which is the ultimate goal of Capability Approach.[67] In any case, the notion of living healthily until the end of a normal lifespan clarifies the connection between a life worth living life[68] and human dignity;[69] the latter being the basis of fundamental rights.[70]

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[64] According to the ESCR Committee the meaning of the right to health is not restricted to just being healthy; Supra 2.6.
[65] Supra [68].
[66] For an analysis of the differences between capability philosophers and John Rawls' theory on social primary goods (income, wealth, opportunities, liberties and self-respect), see John Rawls, *A Theory of Justice* (Harvard University Press, 1971); Amartya Sen, 'Equality of What?' in 'The Tanner Lecture on Human Values' (1980), 197-220; Sandro Galea, 'Public Health as a Public Good', available at: https://www.bu.edu/sph/news/articles/2016/public-health-as-a-public-good/>
[67] Govin Persad, 'Justice and Public Health' in Anna C. Mastroianni et Al. (Eds.) *The Oxford Handbook of Public Health Ethics* (Oxford University Press, 2019); S. Matthew Liao, 'Human Rights and Public Health Ethics' in Anna C. Mastroianni et Al. (Eds.) *The Oxford Handbook of Public Health Ethics* (Oxford University Press, 2019).
[68] Robert Audi, *The Good in the Right: A Theory of Intuition and Intrinsic Value (*Princeton University Press, 2005); Peter Duncan, 'Health, Health Care and the Problem of Intrinsic Value' (2010) 16 Journal of Evaluation in Clinical Practice, 318-322.
[69] On the implications of law and human dignity, see Stephen Riley, *Human Dignity and Law: Legal and Philosophical Investigations* (Routledge, 2018); Paolo Becchi and Klaus Mathis, *Handbook of Human Dignity in Europe* (Springer, 2019).
[70] Marta Nussbaum, Frontiers of Justice: Disability, Nationality, Species Membership (Harvard University Press, 2006).

2.1.3. Health as a fundamental condition for a good life: Insights from Liao's Theory of Fundamental Goods, Conditions and Options

Our analysis of the philosophical dimensions of health concludes with an examination of Liao's Theory of Fundamental Goods, Conditions and Options. Liao's Theory offers a great passage to highlight the versatility of health, presenting it not only as a fundamental human right and a global common good,[71] but also as a vital condition.[72]

Expanding upon the concept of capabilities, Liao recognizes that the abundance of goods, capacities and choices, enables humans to exercise easier their basic and specific activities, such as acquiring knowledge, working and forming interpersonal relationships. This perspective allows us to understand the role of health in a broader context.[73]

Liao conceptualizes fundamental conditions as comprising fundamental goods, which are essential for physical self-sustainment, e.g. water, food, air. These goods give rise to fundamental capacities, which are the powers and abilities that allow individuals to engage in basic activities, such as thinking, expressing oneself and exercising autonomy.[74] In turn, these fundamental capacities result in the development of fundamental options, which represent the social forms or institutions necessary for the exercise and excellence of fundamental capacities. For example, this could involve gaining expertise in a specific field rather than merely possessing general knowledge.[75]

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[71]Sandro Galea, 'Public Health as a Public Good', available at: https://www.bu.edu/sph/news/articles/2016/public-health-as-a-public-good/>

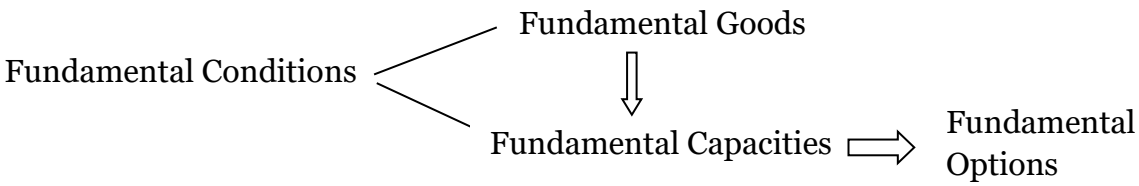
[72] For instance, health and safety as fundamental social conditions. UNGA, The Universal Declaration of Human Rights (United Nations General Assembly,1948); Article 25 para 1: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."; International Labour Organization (ILO), C187-Promotional Framework for Occupational Safety and Health Convention (2006).

[73] Anna C. Mastroianni et Al. (Eds.) *The Oxford Handbook of Public Health Ethics* (Oxford University Press, 2010).

[74] Ibid.

[75] Ibid.

Figure 2. Liao's theory



Through this framework, Liao highlights the versatility of health, positioning it is an essential condition that permeates all levels of human existence: From the basic necessities for survival to the capacities and options that enable individuals to achieve a good life.[76] Health, in his view, is not only a means to an end, but also a fundamental component of human dignity and development, intertwined with other essential goods and capacities for a fulfilling life.[77]

2.1.4. Basic and non-basic health: Connection with the WHO's definition and the difference between the right to health and the right to being healthy

While Liao elaborates on the nature of health, by distinguishing between basic and non-basic health, we believe that he is reluctant in explicitly categorizing health as a human right. He defines basic health as the adequate functioning of organs for our fundamental capacities, influenced by the socio-political environment, diseases or insufficient resources.[78] Non-basic health, on the other hand, refers to changes in our organs that do not affect the sufficient functioning of crucial capacities.[79] For instance, a leg injury might affect a dancer's career but not their ability to walk.

[76] Ibid; S. Matthew Liao, 'The Basic of Human Moral Status' (2010) 7 Journal of Philosophy, 159-179; S. Matthew Liao, 'Health (Care) and Human Rights: A Fundamental Conditions Approach' (2016) 37 Theoretical Medicine and Bioethics, 259-274; S. Matthew Liao, 'Human Rights as Fundamental Conditions for a Good Life' in Rowan Cruft, S. Matthew Liao and Massimo Renzo (Eds.) *Philosophical Foundations of Human Rights* (Oxford University Press, 2015).
[77] Ibid.
[78] Ibid.
[79] Ibid.

Liao's approach is more restrictive compared to the WHO's definition of health, which is broader and more holistic (physical, mental and social well-being). Liao excludes the mental and social well-being from his distinction on basic and non-basic health. In contrary, the WHO definition seems broader for the following reasons: First, because it defines health in a positive and negative way ("[*Health is a] State of complete physical, mental and social well-being and not merely the absence of disease or infirmity".*[80] Secondly, the WHO includes three different aspects of health, namely the physical, mental and social well-being, which clarify that the concept of health should be regarded in an holistic way. Liao's definition seems to focus widely on the right to *being healthy* rather than the *right to health,* a misconception that is common. The main difference between them concerns the way in which health is approached.

For instance, the *right to health*, as recognized internationally, emphasizes the importance of providing access to health services, healthy conditions and healthy environment. The *right to* health is not an assurance of perfect health. As the OHCHR clarifies, "*The right to health is not the same as the right to being healthy. A common misconception is that the State has to guarantee us good health. However, good health is influenced by several factors that are outside the direct control of States, such as an individual's biological make-up and socio-economic conditions. Rather, the right to health refers to the right to the enjoyment of a variety of goods, facilities, services and conditions necessary for its realization. This is why it is more accurate to describe it as the right to the highest attainable standard of physical and mental health, rather than an unconditional right to be healthy."*[81]

In contrast, Liao's distinction on basic and non-basic health seems to focus more on the *right to being healthy* which could be summarized as the opportunity that all individuals should be entitled to in achieving and maintaining a good health, which is essential for a flourishing life. Therefore, the emphasis that Liao puts on having options in life which allow individuals to engage in meaningful activities is connected with the right to being healthy, due to its inextricability with exercising these options. For instance, a chronically ill person might have fewer opportunities to engage in social activities, therefore limiting his options.

[80] See Constitution of the WHO (1948).
[81] Office of the High Commissioner for Human Rights, 'The Right to Health: Fact Sheet No. 31' (2008).

Liao's theory seems to view health in individualistic terms, framing it as a means to achieve personal fundamental options. However, we acknowledge that he emphasizes the moral importance of health, a commonality also found in Sen and Nussbaum which focus on human dignity. Even though Liao describes health from an individualistic standpoint, he stresses the importance of regulating the social determinants that affect public health policies and one's access to this fundamental good.[82] This recognition underscores the importance of regulating the socio-political factors that influence public health, highlighting health's role as a foundational condition for both individual and societal well-being.

2.2. Health from the Human Rights Perspective

In exploring the concept of health, our philosophical examination has revealed its significant role in social justice, profoundly influencing individuals' opportunities and overall well-being. This realization naturally leads us to a pivotal legal inquiry: why is health rightfully considered a human right and, if so, what limitations or constraints might apply?

Rather than presupposing that health is inherently a human right, it is essential to critically examine its assumption by considering the perspectives of scholars such as Sreenivasan[83] and Griffin.[84] Both scholars contend that health should not be considered a standalone human right due to its inherent vagueness and the potentially onerous obligations it could impose on its holders.

Following the presentation of Sreenivasan and Griffin's arguments, we will offer our counter-reply. We will argue that their objections are unconvincing both from a legal standpoint and within the broader philosophical context. By critically assessing their viewpoints, we aim to clarify the nature of health in legal terms and affirm its role as a fundamental human right, while addressing any constraints or limitations that may arise.

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[82] Liao, supra [76].
[83] Gopal Sreenivasan, 'A Human Right to Health? Some Inconclusive Scepticism' (2012) 86 Aristotelian Society Supplementary Volume, 239-265; Gopal Sreenivasan, 'Health Care and Human Rights: Against the Split Duty Gambit' (2016) 37 Theoretical Medicine and Bioethics, 343-364.
[84] James Griffin, *On Human Rights* (Oxford University Press 2008); James Griffin, 'Well-Being and Justice: A Moral Evaluation of the Right to Health' (2009) 11 Journal of Human Rights 67.

2.2.1. The opponents of the human right to health

To elucidate that health is a human right, the analysis will first expose the main arguments of the opponents of the right to health.

Neglecting the international legal protection and the consensus of states in the establishment of a human rights system, including the right to health, the opponents of considering health as a human right strongly rely on the fact that human rights are claims that do not only represent rights, but also duties. As we elaborate below, they equally misinterpret the Kantian[85] and Hohfeldian[86] approach towards rights and duties. Moreover, another commonality they share in denying health as an individual human right concerns the vagueness of the concept of health. For instance, they stress that being healthy cannot be quantified nor practically determined, therefore, the obligations that human rights entail to their holders, cannot be equally determined.

Starting from Sreenivasan, he argues that while access to healthcare services can be a right, the state of health itself, influenced by various uncontrollable factors, cannot be considered a human right per se. Similarly, Griffin contends that health should be viewed as a specific capability rather than a standalone right, citing practical difficulties in ensuring health, especially in resource-limited settings. We find these arguments unconvincing both conceptually and morally.

Sreenivasan's claim overlooks the fact that human rights, derived from inherent human dignity, create obligations that extend beyond legal mandates and include indirect contributions to public health, such as supporting preventive measures. Furthermore, Griffin's concern about the lack of a universally defined level of health mirrors the ambiguity found in other human rights, like the right to a fair trial. The complexities involved in health policy should not diminish the social and legal significance of health as a fundamental human right, which, like other rights, is grounded in principles of dignity, equality, and universal applicability.

Griffin claims that health is "not even a reasonable social aim, let alone a right".[87] His argument focuses on the lack of specificity regarding the level of health that humans are entitled to. Sreenivasan, on the other hand, begins with the general premise that human

[85] Immanuel Kant, *The Metaphysics of Morals* (Cambridge University Press, 1996).
[86] Wesley Newcomb Hohfeld, Fundamental Legal Conceptions as Applied in Judicial Reasoning (Yale University Press, 1919).
[87] John Tobin, 'Still Getting to Know You: Global Health Law and the Right to Health' in Gian Luca Burci and Brigit Toebes (Eds.) *Research Handbook on Global Health Law* (Edward Elgar, 2018).

rights generate claims against other capable persons, under specific circumstances,[88] which is rational, given the rights' reciprocity: freedoms and relevant obligations. What is noteworthy is that Sreenivasan acknowledges the relevance of duties concerning health. According to him, the holder of a human right to health bears the duty to provide essential resources for the promotion and maintenance of basic health for everyone.[89] Can everyone take this duty? No. His argument continues by emphasizing that if states are the sole bearers of obligations, then states with less resources may be unable to provide basic health services for their citizens.[90] This is of course a matter of equality and justice. Both of which are aspects of distributive justice.[91]

2.2.2. Our counterreply

The arguments provided by Griffin and Sreenivasan fail to convince that health should not be recognized or treated as an individual human right. We counter their arguments on three different levels: First, concerning Griffin's argument on the 'immeasurability' of health, we stress that even when human rights seem to be 'immeasurable' there are indirect ways or indicators that can be used to evaluate the implementation of a specific human right. To us, the difficulty in measuring the implementation of a specific human right, justifies why this particular human right should receive wider protection. For instance, the concept of 'fair trial' cannot be measured by default. However, the accessibility, transparency and efficiency of legal protection indicate whether someone's right to a fair trial has been respected or not. Second, regarding Sreenivasan's argument on the disproportionate burdens to citizens that the recognition of health as a human right entails, we stress that he misinterprets the Hohfeldian analysis on rights and obligations. Our main argument is that the recognition of a human right to health does not demand from citizens the construction of hospitals or the invention of new drugs. Human rights are essentially related to how we treat others and our responsibility in respecting the others' right to health can be achieved in milder ways, e.g. by vaccinating,

[88] Gopal Sreenivasan, 'A Human Right to Health? Some Inconclusive Scepticism' (2012) 86 Aristotelian Society Supplementary Volume, 239-265; Gopal Sreenivasan, 'Health Care and Human Rights: Against the Split Duty Gambit' (2016) 37 Theoretical Medicine and Bioethics, 343-364.
[89] Liao, supra [76]; Sreenivasan, supra [88].
[90] Ibid.
[91] Karen S. Cook and Karen A. Hegtvedt, 'Distributive Justice, Equity and Equality' (1983) 9 Annual Review of Sociology, 217-241.

or wearing masks during the outbreak of diseases for the protection of vulnerable population. In particular:

Concerning Griffin's argument that the 'immeasurability' of health: We consider this argument insufficient. By analogy this 'quantitative concern' could apply to any other human right or liberty. For instance, while the right to a fair trial may not be measurable, this does not negate its status as a human right. Even if certain human rights are immeasurable, their implementation should be criticized on other qualitative parameters, indicatively, on the accessibility and effectiveness of the entitlements that human rights entail.

In the case of the right to health, we can 'measure' or evaluate its implementation by using various parameters. For instance, the progress on legal and policy frameworks, the alignment of domestic policies with international standards on the right to health, the availability and accessibility of healthcare infrastructure and medicines, the non-discrimination, the evaluation of the social determinants of health (nutrition, water and sanitation, housing and living conditions), the provision of accountability mechanisms for the monitoring and mediation of relevant abuses, are all criteria that determine whether the human right to health has been effectively promoted or not. All these parameters relate to the Environmental, Social and Economic Dimensions of the 2030 Agenda, which is intrinsically linked with the promotion of relevant human rights in light of the ongoing global challenges in these domains. Therefore, we argue that the difficulty in directly 'measuring' a human right with specific indicators, does not diminish its legal protection. On the contrary, we believe that such difficulty should be used as an additional reason for its wider protection.

With regards to Sreenivasan, we agree that as humans we are entitled of universal human rights just because of our human nature. This of course entails obligations, but especially towards other humans, since the core of human rights, consisting of positive and negative obligations, concerns how we treat others.[92] Besides, there are various ways in which someone's actions can indirectly affect the promotion of someone else's health. Following the rationale of Sreenivasan, recognizing health as a standalone human right entails the 'unbearable' obligation to citizens to overcome their potentials. An example of unbearable obligations that we could think of based on Sreenivasan's

[92] John Tasioulas and Effy Vayena, 'Getting Human Right Right in Global Health Policy' (2015) 385 Lancet, 42-44; John Tasioulas, 'Taking Rights out of Human Rights' (2010) 120 Ethics, 647-678.

logic, is the construction and fully equipment of hospitals by other citizens. However, Sreenivasan seems to fail to understand that the promotion of healthcare by other citizens can be done in indirect ways, which seem proportionate and feasible. For instance, paying taxes for the social security, wearing masks or vaccinating people for the protection of those belonging to the vulnerable population, are some of the ways in which recognizing, and therefore, respecting the right to health can be achieved in feasible and definitely bearable ways.[93]

Moreover, as stated previously, human rights are related to how we treat others, not how we treat ourselves, exactly due to the personal autonomy.[94] As Tasioulas and Vayena stress, human rights are associated with universal human interests, which generate obligations of protection and promotion of such rights. Nevertheless, Tasioulas and Vayena interpret the right to health in the personal autonomy front, by giving the imaginary scenario of an obesity pandemic outbreak; It is a matter of public health concern, but not a human rights concern, because when someone neglects his rights, he does not violate them. Therefore, they perceive the right to health as *''principally ranging over obligations concerned with the provision of health care services and public measures rather than extending to social determinants of* health".[95]

To conclude our counterargument, we stress that there is a human right to health based on the rationale 'a minore ad maius'. Health is deeply influenced by social determinants, i.e. the non-medical factors that influence health outcomes such as the environment, education, income and social protection, working life conditions, food safety, housing and basic amenities, non-discrimination. These determinants are aspects of specific and internationally recognized human rights. For example, the Human Rights Council acknowledged with its Resolution 48/13 the human right to a clean, healthy and

[93] Garrett Hardin, 'The Tragedy of the Commons: The Population Problem has no Technical Solution; It Requires a Fundamental Extension in Morality' (1968) 162 Science: New Series 3859, 1243-1248; Nerina Boschiero, 'COVID-19 Vaccines as Global Common Goods: An Integrated Approach of Ethical, Economic Policy and Intellectual Property Management' (2021) Global Jurist, 1-54; Nerina Boschiero, 'Intellectual Property Rights and Public Health: An Impediment to Access to Medicines and Health Technology Innovation?' (2017) 22 Rivista Stato, Chiese e Pluralismo Confessionale, 1-35.
[94] Op.cit. [92]
[95] Ibid.

sustainable environment. Similarly, the rights to education,[96] social protection,[97] safe working conditions,[98] food safety,[99] housing,[100] non-discrimination[101] are recognized in several international treaties and conventions. All these human rights cannot be fully enjoyed in the absence of health and well-being. As Tobin stresses there is a human right to health whose fulfilment enables the fulfilment of other capacities and interests.[102]

Moreover, the moral value and universality of health are further evidenced by health's association with human dignity, the existential point of human rights. Therefore, following the rationale 'a minore ad maius' it is clear that health is a human right per se. Nevertheless, it is important to note that many legal scholars and philosophers view health in 'individualistic terms', focusing on the right to being healthy, rather than the right to health as a global common.

2.2.3. The consolidation of the human right to health and its constraints

The WHO's definition is broad, encompassing physical, mental and social well-being, while emphasizing simultaneously that the mere absence of illness is not a synonym for health. In this Thesis, we illustrate the importance of health in its entirety. We consider

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[96] International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Article 13; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 28; Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, Article 10.

[97] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Article 9; Convention on the Rights of Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 26; Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, Article 11(1)(e).

[98] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Article 7; ILO Convention No.155 on Occupational Safety and Health (1981) (adopted 22 June 1981, entered into force 11 August 1983) 1331 UNTS 279, Articles 4,5, 16; ILO Convention No.187 on the Promotional Framework for Occupational Safety and Health (2006) (adopted 15 June 2006, entered into force 20 February 2009) ILO C187, Article 2.

[99] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Article 11; Convention on the Rights of the Child (adopted 20 November 1989 entered into force 2 September 1990) 1577 UNTS 3, Article 24.

[100] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Article 11; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 27(3).

[101] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III), Article 2; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 26; Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, Article 5; Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, Article 1.

[102] John Tobin, 'Still Getting to Know You: Global Health Law and the Right to Health' in Gian Luca Burci and Brigit Toebes (Eds.) *Research Handbook on Global Health Law* (Edward Elgar, 2018)

health not only as the human right to be healthy or to work in healthy conditions, but also as an integral part of the human right to live in a healthy, clean and sustainable environment. We adopt a holistic view of health: In 'individual' terms (right to be healthy) and from a broader perspective (health as a global common).

The WHO was the first organization to underscore the significance of health and the importance of promoting the highest attainable standard of health. The WHO imposes on States the obligation to effectively promote the highest attainable standard of health by generating health research and development that addresses, for example, the health needs of disadvantaged individuals, communities, and populations. Health is therefore safeguarded by the principles of equity, non-discrimination and fairness. However, the recognition of health as a human right has been included in several international and EU treaties, as well as in international case-law.

The legal recognition of health as a human right is a cornerstone of various international treaties and instruments, each contributing to a robust framework for the protection and promotion of health worldwide. The 1948 Universal Declaration of Human Rights[103] implicitly asserts the right to an adequate standard of living, which encompasses essential elements such as food, clothing, housing, and healthcare necessary for the health and well-being of individuals and their families. Article 25(1) emphasizes the holistic nature of health, recognizing that it is inextricably linked to various socio-economic factors.

Subsequently, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination explicitly affirms the right to public health and medical care, social security, and social services, free from discrimination (Article 5(e)(iv)). This reinforces the idea that access to health services is a fundamental right that should be equally available to all, irrespective of race or ethnicity. In parallel, the 1966 International Covenant on Economic, Social and Cultural Rights further solidifies the recognition of health by establishing that everyone has the right to the highest attainable standard of physical and mental health (Article 12).[104] This article underscores the State's responsibility to take necessary steps toward the realization of this right, thereby

[103] *Universal Declaration of Human Rights* (adopted 10 December 1948 UNGA Res 217 A(III).
[104] *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

establishing a clear obligation for governments to create and maintain conditions conducive to health.

In the context of gender equality, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women highlights the importance of health access for women, particularly concerning family planning services (Article 12). This aspect of health rights emphasizes the need for gender-sensitive approaches to healthcare, recognizing that women face unique health challenges and barriers to accessing necessary services.

The 1989 Convention on the Rights of the Child further advances the discussion by acknowledging the right of every child to attain the highest standard of health and to have access to facilities for the treatment of illness and rehabilitation (Article 24). This not only reflects the special attention required for children's health but also stresses the importance of preventive measures and the overall well-being of minors.

The 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs)[105] introduce a framework for integrating health rights within the broader context of business practices. These principles outline the State's duty to protect human rights, the corporate responsibility to respect these rights, and the necessity for effective remedies. This is crucial in a globalized world where business operations can significantly impact health outcomes, particularly in vulnerable populations.

Moreover, the 2015 SDGs especially Goal 3, aim to ensure healthy lives and promote well-being for all at all ages.[106] This goal highlights a global commitment to health as a fundamental human right, emphasizing the need for concerted efforts across countries and sectors to improve health outcomes.

Within the Council of Europe, the 1950 European Convention on Human Rights does not explicitly recognize the right to health;[107] however, the jurisprudence of the European Court of Human Rights interprets health as a component of the right to private and family life. This interpretation becomes particularly significant in cases related to access to healthcare, environmental threats, and other conditions that can

[105] UN Human Rights Council, 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.
[106] UNGA Res 70/1 'Transforming our World: The 2030 Agenda for Sustainable Development' (21 October 2015) UN Doc A/RES/70/1.
[107] *European Convention for the Protection of Human Rights and Fundamental Freedoms* (adopted 4 November 1950, entered into force 3 September 1953) ETS 5, Articles 2 and 8.

adversely affect an individual's health (Article 8). Moreover, the 1961 European Social Charter explicitly recognizes the right to health, obliging states to take appropriate measures for disease prevention, environmental protection, and healthcare provision (Article 11).[108] This creates a legal obligation for Member States to actively work towards ensuring the health of their populations.

In the European Union legal framework, the 2000 Charter of Fundamental Rights asserts the right of individuals to access preventive healthcare and benefit from medical treatment, subject to national regulations (Article 35).[109] This commitment reinforces the importance of health as a fundamental right within the context of EU policies and legislation. Furthermore, the 2012 Treaty on the Functioning of the European Union mandates a high level of human health protection in the definition and implementation of all Union policies and activities (Article 168), highlighting the integration of health considerations across various sectors.[110]

International case law further illustrates the importance of the right to health as a prerequisite for enjoying other fundamental rights and liberties. The European Court of Human Rights in *Osman v. United Kingdom*[111] expanded the scope of Article 2 (Right to Life) to include the State's obligation to protect individuals from potential threats to their lives, reinforcing the intersection between health and life. Additionally, in *Gerats-Smits and Peerbooms v. Stichting Ziekenfonds*, the Court recognized access to healthcare as a right in cross-border contexts, subject to certain limitations, illustrating the evolving understanding of health rights in the face of globalization.[112]

In *Tysiąc v. Poland*, the Court found a violation of Article 8 due to Poland's failure to provide adequate medical assistance to a woman seeking an abortion, highlighting the need for states to ensure that health services are accessible and sufficient to uphold individual rights.[113] The European Committee of Social Rights also affirmed health as a

[108] European Social Charter (revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163, Article 11.
[109] Charter of Fundamental Rights of the European Union [2000] OJ C364/1, Article 35.
[110] Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ 326/47, Article 168.
[111] Osman v. United Kingdom (1998) 29 EHRR 245.
[112] Case C-157/99 Gerats-Smits & Peerbooms v. Stichting Ziekenfonds VGZ (2001).
[113] Tysiąc v. Poland (2007) 45 EHRR 42.

fundamental social right, as demonstrated in cases where States failed to protect the health of vulnerable populations, such as migrants.[114]

Jurisprudence consistently interprets health as intrinsically connected to a sustainable and clean environment, often in the context of Business & Human Rights violations. In particular, the African Commission on Human and Peoples' Rights recognized health as integral to the right to life and dignity in the case of *Purohit and Moore v. The Gambia*, emphasizing the necessity of protecting health rights within the context of regional human rights frameworks.[115] The Commission's findings regarding Nigeria's violations of the right to health of the Ogoni population due to environmental degradation exemplify the critical intersection between health and environmental protection.[116]

Similarly, the District Court of California in *Kenia Doe et al. v. Unocal Corporation* also illustrates how corporate actions can adversely affect health rights, as the court found labor abuses and environmental degradation in Myanmar that violated the local population's right to health.[117] Moreover, the Inter-American Court of Human Rights ruled against Suriname for permitting harmful mining activities without community consent, thereby adversely impacting the health of local populations.[118]

Finally, the landmark decision of the District Court of The Hague in *Millieudefensie et al. v. Royal Dutch Shell PLC*[119] is of particular importance as it established a precedent for extraterritorial jurisdiction, as shown in Chapter 5. This ruling highlighted the need to globally address environmental degradation as a means to protect health rights, reinforcing the idea that Corporations have responsibilities that extend beyond their immediate operational contexts.

In summary, the evolving recognition of health as a human right across various international frameworks, treaties, and case law illustrates its importance in the broader context of human rights, social justice, and corporate accountability. This comprehensive legal framework is vital for ensuring that health is prioritized in policy

[114] International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Merits (ECSR, 8 September 2004).
[115] Purohit and Moore v. The Gambia (2003) AHRLR 96 (ACHPR 2003).
[116] Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria (2001) AHRLR 60 (ACHPR 2001).
[117] Kenia Doe et al. v. Unocal Corporation, 963 F Supp 880 (CD Cal 2002).
[118] Saramaka People v. Suriname (Judgment of November 28, 2007) IACHR Series C No.172.
[119] Milieudefensie et al v Royal Dutch Shell PLC [2021] District Court of The Hague, C/09/571932 / HA ZA 19-379 (26 May 2021).

and practice, particularly in an era of increasing globalization and environmental challenges.

The systematic analysis of these international treaties and case-law decisions confirms that health is indeed a human right, subject to restrictions, especially when it conflicts with other rights, the national security or the public order. For instance, States may impose quarantines, masks or isolation measures for the prevention of the spread of diseases, as a means to protect public health.[120] However, we emphasize that such limitations or derogations are allowed only in times of emergency as long as they are necessary, proportionate and legitimate.[121]

Nevertheless, we notice that the human right to health is subject to a different kind of limitation, commonly justified under the principle of 'progressive realization'. Given that health is influenced by finance, the International Covenant on Economic, Social and Cultural Rights has recognized resource constraints as a legitimate limitation. For example, while Article 12 of the International Covenant on Economic, Social and Cultural Rights acknowledges the right to the highest attainable standard of health, it allows for limitations based on the availability of resources. The UN Office of the High Commissioner for Human Rights and the WHO clarify in their Fact Sheet No. 31 'The Right to Health', that health can be subject to specific and reasonable limitations. In parallel, health is subject to the principle of progressive realization, which requires states to make continuous efforts despite economic and social challenges.[122] Such limitations must be reasonable, necessary, and proportionate, aimed at legitimate public goals without undermining the essence of the right.[123] Core obligations, such as

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[120] See also the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1984) which describe the permissible limitations on rights especially for the sake of public interest.

[121] Human Rights Committee, General Comment No 29: States of Emergency (Article 4) UN Doc CCPR/C/21/Rev.1/Add,11 (2001).

[122] Office of the United Nations High Commissioner for Human Rights and World Health Organization, 'Fact Sheet No. 31: The Right to Health' , available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf> (Accessed: 10/6/2024). However, it is stressed that "[...] The fact that the right to health should be a tangible programmatic goal does not mean that no immediate obligations on States arise from it. In fact, States must make every possible effort, within available resources, to realize the right to health and to take steps in that direction without delay. Notwithstanding resource constraints, some obligations have an immediate effect, such as the undertaking to guarantee the right to health in a non-discriminatory manner, to develop specific legislation and plans of action, or other similar steps towards the full realization of this right, as is the case with any other human right. States also have to ensure a minimum level of access to the essential material components of the right to health, such as the provision of essential drugs and maternal and child health services."

[123] See also, UN Committee on Economic, Social and Cultural Rights E/C.12/2000/4 Agenda item 3: Substantive Issues arising in the Implementation of the International Covenant on Economic, Social and

ensuring access to essential healthcare and preventing epidemics, are non-derogable and cannot be suspended. Moreover, any restrictions must avoid discrimination and ensure equitable access, and include mechanisms for accountability and remedies. Examples include prioritizing health services under economic constraints and

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Cultural Rights, General Comment No.14 (2000) The Right to the Highest Attainable Standard of Health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 11 August 2020; paras 30 "[…] II. STATES PARTIES' OBLIGATIONS
General legal obligations
30.While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2.2) and the obligation to take steps (art. 2.1) towards the full realization of article 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to health.
31.The progressive realization of the right to health over a period of time should not be interpreted as depriving States parties' obligations of all meaningful content. Rather, progressive realization means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of article 12.
32.As with all other rights in the Covenant, there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources.
33.The right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil contains obligations to facilitate, provide and promote. The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to protect requires States to take measures that prevent third parties from interfering with article 12 guarantees. Finally, the obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health."; Paras III. VIOLATIONS
[…]
47. In determining which actions or omissions amount to a violation of the right to health, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations under article 12. This follows from article 12.1, which speaks of the highest attainable standard of health, as well as from article 2.1 of the Covenant, which obliges each State party to take the necessary steps to the maximum of its available resources. A State which is unwilling to use the maximum of its available resources for the realization of the right to health is in violation of its obligations under article 12. If resource constraints render it impossible for a State to comply fully with its Covenant obligations, it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy, as a matter of priority, the obligations outlined above. It should be stressed, however, that a State party cannot, under any circumstances whatsoever, justify its non-compliance with the core obligations set out in paragraph 43 above, which are non-derogable .
48. Violations of the right to health can occur through the direct action of States or other entities insufficiently regulated by States. The adoption of any retrogressive measures incompatible with the core obligations under the right to health, outlined in paragraph 43 above, constitutes a violation of the right to health. Violations through acts of commission include the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to health or the adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to health.
49. Violations of the right to health can also occur through the omission or failure of States to take necessary measures arising from legal obligations. Violations through acts of omission include the failure to take appropriate steps towards the full realization of everyone's right to the enjoyment of the highest attainable standard of physical and mental health, the failure to have a national policy on occupational safety and health as well as occupational health services, and the failure to enforce relevant laws."

implementing temporary public health measures like travel restrictions or mandatory vaccinations, provided they are scientifically justified and respect human dignity and rights.

The WHO supports this concept, by stressing that States are required to reach the maximum availability of their resources to thoroughly realize the right to health.[124] However, such realization should be viewed in progressive terms and not immediately. Not all States have the same financial power and therefore, the promotion of healthcare should be viewed diachronically.[125]

While it may seem paradoxical that WHO, the global health regulator, to adopt a seemingly 'lenient' stance on the non-acceleration of the right to health, it clarifies two key points: First, the States' obligation to continuously improve their health systems and second, the States' obligation to ensure non-discrimination and non-retrogression. Being in line with the Committee on Economic, Social and Cultural Rights, the WHO repeats the obligation to avoid regressive measures that would reduce the existing level of enjoyment of the right to health, unless there are strong justifications based on the totality of the rights framework.[126]

2.3. Synergy between Philosophy and Law: On intrinsic values and human rights

2.3.1. The concept of intrinsic values and how they shape the essence of human rights

This Section explores how philosophy contributes to human rights law and corporate accountability through the lens of intrinsic values. Elaborated by Donaldson, intrinsic values serve as a rationale for defining corporate accountability in teleological terms,

[124] See also, John Tobin, 'Still Getting to Know You: Global Health Law and the Right to Health' in Gian Luca Burci and Brigit Toebes (Eds.) *Research Handbook on Global Health Law* (Edward Elgar, 2018).
[125] International Covenant on Economic, Social and Cultural Rights (Article 2(1)), that recognizes resource availability as a legitimate constraint to rights.
[126] See Committee on Economic, Social and Cultural Rights, General Comment No.14: The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant) (11 August 2000) UN Doc E/C.12/2000/4, para 32; Committee on Economic, Social and Cultural Rights, General Comment No.3: The Nature of States Parties' Obligations (Article 2 para 1 of the Covenant) (14 December 1990) UN Doc E/1991/23, para 9; WHO, 'Human Rights and Health' (Fact Sheet No.31, June 2017), available at: < https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health> (Accessed: 10/6/2024).

characterized as non-instrumental, non-derivative and full-stop explainers of actions.[127] They clarify why specific corporate conducts should be avoided or promoted, especially when related to human dignity, justice, environmental integrity, health, and freedom of religion.[128] According to this perspective, the justification for a particular action often relies solely on the intrinsic value it upholds. For instance, a State does not need to justify why it should respect its citizens' human dignity; it is an intrinsic value that stands on its own.

Intrinsic values extend beyond the confines of legal frameworks. Human rights, as universal moral values entitled to everyone, simply by virtue of being human, exemplify intrinsic values.[129] For example, a State's duty to respect its citizens does not derive only from International Conventions, but essentially from the inherent value of human dignity itself. In the context of the right to health, intrinsic values imply that health should be respected not only because it is enshrined in landmark legal instruments,[130] but essentially because it is intertwined with human dignity. This perspective places equal responsibility on both public and private actors to safeguard and promote health.[131]

Donaldson acknowledges that among the landmark features of human rights, universality, non-exception and non-discrimination[132] might result in a *"one hat fits all"* approach.[133] Inspired from Shue's approach to human rights,[134] he emphasizes that human rights imply three distinct kinds of obligations towards the protected human

[127] Thomas Donaldson, 'Intrinsic Values and Human Rights Duties: Corporate Duties Depend on Industry Values' (2022) 7 Business and Human Rights Journal, 189-200.
[128] Ibid.
[129] Ibid.
[130] For an overview of the evolution of the right to health, see Virginia A. Leary, 'The Right to Health in International Human Rights Law' (1994) 1 Health and Human Rights, 24-56; Alicia Ely Yamin, 'The Right to Health Under International Law and its Relevance to the United States' (2005) 95 American Journal of Public Health, 1156-1161; Anna C. Mastroianni et al. (Eds.) *The Oxford Handbook of Public Health Ethics* (Oxford University Press, 2019).
[131] Thomas Mertens, *A Philosophical Introduction to Human Rights* (Cambridge University Press, 2020); Florian Wettstein, 'CSR and the Debate on Business and Human Rights: Bridging the Great Divide' (2012) 22 Business Ethics Quarterly, 739-770.
[132] Donaldson, supra [127]; Anna Lena Svensson-McCarthy, *The International Law of Human Rights and States of Exception* (Brill Nijhoff, 2021).
[133] Thomas Donaldson, *The Ethics of International Business* (Oxford University Press, 1989); Thomas Donaldson, *Corporations and Morality* (Prentice Hall, 1982); Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton University Press, 1980).
[134] Shue, ibid.

right. As demonstrated below, this perspective formed the basis of his main disagreement with Ruggie in terms of Business and Human Rights obligations.[135]

Briefly, Donaldson and Walsh start from the premise that human rights obligations are fundamentally tied to how we treat and respect the rights of others.[136] They describe these obligations in a triadic way:

a) The non deprivation of that human right from its holder;
b) The protection of that right from deprivation, e.g. providing first aid to someone who is suffocating;
c) The restoration of the object of that right, e.g. giving water to someone dehydrated.[137]

Among these obligations, only the first two apply to private actors,[138] while the third falls within the domain of public policy. The diversity of obligations, -regardless of their formulation as 'duties' or 'responsibilities'-[139] clarifies that everyone enjoys human rights by virtue of their inherent human nature, but the degree of responsibility towards others varies. Yet, such responsibility undeniably exists. States are responsible for drafting efficient, accessible and effective health policies and ensuring that their citizens' rights are thoroughly respected and promoted. However, Enterprises, as private actors, have different kinds of obligations towards their stakeholders (the society, the environment etc).

In particular, corporate responsibilities regarding human rights should not be "decreased in the enlightened pursuit of profit".[140] Companies bear the significant responsibility of respecting and fulfilling the human rights that are directly related to their industrial identity. It would be ironic and against a company's moral standing to

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[135]As demonstrated in the following chapters, Ruggie insisted on the existence of uniform obligations and duties for the protection of Business Human Rights. According to his trilateral protection framework, States have the duty to protect against human rights abuses, while corporate responsibility lies in respecting human rights, and finally by assisting victims to achieve remedy. Supra [47]-[55]; UNHR, HR/PUB/11/04, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011); Radu Mares, *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation* (Brill, 2011).
[136] Supra [133].
[137] Ibid.
[138] Especially with regard to a for-profit corporation; Ibid.
[139] Barnali Choudhury, 'Balancing Soft and Hard Law for Business and Human Rights' (2018) 67 International and Comparative Law Quarterly, 961-986.
[140] Supra [130],[136]; Florian Wettstein, 'Silence as Complicity: Elements of a Corporate Duty to Speak Out against the Violation of Human Rights' (2012) 22 Business Ethics Quarterly, 37-61; John Douglas Bishop, 'The Limits of Corporate Human Rights Obligations and the Rights of For-Profit Corporations' (2012) 22 Business Ethics Quarterly, 119-144.

act in ways that opposite its intrinsic values. Consequently, the convergence between intrinsic values and corporate behavior should prioritize human rights, sustainability and business ethics as guiding principles rather than mere profit accumulation.

Regarding the right to health and its connection with intrinsic values, we observe that health is itself an intrinsic value. This concept aligns closely with Donaldson's idea of fundamental ethical principles that should guide human and corporate behavior. Donaldson has already emphasized that the well-being of individuals is non-negotiable and should not be compromised for other goals, including profit or efficiency. This understanding reinforces the central focus of our thesis: why health should be prioritized by both private and public actors. Interpreting health as an intrinsic value means that its preservation and promotion are core responsibilities for governments, Corporations, or individuals alike. Acting as a "full-stop explainer",[141] the intrinsic value of health underscores the moral duty to be preserved, whether as an individual human right or as a global common. For example, ensuring access to healthcare, promoting healthy and resilient environments, and protecting individuals from harm, reflect that health is deontologically linked to a person's dignity and worth. Donaldson also highlights that intrinsic values should not be seen as means to an end, but as fundamental components of a good life.[142]

2.3.2. The weaknesses of Intrinsic Values

A major challenge of intrinsic values lies in the classification of moral interests.[143] For instance, how can we resolve conflicts between justice and personal freedom? Donaldson does not provide a clear answer for addressing possible conflicts among intrinsic values. In this theoretical classification problem, Downie addresses this issue by distinguishing between liking values (i.e. preferences) and moral values, which have a normative dimension that exceeds preferences.[144]

Due to the risk of subjectivity and vagueness, Downie states that some moral values should be commonly widespread in society, as they are integral to social progress

[141] Donaldson, supra [130]-[136].
[142] Ibid.
[143] Peter Duncan, 'Health, health care and the problem of intrinsic value' (2010) 16 Journal of Evaluation in Clinical Practice, 318-322; Peter Duncan, *Values, Ethics and Health Care* (Sage Publications, 2010).
[144] Ibid.

(necessary social values).[145] Therefore, the existence of such social values is vital for self-development (necessary personal values). The interplay between necessary social values and necessary personal values suggests that neglecting the values required for social functionality, diminishes the values that essential for personal functionality.[146]

Applying Downie's logic to health positions it as both a necessary personal and social value. Health, regardless of its definition, represents the realization of what it means to be human and to thrive socially, mentally and behaviorally. This connection between health, human dignity and humanity further supports the idea that health is both an intrinsic and moral value, positioning it at the core of human rights.[147]

While we agree with the concept of intrinsic values as fundamental ethical principles that should guide public and private behavior, we observe the following weakness. Donaldson applies the concept of intrinsic values within a *quid pro quo* logic. In his attempt to strengthen his position that intrinsic values should be upheld at all costs due to their self-evident worth, he closely associates them with the nature of corporate purposes. When evaluating corporate conduct, he uses his theory as an additional layer of accountability, yet this is linked to the pursuit of specific commercial purposes. For instance, it would be irrational for a pharmaceutical company to violate the right to health by prioritizing profits over health, because health belongs to the company's main activity. Therefore, following Donaldson's logic, a pharmaceutical company bears a 'bigger burden' of promoting this particular intrinsic value (health) as it is central to its operations.

However, does this entail that we should be hypothetically more 'lenient' towards a chemical company that pollutes the environment and thus affects the local community's health, simply because its main activity is unrelated to health? While Donaldson's theory offers valuable insights, we argue that it should be applied with caution.

[145] Ibid.
[146] Ibid.
[147] Nevertheless, if intrinsic values are problematic in terms of classification, then does the achievement of health (intrinsic value) justify why it should be prioritized over other values, such as self-autonomy? Self-autonomy and health are considered as equally crucial for personal and social progress, but we should also consider that people should have the freedom of enjoying their own health interests. Therefore, Duncan suggests that health should be interpreted in instrumental terms; Ibid.

2.4. Why the human right to health should be a matter of business conduct: Insights from Corporate Social Responsibility (CSR) and Business and Human Rights (BHR)

The fields of BHR and CSR demonstrate two important insights: First, that States are not exclusively accountable for (gross) human rights violations and second, that corporate actions have broader societal and environmental impacts. As discussed in Chapter 3 "*The Interplay of Private and Public Actors in the Promotion of Health",* the rise of Transnational Corporations and their involvement in a plethora of human rights and environmental violations illustrate that private actors[148] should be held accountable for acts or omissions of their business conduct.

CSR underscores that shareholders' primacy should not be the sole driver of corporate actions, exactly because Enterprises cannot be self-standing.[149] Enterprises do not operate in isolation; their actions affect a wider circle of stakeholders. Society is part of this broader circle of stakeholders, with health and sustainability being one of the most crucial aspects of human development.

While a detailed analysis of the conceptual differences between BHR and CSR will be addressed in Chapter 3, our previous philosophical and legal analysis leads to the following theoretical observations. We posit that health should be a key consideration in business conduct. Health is a human right that States must regulate, but Corporations should also promote it in three ways: as a working condition, as a human right of the employees and other stakeholders to physical, social and mental well-being and last, as a global common good alongside environmental resilience.

To summarize the main differences between BHR and CSR: BHR addresses human rights violations by Corporations, while CSR emphasizes a wider responsible behavior towards the society as a stakeholder, with stakeholders' interests as significant as those

[148] See also Permanent Court of International Justice, Jurisdiction of the Courts of Danzig: Peculiar claims of Danzig Railway Officials who have passed into the Polish Service, against the Polish Railway Administration (Advisory Opinion No.15) 3 March 1928.
[149] Annie-Sofie Hiswåls, Cornelia Wulff Hamrin et al., 'Corporate Social Responsibility and External Stakeholders' Health and Wellbeing: A Viewpoint' (2020) 9 Journal of Public Health Research 1742; Sadok el Ghoul and Others, 'Corporate Environmental Responsibility and the Cost of Capital: International Evidence' (2018) 149 Journal of Business Ethics 335-361.

of a company's shareholders.[150] Upon closer examination, we have noticed that health has not received as much explicit attention in either domain, compared to other critical issues, such as the environmental sustainability or non-discrimination. We believe this gap should be addressed and examined from social and political perspectives, especially after the social and environmental challenges that the Covid-19 pandemic brought into surface.

Specifically, promoting stakeholders' health could be proposed[151] as an additional aspect of CSR, based on the duty of due diligence.[152] Besides, frameworks like the Global Reporting Initiative, facilitate dialogue between States and Enterprises for their impact on sustainability and human rights.[153]

Therefore, we underscore that placing health at the forefront of corporate actions (as a human right, working condition, and a global common linked with sustainability) can help bridge any existing gaps that hinder the BHR and CSR domains. Moreover, the 2030 Agenda on Sustainable Development underscores the importance of achieving the SDGs through global partnerships and cooperation among public and private actors (SDG 17).[154]

Consequently, we propose that health can serve as a unifying principle that not only converges these theoretical frameworks, but also reflects how consensus among public and private actors can be achieved. While States and Corporations may not share the same obligations, the active protection of health and sustainability can facilitate the achievement of the other Dimensions of Sustainable Development, given that the Environmental, Social and Economic Pillars are equally important and interconnected.

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[150] Anita Ramasastry, 'Corporate Social Responsibility versus Business and Human Rights: Bridging the Gap between Responsibility and Accountability' (2015) 14 Journal of Human Rights 2, 237-259.
[151] Celine Brassart Olsen, 'Towards Corporate Health Responsibility? An Analysis of Workplace Health Promotion through the Prism of CSR and Transnational New Governance' (2020) 36 International Journal of Comparative Labour Law and Industrial Relations, 19-54.
[152] See for instance Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (France).
[153] Ibid; More information on https://www.globalreporting.org/.
[154] UN General Assembly, 'Transforming our World: The 2030 Agenda for Sustainable Development' (21 October 2015) UN Doc A/RES/70/1, SDG 17.

2.5. Conclusions

This Chapter explored the multifaceted nature of health from both philosophical and legal perspectives. Health is characterized as a "multilayer concept" encompassing its roles as an inherent condition, a fundamental human right, and a global common good. To justify why health is such a complex and multifunctional concept that should be prioritized by both public and private sectors, the Chapter first sought to define what health truly entails. Should health be understood merely as the absence of disease, or should it be approached more holistically, emphasizing its protection and enhancement?

In defining and understanding the right to health, this Chapter primarily focused on the World Health Organization (WHO), the key global authority on health law. The WHO, in its 1946 Constitution, was the first organization to formally articulate the concept of health, declaring that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition." The WHO's definition of health as "a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity," laid the foundation for recognizing health as a right in subsequent human rights treaties, including the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). These treaties highlight health's role as a prerequisite for safe labor, social protection, and child development, while also emphasizing state responsibilities in achieving the highest attainable standard of health.

The Chapter underscored that health's classification as a "multilayer concept" — a human right intertwined with physical, mental, and social well-being, a general condition, and a global common good — is affirmed by various frameworks, including the WHO's definition and the 2030 Agenda on Sustainable Development. Unlike traditional approaches that focus on public policy, this work extended the discussion to corporate responsibility, arguing that businesses have a crucial role in promoting health and sustainability.

Section 2.1 incorporated philosophical perspectives, beginning with Aristotle's philosophy on well-being and extending to Rawls, Daniels, Sen and Nussbaum. We clarified that although health has been explicitly addressed only by Aristotle, many

philosophers approached health indirectly, describing it as a consequence of their general theories on justice and fairness. We discussed the philosophical perception of health, noting that many theories view health in purely individualistic terms, often confusing health with the status of being healthy. We highlighted Sen's Capability Approach, which recognizes the essential role of health for human flourishing, and criticized its main weaknesses: particularly, the ambiguity in whether it views health as a means or an end in human development. In this critique, we referenced Liao's Theory on Fundamental Goods, Conditions and Options which similarly views health as a key factor in human development and social potential.

Following the philosophical discussion, **Section 2.2** examined the legal frameworks, focusing on the nature of the human right to health and whether it should be a standalone human right. We began by presenting the main arguments against health as a human right, which center on the 'unbearability' of obligations that a human right to health would entail to other individuals. In response, we argued that health is indeed a standalone human right, and the difficulty in 'measuring' it, should be viewed as an additional reason to strengthen its implementation. We continued our analysis by providing the legal framework that consolidates the right to health, as outlined in International Treaties and case-law in both international and European legal orders.

Section 2.3 merged the philosophical analysis with the legal one through the concept of Intrinsic Values, a theory advanced by Thomas Donaldson, as a means to promote the ethical behavior of Corporations. According to Donaldson, intrinsic values act as full stop explainers, and in our case, we described that health is an intrinsic value because its moral and universal importance justifies why it should be protected by corporate impacts. However, we also identified weaknesses in Donaldson's theory, especially his tendency to associate intrinsic values with specific corporate activities and his failure to explain how conflicts among intrinsic values could be resolved.

In conclusion, we summarized in **Section 2.4** why health should be a matter of business conduct, meaning that Corporations should seriously consider the potential impact of their actions in health and sustainability. We suggested that the multilayered concept of health, justifies why the right to health should be promoted by public and private actors. We underscored that despite the conceptual differences between the BHR and CSR domains, health can act as a unifying principle that counterbalances power asymmetries among public and private actors. Moreover, given the importance

of health and sustainability, we stressed that health should be prioritized, as it can act as a unifying Pillar among the Environmental, Social and Economic Dimensions of the 2030 Agenda on Sustainable Development. The 2030 Agenda emphasizes that since all Targets are equally important and interconnected, having health as a starting point facilitates the promotion of the other SDGs.

Chapter 3.
"The Interplay of Private and Public Actors in the Promotion of Health"

Keywords: Transnational Corporations (TNCs), Public Actors, Business &Human Rights (BHR), Partnerships

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Introduction

The aim of this Chapter is to highlight the 'peculiar' relationship between public and private actors concerning the right to health. As emphasized in the Chapter 2, health is understood as a multilayer concept. Depending on the context and the examples cited, health may be viewed as a violated or impacted human right, or as a feature of a clean and safe environment and a common good.

The framework for this Chapter is provided by the disciplines of BHR and CSR, which will be extensively analyzed in Chapter 4. However, this Chapter will pay particular attention to BHR for the following reasons:

i. BHR is a field of law that reveals the socio-political implications of business conduct and, by expansion the imbalances between political will and reality. This raises questions about how private actors interact with public authorities and whether private actors can substitute for States in specific domains, especially when States are unwilling on incompetent.
ii. BHR emphasizes issues of legal personality, accountability and responsibility, highlighting the universality of Human Rights.
iii. BHR intersects with CSR, which also elaborates on how business conduct should shift from mere profit maximization to more solid, ethical grounds.

To understand the interplay between private and public actors, the Chapter begins with a brief description of power asymmetries, that have significantly influenced interactions between States and Corporations. As discussed in Section 3.1, the relationship between public and private actors has been viewed dichotomously: Either negatively (due to issues threatening State sovereignty and human rights) or positively (through successful partnerships that enhance social aims and the broader individual well-being). The

literature on these partnerships centers on power dynamics and legal personality, positing that Corporations can act as substitutes for State power in human rights matters.

Our analysis starts with a brief examination of how Enterprises influence States through the BHR framework, highlighting that corporate behavior impacts society and the environment, not just finances. This supports our argument that corporate conduct is not one-sided, as Enterprises cannot be entirely standalone actors. A crucial aspect of understanding the interaction between public and private actors involves exploring legal personalities. We start by discussing the concept of corporate accountability. For instance, are States the only duty-bearers towards human rights, or are Enterprises also responsible for their conduct? If so, to whom are they accountable?

Section 3.2 traces the emergence of the BHR framework, noting that the foundations for corporate liability for human rights were unexpectedly established in the Nuremberg Trials. The *IG Farben, Flick and Krupp* cases clarified that Corporations can be liable for human rights abuses through both their actions and omissions. We then outline early BHR implementation attempts in TNCs, such as the Sullivan Principles against apartheid policies and the OECD Guidelines on Multinational Enterprises. This Section concludes with a discussion of initial UN efforts to regulate business conduct in the pre-UNGPs era, including the 1990 Draft Code, the UN Global Compact and the UN Draft Norms.

Section 3.3 focuses on the UNGPs, outlining their strengths and weaknesses compared to pre-UNGPs instruments. Rather than providing a strict description of the UNGPs, we connect them to the principle of bona fides, arguing that the UNGPs reflect this principle in three ways: First, States should protect the human rights of their citizens from third-party impacts due to public expectations. Second, Corporations should respect human rights, based on the assumption (bona fides) that domestic legal systems will provide effective protection to victims and sanctions to abusers (first degree assumption). Third, individuals assume it is not beneficial for Corporations to violate their human rights, because victims will receive effective legal protection (second degree assumption).

In Section 3.4 we critique the UNGPs by examining the Draft Treaty on BHR The Draft Treaty, referred to as an "internationally binding instrument", aims to address the voluntary nature of the UNGPs. While it emphasizes a legally binding character, this distinction is most apparent in Pillar I of the UNGPs. Both frameworks share principles,

advocating for a Multistakeholder approach in policy creation and adaptation. Both frameworks have faced criticism for their lengthy development—nearly a decade following relevant UN Resolutions. However, a key challenge in both of them is the lack of consensus: The UNGPs have been critiqued for introducing regulatory guidelines that are not mandatory for Corporations, while the Draft Treaty, though legally binding, still requires State adoption for enforcement. Nonetheless, domestic legal systems, such as France's 2017 Duty of Vigilance Law, show progress even when international measures lag.

Section 3.5 revisits the interplay between public and private entities, as discussed in the Chapter's introduction. We evaluate the role of Public-Private Partnerships (PPPs) and Multistakeholder Partnerships (MSPs) in achieving the 2030 Agenda (SDG 17), presenting arguments for and against these collaborations. We argue that it is overly rigid to view PPPs or MSPs solely as contributors to human rights abuses or threats to State authority. Instead, we emphasize their importance in advancing social and environmental goals. While States retain the primary responsibility for addressing inequalities and implementing human rights, MSPs and PPPs play a complementary role in advancing Sustainable Development. States often cannot address social and environmental issues alone and health lies exactly at this intersection. This argument was already established in Chapter 2, which emphasized health as a human right and global common good, interconnected with sustainability and social and environmental justice.

Finally, we conclude that for MSPs to be effective, all stakeholders must adopt a "common language" to facilitate cooperation. We argue that BHR and CSR can serve as this common language, provided their weaknesses are addressed.

3.1. The interplay of Enterprises with public authorities

To understand the interaction between States and Corporations, we will not delve into the main provisions of Private Law or Administrative Law. Not only would this fall outside the scope of this Thesis, but it would also limit our research to a specific legal order. Given our argument that BHR and CSR can act as a 'common language' between State and Corporations, we first explore the dynamics of the BHR framework.

Traditionally, Public International Law recognized only States and International Organizations (especially after the establishment of the United Nations) as subjects of international law.[155] These entities, due to their 'automatically acknowledged' legal personality, bore rights and obligations in the international legal order.[156] However, the 20th century saw a shift in international law, extending legal personality to Enterprises and private actors. This was justified due to the increasing recognition of the global impact of non-Sate actors and the evolving nature of international legal obligations. For example, in the 1930s, Lauterpacht and Politis suggested that nothing prevented non-State actors, such as individuals and Enterprises, from accruing international rights and obligations, given their impact on international relations and legal obligations.[157] Similarly, Hans Kelsen, in his work on the nature of international law, proposed that while States remain the primary subjects, international norms increasingly influence non-State actors, including Multinational Corporations.[158] This perspective laid the groundwork for later developments in recognizing the legal responsibilities of private entities under international law.

The shift toward acknowledging the role of Enterprises and other private actors reflects a broader understanding of their impact on global legal standards and human rights.[159] For instance, the establishment of international tribunals demonstrates that the increasing involvement of private actors, such as Multinational Corporations and individuals, in international relations and global economic activities has exposed the limitations of traditional State-centric international law, particularly in addressing human rights abuses.[160]

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[155] Emily Crawford, Alison Pert and Ben Saul, *Public International* Law (Cambridge University Press, 2023); James Crawford, *Brownlie's Principles of Public International Law* (9th Edition) (Oxford University Press, 2019); Glenda Sluga and Patricia Clavin, *Internationalism: A Twentieth-Century History* (Cambridge University Press, 2016).

[156] For instance, the fact that the UN Charter endows the United Nations with authorities, organs and functions independent of those of its Member States, proves its legal personality. See more at Crawford and Others (Eds.), supra [155].

[157]Hersch Lauterpacht, International Law and Human Rights (Praeger 1950); Elihu Lauterpacht, International Law: Being the Collected Papers of Hersch Lauterpacht. Systematically Arranged and Edited by E. Lauterpacht (Cambridge University Press, 1970); Nicolas Politis, 'The New Aspects of International Law: A Series of Lectures Delivered at Columbia University' (Carnegie Endowment for International Peace, University of Michigan, 1928).

[158] Hans Kelsen, *Principles of International Law* (Rinehart & Winston, 1952).

[159] Florian Wettstein, Business and Human Rights: Ethical, Legal and Managerial Perspectives (Cambridge University Press, 2022).

[160] Ibid.

In fact, the International Court of Justice's advisory opinion in the *Reparation for Injuries* case[161] was pivotal in demonstrating that international law could recognize entities beyond States. This recognition paved the way for a broader interpretation of legal personality, allowing for the inclusion of individuals and private actors in international legal frameworks. Specifically, in this landmark decision the International Court of Justice (ICJ) addressed whether the United Nations had the capacity to bring international claims for damages incurred by its officials in the course of their duties. The case arose from injuries suffered by a UN official, and the question was whether the UN could claim reparation for these injuries under international law. The ICJ affirmed that the UN does have international legal personality and therefore is entitled to bring such claims. The Court reasoned that the UN, as an international organization, possesses rights and obligations distinct from its Member States. This capacity is necessary for the UN to fulfill its functions effectively, including protecting its staff and asserting claims for damages "*[…] It is clear that the Organization is not a State, but it possesses an international personality which is separate and distinct from that of its Members. This personality enables it to bring international claims.*"[162]

This decision not only expanded the scope of international legal personality but also showed a broader movement towards holding private actors accountable for their actions. The actions of private actors could no longer be confined to domestic jurisdictions when they had global implications. This shift justified the emergence of the BHR framework, which seeks to articulate and enforce corporate responsibilities in the realm of human rights.

3.2. The emergence of Business & Human Rights (BHR)

3.2.1. The Nuremberg Trials and their unexpected connection with BHR

Unexpectedly, prominent scholars attribute the foundations of BHR's emergence to the jurisdiction establishing the criminal liability of Corporations during the World War II. According to Wettstein and Ramasastry, the evolution of corporate liability in international law can be significantly traced back to the Nuremberg Trials, which included landmark prosecutions of German Corporations for their involvement in war

[161] International Court of Justice, *Reparation for Injuries Suffered in the Service of the Nations* (Advisory Opinion) [1949] ICJ Rep 174.
[162] Ibid; para 179.

crimes and crimes against humanity.[163] Notably, three major firms—I.G. Farben, Flick, and Krupp—were subjected to international scrutiny for their roles in supporting and sustaining the Nazi war machine through egregious human rights abuses.

More specifically, *I.G. Farben,*[164] a chemical conglomerate, was deeply implicated in war crimes due to its extensive use of forced labor and its involvement in the atrocities at Auschwitz. The company produced Zyklon B, the gas used in the gas chambers, and employed concentration camp prisoners in inhumane conditions, contributing to its conviction for crimes against humanity.[165] The Tribunal's verdict against I.G. Farben underscored the direct responsibility of corporate entities in perpetuating war crimes and human suffering.

Similarly, the *Flick* case,[166] involved another major industrial entity found guilty. Friedrich Flick's companies were noted for their exploitation of forced labourers, including prisoners of war and concentration camp inmates. The Tribunal's findings highlighted Flick's systematic use of slave labor to fuel its extensive industrial

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[163] Florian Wettstein, supra [159]; For a thorough analysis on the movement of corporate accountability see Anita Ramasastry, 'Corporate Complicity: From Nuremberg to Rangoon: An Examination of Forced Labor Cases and their Impact on the Liability of Multinational Corporations' (2002) 20 Berkeley Journal of International Law 91, 91-159; Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press,2006).

[164] International Military Tribunal (IMT), *United States v I.G. Farbenindustrie AG* (Judgment, 1948) (Nuremberg Military Tribunals, 14 August 1947). The Farben Trial was the sixth out of the twelve Nuremberg Proceedings, involving 24 defendants of the IG Farben industry, on the charges of planning, preparation, initiation and waging of wars of aggression and invasion of other countries; war crimes and crimes against humanity through the spoliation and plunder of public and private property; participation in the enslavement and deportation for slave labor of civilians; participation of three defendants in the SS; participation in a common plan or conspiracy for committing crimes against peace. The trial started on 28/8/1947 and ended on 11/6/1948, rendering it one of the longest Nuremberg trials after the International Military Tribunal and the Ministries Case trials. More information on Anita Ramasastry, 'Corporate Complicity: From Nuremberg to Rangoon: An Examination of Forced Labor Cases and their Impact on the Liability of Multinational Corporations' (2002) 20 Berkeley Journal of International Law 91, 91-159; Information is also retrieved from the US Holocaust Memorial Museum, at: https://encyclopedia.ushmm.org/content/en/article/subsequent-nuremberg-proceedings-case-6-the-ig-farben-case (Access: 25/4/2023).

[165] See also Arno Mayer, Why Did the Heavens Not Darken? The "Final Solution" in History (Pantheon Books, 1988).

[166] International Military Tribunal (IMT*), United States v Friedrich Flick* (Judgment, 1947) (Nuremberg Military Tribunals, 22 December 1947). In this case six defendants were leading officials in the Flick Concern, a group of Enterprises active in coal, iron and steel production and fabrication. The men were indicted on 18/3/1947 charged inter alia with the commitment of war crimes and crimes against humanity through slave labor , deportation for labor of civilians and use of prisoners of war for war operations. Ramasastry, supra [10] and more information at:
<https://encyclopedia.ushmm.org/content/en/article/subsequent-nuremberg-proceedings-case-5-the-flick-case> (Access: 25/4/2023).

operations, significantly contributing to its conviction for war crimes and crimes against humanity.[167]

Moreover, *Krupp*,[168] a prominent arms manufacturer, was prosecuted for using forced labor and its involvement in war crimes.[169] The tribunal's judgment against *Krupp* established a precedent for corporate accountability in the context of war crimes and crimes against humanity.[170]

Even though the cases offer valuable insights primarily within the realm of International Humanitarian Law and the Law of Armed Conflicts, Wettstein and Ramasastry rightfully consider them pivotal for BHR. These cases marked a significant shift in international jurisprudence by establishing that Corporations, not just individuals or States, can be held accountable for serious human rights violations.[171] Therefore, such development set the foundation for contemporary principles of corporate liability, influencing subsequent international legal frameworks and mechanisms for holding Corporations accountable for their actions in the realm of international law.[172]

Notably, in 2011 the Chairman of the French national railway company (SNCF), apologized on behalf of the company for its role in transporting 76.000 people to Nazi concentration camps during the World War II.[173] Despite the gravity of the allegations, the apology was criticized as being more of a 'negotiation' attempt, rather than an act of

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[167] Gerhard Weinberg, *A World at Arms: A Global History of World War II* (Cambridge University Press, 1994).

[168]International Military Tribunal (IMT), *United States v Friedrich Krupp AG* (Judgment, 1948) (Nuremberg Military Tribunals, 31 August 1948). The case concerned the involvement of twelve former directors of the Krupp Group in crimes against peace, crimes against humanity, war crimes, enslavement, deportation and extermination of civilians. See Ramasastry, supra [10] and <https://encyclopedia.ushmm.org/content/en/article/subsequent-nuremberg-proceedings-case-10-the-krupp-case> (Access: 25/4/2023).

[169] Since the Geneva Conventions that regulate international armed conflicts were entered into force in 1949, therefore after the decisions of the International Military Tribunals on the aforementioned cases, the legal basis of the jurisdiction was mostly rules deriving from customary international law and some conventions that addressed forced labor and humanitarian concerns. For instance, the Convention Hague IV regarding the Respect to the Laws and Customs of War on Land (Hague Convention IV, 18 October 1907, UKTS 9) and the International Labor Organization Convention No.29 on Forced Labor (Forced Labour Convention, 28 June 1930, C29, 39 UNTS 55).

[170] Hermann Michel, *Krupp: A History of the Firm* (Macmillan, 1972).

[171] Natasha Wheatley, 'New Subjects in International Law and Order' in Glenda Sluga and Patricia Clavin (Eds.) *Internationalism: A Twentieth-Century* History (Cambridge University Press, 2016); Nathan Feinberg, 'Some Problems of the Palestine Mandate' (Tel Aviv: Shoshani's, 1936).

[172] Anita Ramasastry, 'Corporate Complicity: From Nuremberg to Rangoon: An Examination of Forced Labor Cases and their Impact on the Liability of Multinational Corporations' (2002) 20 Berkeley Journal of International Law 91, 91-159; Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press,2006).

[173] Susan Ariel Aaronson and Ian Higham, '"Re-righting Business": John Ruggie and the Struggle to Develop International Human Rights Standards for Transnational Firms' (2013) 36 Human Rights Quarterly, 333-364.

genuine goodwill. Our research reveals that in 2014, Keolis, a subsidiary of the SNFC began managing the US commuter rail services for over eight years.[174] However, some lawmakers in California and Florida planned to block Keolis and SNFC from participating in railway projects in their states, unless the French company acknowledged its involvement in the deportation of civilians and made reparations to the victims and their families.[175] A campaign started by Holocaust survivor, Leo Bretholz, and the Director's apology led to Holocaust descendants filing lawsuits against SNCF in the USA, seeking compensation for the confiscation and sale of personal property as well as transportation to death camps.[176] Some plaintiffs argued that US federal courts had jursidiction based on the enforceability of international law within federal law.[177]

However, in a recent decision concerning the lawsuit *Scalin, Cherrier and Piquard v. SNFC S.A.*,[178] the US Court of Appeals noted that although the Foreign Sovereign Immunities Act (FSIA)[179] generally shields foreign sovereigns and their entities, e.g. SNCF, from lawsuits in US courts, exceptions do apply. The district court dismissed the plaintiffs' complaint, not on these grounds, but because it determined that the plaintiffs should seek their remedy through a French administrative-claims system designed to compensate victims of Nazi occupation and the Vichy regime. This decision reflected precedents like *Abelesz v. Magyar Nemzeti Bank*[180] and *Fischer v. Magyar*

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[174] Jack Lepiarz. 'MassDOT selects new commuter rail operator' (9 January 2014), available at: < https://www.wbur.org/news/2014/01/09/keolis-commuter-rail-contract> (access: 25 August 2024); Jack Lepiarz, 'New Mass. Commuter rail operator faces Maryland opposition due to holocaust link' (26 February 2014), available at: < https://www.wbur.org/news/2014/02/26/keolis-holocaust-maryland> (Access: 25 August 2024); RFI, 'French rail company challenged over Nazi deportation in US rail bid' (5 February 2014), available at: <https://www.rfi.fr/en/americas/20140205-french-rail-company-challenged-over-nazi-deportation-us-rail-bid> (Access: 25 August 2024).

[175] See also 'France: National Railway apologizes for its role in deporting Jews in war' (12 November 2010), available at: < https://www.business-humanrights.org/en/latest-news/france-national-railway-apologizes-for-its-role-in-deporting-jews-in-war/> (Access: 22/4/2023); Maia de la Baume, 'France: National Railway apologizes for its role in deporting Jews in war', available at: <https://www.nytimes.com/2010/11/13/world/europe/13briefs-SNCF.html?_r=1&scp=1&sq=SNCF&st=cse> (Access: 22/4/2023).

[176] Ibid.

[177] Ibid.

[178] United States Court of Appeals for the 7th Circuit, No. 18-1887 Karen Scalin, Roland Cherrier and Josiane Piquard v. Société Nationale SNCF SA Appeal from the US District Court for the Northern District of Illinois (6 August 2021), available at: <https://law.justia.com/cases/federal/appellate-courts/ca7/18-1887/18-1887-2021-08-06.html> (Access: 20 August 2024).

[179] Foreign Sovereign Immunities Act of 1976, 28 USC §§ 1602–1611 (2018).

[180] United States Court of Appeals for the 7th Circuit, *Abelesz v Magyar Nemzeti Bank* 692 F 3d 661 (7th Cir 2012).

Államvasutak Zrt[181] which suggest that US courts may defer to compensation systems in the country where the wrong occurred, a principle often referred to as 'comity-based abstention'.[182]

Ramasastry, Wettstein, Aaronson and Higham are among the scholars that credit the emergence of BHR to the Nuremberg Trials, based on the establishment of individual responsibility for the direct or indirect violation of human rights.[183] They equally emphasize that corporate activities and relations create operational and reputational risks and stress that executives need the right guidance to ensure that the company's activities do not endanger or infringe their stakeholders' human rights.[184]

3.2.2. The initial attempts: From Sullivan Principles to the OECD Guidelines on Multinational Enterprises

The literature review shows that the responsibility of individuals to respect human rights was already included in the Universal Declaration of Human Rights.[185] According to which "*every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their*

[181] United States Court of Appeals for the 7th Circuit, *Fischer v Magyar Államvasutak Zrt* 777 F 3d 847 (7th Cir 2015).

[182] Comity-based abstention is a legal doctrine in which a Court decides to refrain from exercising its jurisdiction over a case out of respect for the legal proceedings or judgments of another sovereign entity. The doctrine is based on the recognition that different nations have their own legal systems and regulations and promotes mutual respect between jurisdictions. In practice, comity-based abstention works as a procedural obstacle, since the Court might decide not to hear the case if there is an appropriate forum available in another country, which is better suited at resolving the dispute. We understand that the comity-based abstention would challenge the access to remedy for victims of BHR abuses, especially because the Courts that dismiss the complaints should affirm whether the national legal system that they seem to respect, is indeed effective and appropriate. Examples of comity-based abstention are found in the case-law of the US Federal Courts, including the Supreme Court of the United States, *Hartford Fire Insurance Co v California*, 509 US 764 (1993); Supreme Court of the United States, *Environmental Tectonics Corp International v Kirkpatrick & Co Inc* 493 US 400 (1990); Supreme Court of the United States, *Daimler AG v. Bauman,* 571 U.S. 117 (2014); Supreme Court of the United States, *Republic of Hungary et Ano v. Rosalie Simon et al. Republic of Hungary v Rosalie Simon* 592 US (2021). For a recent analysis see John Harland Giammatteo, 'The New Comity Abstention' (2023) 111 California Law Review 1705.

[183] Wettstein and Ramasastry, op.cit.[159],[163]; Aaronson and Higham, supra [173].

[184] Aaronson and Higham, supra [173]; Mark B. Taylor, Luc Zandvliet and Mitra Forouhar, 'Due Diligence for Human Rights: A Riske-Based Approach' (2009) 53 Corporate Social Responsibility Initiative Working Paper (Harvard University Press), available at: https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/workingpaper_53_taylor_etal.pdf (Access: 20/4/2023).

[185] General Assembly Resolution 217 A, Universal Declaration of Human Rights (10 December 1948) UN Doc A/810 71.

jurisdiction."[186] However, this responsibility was not considered to be the starting point that stimulated the emergence of BHR.

As Muchlinski stresses, "*The reference to 'every organ of society' has been interpreted as including business organisations. However, (BHR) do not use this phrase and take a more functional approach seeing business actors as primarily economic organisations that can abuse human rights but which, as a result, require a different approach to their human rights accountability than states."*[187] Muchlinski continues that BHR emerged as a field of international law with a functional approach towards corporate externalities, especially in the human rights domain, as primary economic actors.[188] Such abuses were especially facilitated by the emergence of globalization in the 1980s.

Globalization, especially from the 1980s onward, led to a significant increase in global trade, investment, and the movement of people and capital across borders. This economic liberalization resulted in the expansion of markets and enhanced economic opportunities globally. However, it also created conditions where human rights abuses could flourish, due to the disparities between strong legal protections in developed countries and weaker regulations in developing countries. This disparity set the stage for poor working conditions, child labor, sweatshops and environmental degradation. For example, as Ruggie and Snidal highlight, many TNCs, in their quest to cost reduction and profit maximization, were found to engage in practices that violated workers' rights, exploited vulnerable populations and caused environmental harm.[189]

Notably, many scholars consider the first -unofficial-precursor of BHR to be a set of principles drafted in 1977 aimed at regulating the business conduct of US Enterprises in South Africa. Specifically, the 'Sullivan Principles', drafted by Reverend Leon Sullivan, a member of the Board of Directors of General Motors, sought to address racial segregation and apartheid in South Africa. He drafted the Sullivan Principles by encouraging companies to adhere to standards of non-discrimination and equitable

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[186] Ibid; Preamble
[187] Peter T. Muchlinski, *Advanced Introduction to Business and Human Rights* (Elgar Advanced Introductions, 2022).
[188] Ibid.
[189] John G. Ruggie, 'Global Governance and 'New Governance Theory': Lessons from Business and Human Rights' (2014) 20 Global Governance 1, 5-17; John G. Ruggie and Duncan Snidal, 'World Politics and Multinational Corporations: The Return of the State' (1986) 39(2) International Organization 343; Duncan Snidal, 'The Limits of Hegemonic Stability Theory' (1985) 39(4) International Organization 579; Duncan Snidal, 'Rational Choice and International Relations' in Walter Carlsnaes, Thomas Risse, and Beth A. Simmons (eds), *Handbook of International Relations* (Sage Publications, 2002).

treatment in their operations. The Sullivan Principles addressed not only the direct impact of business practices on human rights but also highlighted the broader role of Corporations in promoting social justice. This early advocacy for corporate accountability in human rights laid the foundation for subsequent developments in the CSR and BHR domains, as Ruggie[190] and Wettstein[191] acknowledge.

The Sullivan Principles consist of the following principles:

1. Non-segregation of the races in all eating, comfort and work facilities.
2. Equal and fair employment practices for all employees.
3. Equal pay for all employees doing equal or comparable work for the same period of time.
4. Initiation of and development of training programs that will prepare, in substantial numbers, blacks and other non-whites for supervisory, administrative, clerical and technical jobs.
5. Increasing the number of blacks and other non-whites in management and supervisory positions.
6. Improving the quality of life for blacks and other non-whites outside the work environment in such areas as housing, transportation, school, recreation, and health facilities.
7. Working to eliminate laws and customs that impede social, economic, and political justice.

The Preamble to the Sullivan Principles aimed to support economic, social and political justice by companies where they do business, promote human rights and encouragement of equal opportunity at all levels of employment, including racial and gender diversity on decision making committees and boards. It also focused on the training and assistance of disadvantaged workers for technical, supervisory and management opportunities and fostering greater tolerance and understanding among peoples to improve the quality of life for communities, workers and children with dignity and equality. The Sullivan Principles were publicly introduced with twelve initial signatories, including 3M, American Cyanamid, Burroughs, Caltex (Chevron Oil),

[190] Ruggie, supra [189].
[191] Florian Wettstein, *Business and Human Rights: Ethical, Legal and Managerial Perspectives* (Cambridge University Press, 2022); Molly Roth, 'Sullivan Principles' available at https://philadelphiaencyclopedia.org/essays/sullivan-principles/> (Access: 25/4/2023).

Citibank, Ford, General Motors, IBM, International Harvester, Mobil, Otis Elevator, and Union Carbide.[192]

Although the Sullivan Principles started as a social movement, they were codified into law through the Anti-Apartheid Act of 1986,[193] which prohibited US companies from engaging in segregationist practices globally.[194]

Meanwhile, as Hamdani and Ruffing highlight, there were growing concerns over the influence and operations of Transnational Corporations (TNCs) in developing countries. Notably, Salvador Allende, in his *"[…] plaintive (and prophetic) plea to the UN General Assembly"*[195] openly accused the International Telephone& Telegraph (ITT) conglomerate of actively provoking the civil war in Chile: *"[…] of trying to provoke a civil war in my country, the supreme state of disintegration for a country. This is what we call imperialist intervention"*.[196] These public accusations received growing attention in the Press[197] and the UN General Assembly highlighted the need to mitigate potential dangers posed by powerful TNCs operating in States with weak regulatory oversight.

The UN Resolution 3281 on the Economic Rights and Duties of States stressed that "Each State has the right to regulate and supervise the activities of transnational Corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational Corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, co-operate with

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[192] Roth, ibid.
[193] United States Congress, Senate, *Comprehensive Anti-Apartheid Act of 1986, S 2701, 99th Congress (1986)*. As we read, the legislation championed by Congressmen William H. Gray of Pennsylvania and Stephen J. Solarz of New York despite the veto of President Reagan; Roth, supra [195].
[194] John G. Ruggie, Just Business: Multinational Corporations and Human Rights (W.W. Norton & Company 2013); Peter Muchlinski, Multinational Enterprises and the Law (Oxford University Press, 2007); Michael K. Addo, Human Rights Standards and the Responsibility of Transnational Corporations (Kluwer Law International 1999); Olivier de Schutter, International Human Rights Law: Cases, Materials, Commentary (Cambridge University Press, 2019); Andrew Clapham, Human Rights Obligations of Non-State Actors (Oxford University Press, 2006)
[195] Andre Dao, 'The Good, The Bad, The Assemblage: ITT, IBM and Chile' Center of International Law-National University of Singapore, available at: < https://cil.nus.edu.sg/blogs/the-good-the-bad-the-assemblage-itt-ibm-and-chile/> (Accessed: 25 April 2024).
[196] Dao, ibid; United States Congress, Senate Committee on Foreign Relations (Subcommittee on Multinational Corporations), 'The International Telephone and Telegraph Company and Chile, 1970-1971', 43.
[197] See for instance the article 'The I.T.T. and Chile' published at The New York Times (26 March 1972), available at: < https://www.nytimes.com/1972/03/26/archives/the-itt-and-chile.html?smid=url-share> (Accessed: 25 April 2024).

other States in the exercise of the right set forth".[198] The UN finally established the UN Centre on Transnational Corporations (UNCTC) in 1975. The UNCTC started as a probationary attempt to regulate issues of sovereignty, global governance and corporate responsibility.[199] Its mission was to reflect and "*defuse the clash between corporates and states"*,[200] by demanding from TNCs to respect human rights and fundamental freedoms during their operations and promote equality. During its seventeen-year mandate,[201] the UNCTC focused on promoting transparency, accountability, and adherence to human rights standards globally.[202]

Moreover, as Ruggie and Nelson highlight, in 1976, just before the UN began negotiations on a Code of Conduct for Transnational Corporations, "*[…] which was abandoned some fifteen years later"*,[203] the OECD adopted a Ministerial Declaration on International Investment and Multinational Enterprises.[204] This Declaration was notable as the first multilateral instrument to introduce the principle of "*national treatment*" in the context of investment, ensuring that foreign-controlled Enterprises received treatment consistent with international law and no less favorable than that accorded to domestic Enterprises in similar situations.[205] To balance this principle with the responsibilities of TNCs, the Declaration included a set of Recommendations which formed the original OECD Guidelines for Multinational Enterprises.[206] Although OECD Member States[207] were required to jointly promote these Guidelines, the Recommendations themselves were non-binding.[208] Multinationals were advised to

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[198] UN General Assembly, 'Charter of Economic Rights and Duties of States' (12 December 1974) UN Doc A/RES/3281(XXIX); Article 2(b).
[199] Dao, supra [198]; Khalil Hamdani and Lorraine Ruffing, United Nations Centre on Transnational Corporations: Corporate Conduct and the Public Interest (Routledge, 2017).
[200] Hamdani and Ruffing, ibid.
[201] It ceased in 1992. Supra [40]-[43].
[202] Ibid.
[203] John G. Ruggie and Tamaryn Nelson, 'Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges' (2015) Harvard University 66 Working Paper of the Corporate Social Responsibility Initiative, available at: https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/workingpaper.66.oecd.pdf (Accessed: 25/4/2024).
[204] OECD, Declaration on International Investment and Multinational Enterprises (1976).
[205] Ibid; Articles II and V.
[206] Ruggie and Nelson, supra [203].
[207] For the evolution of the BHR movement see, Florian Wettstein, *Business and Human Rights: Ethical, Legal and Managerial Perspectives* (Cambridge University Press, 2022); Florian Wettstein, 'Silence as Complicity: Elements of a Corporate Duty to Speak Out against the Violation of Human Rights' (2012) 22 Business Ethics Quarterly 1, 37-61; Florian Wettstein, 'CSR ad the Debate on Business and Human Rights: Bridging the Great Divide' (2012) 22 Business Ethics Quarterly 739.
[208] On the voluntariness of codes of conduct and soft law see respectively; Owen E. Herrnstadt, 'Voluntary Corporate Codes of Conduct: What's Missing?' (2001) 16 The Labor Lawyer 3, 349-370; Ilias Bantekas, 'The Linkages Between Business and Human Rights and their Underlying Root Causes' (2021) 43 Human Rights Quarterly, 117-137.

comply with national laws, contribute positively to economic and social progress in their host countries, facilitate technology transfer, and avoid harming the environment. However, the Guidelines did not mention internationally recognized human rights,[209] apart from recognizing the freedom of association and the right to bargain collectively—as upheld in the International Labor Organization Conventions.[210]

Recognizing the lack of efficiency in the Guidelines, the OECD Members decided in 1984 the establishment of National Contact Points (NCPs) within each Government. NCPs were tasked with promoting the Guidelines and resolving the problems related to their monitoring. Soon after, a complaints mechanism, referred to by the OECD as ''specific instances'', was established. However, the mechanism was widely used by organized labor to address anti-union activities by Companies and by the early 1990s the system was significantly underutilized.[211] As a result, Corporations were not obliged to participate in the complaints procedure and even if an NCP agreed with a complaint, the only consequence was the issuance of a report.[212]

After the collapse of OECD negotiations on a Multilateral Agreement on Investment (MAI) in 1998, amid criticism that it overly favored investor rights over public interests,[213] the OECD revised the Guidelines in 2000. The revision maintained the voluntary corporate compliance, but the OECD-based Multinationals should follow the Guidelines wherever they operated, not just within OECD countries. Moreover, Enterprises were advised to respect human rights in line with the host government's obligations and commitments—meaning in accordance with any international human rights treaties that the host government might or might not have ratified.[214] The 2000 revision was considered a success compared to the previous Guidelines: It included provisions on eliminating forced and child labor,[215] underscoring the need for better

[209] Ruggie and Nelson, supra [203].
[210] International Labour Organization, Freedom of Association and Protection of the Right to Organize Convention (No 87) (adopted 9 July 1948, entered into force 4 July 1950) 68 UNTS 17; International Labour Organization, Right to Organize and Collective Bargaining Convention (No 98) (adopted 1 July 1949, entered into force 18 July 1951) 96 UNTS 257.
[211] Ruggie and Nelson, supra [206]; Jill Murray, 'A New Phase in the Regulation of Multinational Enterprises: The Role of the OECD' (2001) 30 Industrial Law Journal 3, 255-270.
[212] Ibid.
[213] Ruggie and Nelson, supra [206].
[214] The OECD Guidelines for Multinational Enterprises, 2000 Revision; Article II.2 "Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, Enterprises should: [...] 2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.".
[215] Ibid; Article IV; See also the Commentary, paras 21,22 and 28.

corporate environmental management,[216] respecting minimum consumer protection standards[217] and abstaining from anti-competitive conduct.[218] Among the most innovative measures were the encouragement of disclosure of information about corporate conduct and finances and the adherence of non-Member States to the Guidelines. In fact, these measures resulted in better monitoring procedure, with the NCP system receiving more complaints by labor unions and NGOs compared to the first years of their establishment.

3.2.3. The second attempts: The UN replies in the pre-UNGPs era (The 1990 Draft Code, the UN Global Compact and the Draft Norms)

As mentioned previously, in response to concerns about the involvement of the ITT in the Chilean coup, ECOSOC established a Group of Eminent Persons in 1973 to examine the impact of TNCs on economic development and international relations.[219] The Group opted for a gradual approach towards the regulation of the corporate conduct of TNCs, starting with a code of conduct that would lead to a treaty. They advised ECOSOC to create institutions to address TNC-related issues. This resulted in the establishment of the UN Commission on Transnational Corporations (composed of government representatives) and the UN Centre on Transnational Corporations (serving as the Commission's secretariat) in 1974.[220] The Centre was tasked with developing a normative framework for TNCs, conducting research, and advising developing countries on how to ensure fair competition with TNCs.

In parallel, the Commission on TNCs created an Intergovernmental Working Group on the Code of Conduct, which drafted the first version of the Code in 1983 containing seventy-one provisions. The final version was completed in 1990. Given the substantial similarities between the two versions, we will cite the provisions of the 1990 Draft. The 1990 Draft Code applied to all TNCs, regardless of ownership structure, and importantly, stressed that both Transnational and domestic Corporations should meet the same standards of conduct where relevant.[221] Notably, the 1990 Draft Code stressed

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[216] Ibid; Articles III and V.
[217] Ibid; Article VII.
[218] Ibid; Article IX.
[219] 'The UN and Transnational Corporations' (Briefing Note 17, July 2009), available at: www.unhistory.org/briefing/17TNCs.pdf; Surya Deva, 'The UN Guiding Principles on Business and Human Rights and its Predecessors: Progress at a Snail's Pace?' in Ilias Bantekas and Michael Ashley Stein (Eds.) *The Cambridge Companion to Business and Human Rights Law* (Cambridge University Press, 2021).
[220] Deva, supra [219].
[221] UN Economic and Social Council, 'Draft Code of Conduct on Transnational Corporations' (12 June 1990) UN Doc E/1990/94; Article 1 para 4.

that TNCs must respect all human rights and fundamental freedoms where they operate, resolving any ambiguities about the acknowledgement of these rights in international law or domestic law:

"*Transnational Corporations shall respect human rights and fundamental freedoms in the countries in which they operate. In their social and industrial relations, transnational Corporations shall not discriminate on the basis of race, colour, sex, religion, language, social, national and ethnic origin or political or other opinion. Transnational Corporations shall conform to government policies designed to extend equality of opportunity and treatment."* (Article 13)

The 1990 Draft Code included important steps towards the BHR implementation, by regulating the impact of Enterprises on society, the environment and addressing transparency concerns. Specifically,, the 1990 Draft Code explicitly addressed the prohibition of TNCs from supporting or perpetuating the apartheid (paragraph 15),[222] engaging in corruption (paragraph 20),[223] while including detailed provisions on the environmental[224] and consumer protection[225] and disclosure of information about the Company's ownership, structure and operation.[226] Furthermore, it reinforced labor rights and working conditions by applying the provisions of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.[227]

Despite these advances, the 1990 Code faced criticism due to persistent disagreements between developing and developed States particularly regarding the national treatment

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[222] Ibid; "Transnational Corporations shall not support or sustain apartheid or any other form of racial segregation or discrimination. They shall not take any actions that would contribute to the maintenance or enforcement of such regimes".
[223] Ibid; "Transnational Corporations shall abstain from indulging in corrupt practices, including bribery, kickbacks, and other forms of corruption. They shall adopt and enforce policies to ensure compliance with anti-corruption laws and to prevent corrupt practices in their operations."
[224] Ibid; "37. Transnational Corporations shall conduct their operations in a manner that protects the environment and promotes sustainable development. They shall take measures to prevent environmental damage, ensure the efficient use of natural resources, and manage waste and emissions responsibly. Additionally, transnational Corporations shall comply with national environmental laws and regulations, and seek to adopt practices that exceed these requirements where feasible."
[225] Ibid; "38. Transnational Corporations shall provide adequate and accurate information to consumers about the goods and services they offer. They shall ensure that their products are safe and meet applicable health and safety standards. Companies should also engage in fair marketing and advertising practices, avoid misleading or deceptive claims, and provide clear and truthful information about their products."
[226] Ibid; "Transnational Corporations shall disclose information concerning their activities, including financial and non-financial information. This disclosure should cover details on the corporation's structure, ownership, accounting policies, and the average number of employees. Such information should be provided in accordance with national laws and international standards to ensure transparency and accountability."
[227] International Labour Organization, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (16 November 1977).

of TNCs and the resolution of disputes between TNCs and Host States. Deva points out that the 1990 provisions seemed to prioritize the rights of TNCs in developed countries over the responsibilities of TNCs.[228] Consequently, we notice that such prioritization was an oxymoron to the necessity behind regulating business conduct and power asymmetries between powerful Corporations and weaker States.

Another point of contention was whether the Code should be voluntary or binding. Developing countries opted for a legally binding international instrument, while developed countries advocated for a voluntary Code.[229] The debate mirrored the dichotomy between market-driven development against government-regulated development.[230] As Sahlgren stressed,[231] for the socialist countries, the presence of TNCs in their territories was seen as a '*poisonous flower*': Countries with their own TNCs insisted that these Enterprises be exempt from the Code, as they were already subject to direct government controls. Moreover, some developing countries, while generally supporting a binding Code, also sought to attract foreign investments, complicating their stance on the Code's bindingness.

This shift towards investor-protection, which initially was approached cautiously, ultimately weakened the progress made.[232] Consequently, the Code's collapse was formalized by ECOSOC in 1993 due to ambiguities over its bindingness and difficulties in treating TNCs as privately owned firms.[233]

The second instrument in the pre-UNGPs era was the adoption of the Global Compact. The regulatory gap on corporate conduct between 1993 and 2000 was bridged by the application of the OECD Guidelines and the ILO Conventions. On January 31, 1999, the UN Secretary General Kofi Annan introduced at the World Economic Forum the Global

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[228] Deva, supra [219]; Karl P. Sauvant, 'The Negotiations of the United Nations Code of Conduct on Transnational Corporations: Experience and Lessons Learned' (2015) 16 Journal of World Investment and Trade, 11-87.
[229] Deva, op.cit; T.H. Moran, 'The United Nations and Transnational Corporations: A Review and a Perspective' (2009) 18 Transnational Corporations, 91-112; Michèle Rioux, 'Multinational Corporations in Transnational Networks: Theoretical and Regulatory Challenges in Historical Perspective' (2014) 4 Open Journal of Political Science 3, 109-117.
[230] Deva, ibid.
[231] Kalus A. Sahlgren, 'Scenes from my UN Journey' in Martti Ahtissari (Ed.) *Finns in the United Nations* (Finnish UN Association, 1996); Sauvant, op.cit. [72].
[232] Deva, supra [63]; "[…] the focus of bilateral investment agreements shifting from investor responsibility to investor protection (in the early 1990s) contributed to the demise of the 1990 Draft Code".
[233] Ibid; Sauvant, supra [228].

Compact initiative.[234] Officially launched in 2000, the Global Compact sought to promote a meaningful collaboration between Enterprises and the UN to reshape the global market in a common, 'human' way. Consisting of ten principles that reflect the Universal Declaration of Human Rights,[235] the ILO's Declaration on Fundamental Principles and Rights at Work,[236] the Rio Declaration on Environment and Development[237] and the UN Convention against Corruption,[238] its main areas of interest are human rights (Principles 1-2),[239] labour (Principles 3-6),[240] environmental protection (Principles 7-9)[241] and anti-corruption (Principle 10).[242]

The admission to the Compact requests the submission of application from a company's highest-level executive[243] to the UN Secretary General, declaring the compliance with the Compact's Principles and the SDGs. Applicants submit their annual Communication on Progress (COP).[244]

Nolan critiqued the effectiveness of the Global Compact by emphasizing the inherent lack of its bindingness and the UN's relevant advocacy:

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[234] UN Global Compact, 'The Ten Principles of the UN Global Compact' (2000), available at: < https://unglobalcompact.org/what-is-gc/mission/principles> (Accessed: 25/4/2023).
[235] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)).
[236] ILO Declaration on Fundamental Principles and Rights at Work (adopted 18 June 1998) 37 ILM 1233.
[237] Rio Declaration on Environment and Development (adopted 14 June 1992) UN Doc A/CONF.151/26
[238] United Nations Convention Against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41.
[239] "Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and Principle 2: make sure that they are not complicit in human rights abuses."
[240] "Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; Principle 4: the elimination of all forms of forced and compulsory labour; Principle 5: the effective abolition of child labour; and Principle 6: the elimination of discrimination in respect of employment and occupation."
[241] "Principle 7: Businesses should support a precautionary approach to environmental challenges; Principle 8: undertake initiatives to promote greater environmental responsibility; and Principle 9: encourage the development and diffusion of environmentally friendly technologies."
[242] "Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery."
[243] As we see on the information of the UN website, the application process varies based on the applicants' activities. The applicants are divided in Business Applicants (meaning companies, Corporations or partnerships with at least 250 full-time direct employees and/or state-owned companies) and Non-Business Applicants (including academic institutions, business associations, cities and municipalities, civil society organizations, foundations, labor organizations, public sector organizations and CSR organizations). More information at: https://www.un.org/Depts/ptd/about-us/un-global-compact#:~:text=Step%202-,Prepare%20a%20Letter%20of%20Commitment%20addressed%20to%20the%20UN%20Secretary,a%20biennial%20submission%20of%20a (Accessed: 25 April 2023).
[244]In contrary, the Non-Business Applicants should declare their commitment to implement the Ten Principles of the Global Compact, participate in the activities of the Initiative where feasible and submit biennial submissions of a Communication of Engagement (COE); Ibid.

"[…] the Global Compact does not claim to be another code of conduct, rather the UN views itself as providing a framework and forum for the development of a global learning network where businesses can come together with other stakeholders to discuss how they can improve corporate adherence to the human rights, labour, environmental and anti-corruption principles […] Business participation in the voluntary initiative is triggered simply by a letter sent from a company to the UN Secretary General advising support for the ten broadly framed principles and an ongoing commitment to publicly provide a description of the ways in which the company is supporting the Global Compact and its ten principles. While the Compact carries a significant degree of authority and weight given the UN's international and intergovernmental character' business adherence to the principles is completely voluntary and it does not attempt to impose any legally binding commitments on its participants. […] the United Nations seems eager to ensure that the Compact is not interpreted as anything more than a highly public effort to support a form of global corporate citizenship and relies on companies to implement its ten principles based on concepts of enlightened self-interest, public accountability and transparency."[245]

Since 2011 the Global Compact has increasingly focused on the SDGs. However, this has led to a tick-box approach, where companies are categorized into 'active' and 'advanced' based on their progress in integrating the Principles and the SDGs. Failure to submit a COP can result in a company being downgraded to 'non-communicating' or expelled from the Compact, with public listings on the Company's website. This approach has led to criticism that the Global Compact operates more a certification scheme, rather than a true governance mechanism for global challenges: It is a non-binding, yet "*highly public effort*"[246] that explicitly "*does not police or enforce the behavior or actions of companies. Rather, it is designed to stimulate change and to promote corporate sustainability and encourage innovative solutions and partnerships.*"[247]

Several concerns cast doubt on the effectiveness of the Compact in driving substantial change for human rights and sustainability. To begin with, the Compact has clarified that it focuses on promoting dialogue and partnerships instead of regulating business behavior. However, this contradicts with the regulatory features that it occasionally

[245] Justine Nolan, 'The United Nations' Compact with Business: Hindering or Helping the Protection of Human Rights?' (2005) 24 University of Queensland Law Journal 2, 445-469.
[246] Ibid.
[247] More information at: <https://unglobalcompact.org/about/faq> (Accessed: 23/4/2023).

adopts. For instance, in 2017 the Compact excluded tobacco companies and weapon industries, claiming that they conflict with the broader UN goals on public health and safety.[248] The alignment with the UN exclusionary criteria, namely the WHO Framework Convention on Tobacco Control,[249] seemed an inconsistently drastic approach given its voluntariness. Nevertheless, this exclusion from the initiative did not extend to companies that pose direct risks to public health and the environment, e.g. fossil fuels or chemical companies.

In addition, other concerns pertain transparency and suppliers' adherence to the ten Principles. Our research found no information on how the Compact addresses complaints regarding a company's failure to uphold the Principles, or how suppliers are bound by the signatory companies to respect the Initiative. The Compact's policy is restricted to provide guidance with its 'Decent Work Toolkit for Sustainable Development', the 'Guide to Traceability' and the 'Practical Guide for Continuous Improvement'.[250] This, in our opinion, contradicts the very purpose of the Compact's establishment: Promoting responsible business conduct in a shared and human rights oriented approach, following the failure of the 1990 Draft Code.

We conclude this Section on the pre-UNGPs era with the Draft UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights.[251] Developed by the UN Working Group on the Working Methods and Activities of TNCs between 1999 and 2003, the Draft Norms provided a detailed outline of corporate responsibilities related to human rights, offering guidelines for their enforcement. Officially endorsed by the Sub-Commission on the Promotion and Protection of Human Rights in 2003, the Draft Norms referred to foundational documents to establish the positive obligations of companies, such as the UN Charter, the Universal Declaration of Human Rights (UDHR), and other international treaties.[252]

It remains unclear whether the Norms were expanding on existing international human rights law or restating it in response to previous regulatory failures. In our view, this

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[248] 'UN Global Compact exits tobacco companies' (12 September 2017), available at: https://www.uicc.org/news/un-global-compact-exits-tobacco-companies (Accessed: 23/4/2023).
[249] World Health Organization Framework Convention on Tobacco Control (adopted 21 May 2003, entered into force 27 February 2005) 2302 UNTS 166.
[250] https://unglobalcompact.org/what-is-gc/our-work/supply-chain (Accessed: 23/4/2023).
[251] 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.
[252] Ibid; Preamble, para 3.

approach effectively underscored the importance of human rights responsibilities, especially those within the International Bill of Human Rights,[253] as generating positive obligations rather than merely negative ones. Moreover, the Norms broadened their scope, extending beyond TNCs to cover other business Enterprises whose activities had transnational implications or involved security issues. In fact, nearly all provisions began with the phrase "*Transnational Corporations and other business Enterprises shall".* This, based on the Definitions of the Norms entails that:

"20. The term "transnational corporation" refers to an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries-whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.

21. The phrase "other business enterprise" includes any business entity, regardless of the international or domestic nature of its activities, including a transnational corporation; the corporate, partnership, or other legal form used to establish the business entity; and the nature of the ownership of the entity. These Norms shall be presumed to apply, as a matter of practice, if the business enterprise has any relation with a transnational corporation, the impact of its activities is not entirely local, or the activities involve violations of the right to security indicated in paragraphs 3 and 4."[254]

The Draft Norms had several advantages over the 1990 Draft Code and the Global Compact. First, the Norms covered human rights,[255] labor rights, [256] environmental resilience[257] and consumer protection.[258] Most importantly, their implementation was independent of corporate consent and structure (TNCs and other business Enterprises), imposing positive and negative obligations for the complete promotion of human rights in international and national legal orders. As Deva and Clapham have noted, this feature alongside the recognition that voluntary initiatives were insufficient and the

[253] Consisting of the Universal Declaration of Human Rights and the two Covenants (ICESCR and ICCPR) and its two optional Protocols. For a thorough analysis see Ian Brownlie and Guy S. Goodwill-Gill (Eds.) *Basic Documents on Human Rights* (Oxford University Press, 2006); Rhona K.M. Smith, *International Human Rights Law* (Oxford University Press, 2022).
[254] Paras 20-21.
[255] Ibid; "E. Respect for national sovereignty and human rights", paras 10-12.
[256] Ibid; "D. Rights of Workers", paras 5.9.
[257] Ibid; "G. Obligations with regard to environmental protection", para 14.
[258] Ibid; "F. Obligations with regard to consumer protection", para 13.

establishment of transparent monitoring and remediation mechanisms, show that the Draft Norms exceeded the potential of other regulatory attempts.[259]

However, despite breaking new ground in defining and implementing corporate human rights obligations, the Draft UN Norms also had operational limitations. Enterprises and the Commission on Human Rights were perceiving the Norms as legally unbinding.[260] The Commission on Human Rights requested the Secretary-General to appoint a Special Representative on human rights and TNCs and other business Enterprises, with the mandate:

"(a) To identify and clarify standards of corporate responsibility and accountability for transnational Corporations and other business Enterprises with regard to human rights;
(b) To elaborate on the role of States in effectively regulating and adjudicating the role of transnational Corporations and other business Enterprises with regard to human rights, including through international cooperation;
(c) To research and clarify the implications for transnational Corporations and other business Enterprises of concepts such as "complicity" and "sphere of influence";
(d) To develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational Corporations and other business Enterprises;
(e) To compile a compendium of best practices of States and transnational Corporations and other business Enterprises;"[261]

In addition, another fundamental flaw of the Draft Norms was the absence of providing clear guidance on how Corporations could implement their conventional obligations. Moreover, scholars note that the 'non-voluntary, yet non-binding' nature of the Norms, created challenges for a coherent implementation strategy.[262]

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[259] Deva, supra [219]; Surya Deva, *Beyond the Corporate Responsibility to Respect?* (Cambridge University Press, 2013); Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, 2006); Peter Muchlinski, *Multinational Enterprises and the Law* (Oxford University Press, 2007).
[260] Ibid.
[261] Commission on Human Rights, 'Report on the Sixty-First Session (14 March–22 April 2005): Draft Resolution and Draft Decisions Recommended for Adoption by the Economic and Social Council, and the Resolutions and Decisions Adopted by the Commission at its Sixty-First Session' (14 March–22 April 2005) UN Doc E/CN.4/2005/L.10/Add.17.
[262] Supra [259].

3.3. The UNGPs: Reflections on the principle of bona fides

The failure of the previous attempts to establish an effective regulatory system for responsible business behavior led to the appointment of Professor John G. Ruggie as the UN Secretary General's Special Representative for Human Rights, TNCs and other business entities. During his mandate from 2008 to 2011, he broadened the scope of the UN Framework by cooperating with other UN and international bodies and incorporating a wider range of stakeholders. This collaborative approach culminated in the unanimous endorsement of the UNGPs by the Human Rights Council: a significant achievement, especially considering that it was accomplished without prior governmental negotiations. Following their adoption, the UNGPs influenced other key frameworks, such as the OECD Guidelines and other codes of business conduct, which incorporated human rights provisions in alignment with the Guiding Principles.

The UNGPs, introduced in 2011, represent the first universally accepted global framework for BHR, structured around the Tripartite 'Protect-Respect-Remedy' Pillars.[263] If we were to summarize the pre-UNGPs era with a title, it could be framed as 'Rights vs Responsibilities'. By contrast, the UNGPs era could be characterized as 'Social, or Multistakeholder Expectations vs Legal Responsibilities'. John Ruggie underscored that corporate responsibility reflects the legal, social and moral expectations imposed on companies.[264] We believe that among the many reasons that the previous attempts failed was their focus on the binary relationship 'States vs Corporations'. In our perspective, the previous efforts failed not only due to the lack of clarity concerning the voluntary or mandatory nature of responsibilities of Corporations, but most importantly because they adopted this strict binary approach.

By contrast, Ruggie managed to mark the UNGPs with a 'multistakeholder' touch, which went beyond simply targeting various groups. He fostered a collaborative engagement between public and private actors.[265] This common ground was achieved through what he termed 'principled pragmatism'.[266] Ruggie's principled pragmatism refers to the balanced approach towards upholding human rights with the pragmatic need to render the framework feasible for both governments and businesses. This, according to his

[263] UN Human Rights Council, '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.
[264] John Ruggie, Just Business: Multinational Corporations and Human Rights (W.W. Norton & Company, 2013).
[265] Ibid.
[266] Ibid.

view, could be mainly achieved by considering the different interests of the stakeholders -as included in the Human Rights Due Diligence concept-[267] and by rendering the UNGPs normative yet non-binding, achieved in an incremental progress.[268]

Briefly, the 31 UNGPs rely on three (3) Pillars: Protect, Respect and Remedy, each of them addressing to a specific 'recipient', meaning States (Pillar I), Enterprises (Pillar II) and those affected by BHR abuses (Pillar III). The Guiding Principles refer to already existing international legal obligations, without limiting any legal obligations otherwise imposed upon States.[269] Moreover, the UNGPs apply in their totality to all States and Businesses, regardless of size, location, sector, ownership and structure and are meant to be read "*individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights*".[270]

3.3.1. Unveiling the 'Protect' Dimension (Pillar I)

The 1st Pillar (UNGPs 1-10) emphasizes that States have the fundamental and primary duty to protect individuals against human rights abuses by third Parties, including business. This duty arises from the general principles of international law, which obliges States to ensure that human rights are promoted and respected within their territory and jurisdiction. A combined analysis of UNGPs 1-10 results in the following conclusions:

First, the 'Protect' axis focuses on the States' positive duty to protect human rights. Instead of merely refraining from harms, States should take fundamental actions to prevent, investigate, punish and redress BHR abuses. Undoubtedly this demands the creation of a clear, adequate regulatory environment already in place that encourages business to respect human rights (UNGP 2), extended also to trade agreements, investment policies and public procurement (UNGPs 3 and 6).

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[267] John G. Ruggie, Caroline Rees and Rachel Davis, 'Making 'Stakeholder Capitalism' Work: Contributions From Business& Human Rights' (2020) (Harvard Kennedy School, Corporate) Working Paper No.76; John G. Ruggie, 'The Construction of the UN "Protect, Respect and Remedy" Framework for Business and Rights: The True Confessions of a Principled Pragmatist' (2011) 2 European Human Rights Law Review 127-133; Ludovica Chiussi-Curzi, *General Principles for Business and Human Rights in International Law* (Brill Nijhoff, 2020).
[268] Ibid.
[269] Barnali Choudhury, 'The UN Guiding Principles on Business and Human Rights and Principles for Responsible Contracts: An Introduction' in Barnali Choudhury, *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023).
[270] Supra [267].

However, as Crawford notices, the term 'responsibility' refers to the "*[…] acts which are unlawful under international law".*[271] In parallel, according to the International Law Commission's 2001 Articles, a State's responsibility for private actors' conduct applies only if the actor exercised governmental authority, acted under state control, or the state adopted the conduct as its own.[272] Chiussi-Curzi adds that "[…] *Although [State responsibility] its core elements have been adapted to accommodate breaches of law by international organizations of an intergovernmental nature, the international legal responsibility regime is not necessarily well suited to cover human rights violations committed by Corporations."*[273] Consequently, she adds, corporate violations become a matter of international State responsibility when: "*[…] a) the entity concerned is in fact acting upon instructions by a State, or under its control or direction in carrying out the particular conduct at issue; b) the Corporation is empowered under the State party's legislation to exercise elements of governmental authority or if the circumstances call for such exercise of governmental functions in the absence or default of the official authorities; c) if the State party acknowledges and adopts the conduct as its own; d) if, despite not having caused the violation, the State is in breach of its obligation to protect human rights against violations from third parties."*[274]

We notice that States may breach international human rights obligations when abuses by private actors can be attributed to them. While States are generally required to prevent and address abuses by third-party businesses, direct attribution of corporate abuse to the State activates obligations to respect human rights. However, distinguishing between State duties to respect and protect can be complex for two reasons:

i. First, because direct attribution and third-party responsibility depend on the interaction between the State and non-State actors. Therefore, it seems easier to trace responsibility through negligence or failure to regulate private industries. For instance, the European Court of Human Rights clarified in *Fadeyeva v*

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[271] James Crawford, *State Responsibility: The General Part* (Cambridge University Press, 2013); Carlos López, 'The Ruggie Process': From Legal Obligations to Corporate Social Responsibility?' in Surya Deva and David Bilchitz (Eds.) *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press, 2013); Chiussi-Curzi, supra [270].
[272] International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001) Yearbook of the International Law Commission, vol II, Part Two; Responsibility of States for Internationally Wrongful Acts, UNGA Res 56/83 (28 January 2002) UN Doc A/RES/56/83.
[273] Chiussi-Curzi, op.cit. [270].
[274] Ibid.

Russia,[275] concerning environmental pollution by a private company, that even when States do not own, nor control a Corporation, there is no direct State interference with the human right at risk. Nevertheless, what establishes State's responsibility is the failure to regulate private industries.

ii. Second, because attributing direct State responsibility in case of TNCs gets harder, particularly due to their global operations, which often obscure the link between corporate actions and state involvement. In fact, the complexity of tracing supply-chain relations, the varied legal frameworks across jurisdictions, the decentralized corporate governance or the use of subsidiaries further complicate the clear attribution of responsibility to a particular State. The last case grasps our attention, not only because it bears a difficulty of proving in procedural terms, but mostly because it allows us to connect it better with the UNGP 1.

More specifically, UNGP 1 asserts that "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business Enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.". The Commentary to the Principle clarifies that States are not per se responsible for human rights violations by private actors, however, they can be found guilty of violating their human rights obligations when they fail to take appropriate measures for the prevention, investigation, punishment and remediation of the private actors' abuse.

Even if States have under the general principles of Public International Law the sovereignty and discretionary power of shaping their policies, considering specific circumstances and public interest,[276] they should however consider the full range of permissible preventative and remedial measures.[277] However, what is considered

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[275] *Fadeyeva v Russia*, App no 55723/00 (ECHR, 9 June 2005); See also Lopez Ostra v Spain (1995) 20 EHRR 277, 55; *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* [2024] ECHR 304; In which, the ECHR held that Switzerland violated its obligations under the ECHR by failing to take adequate measures to combat climate change. The applicants, a group of elderly Swiss women, claimed that the state's insufficient climate action endangered their health and lives, invoking Article 2 and Article 8. The Court found that States have the duty to take concrete steps to protect their individuals from the foreseeable effects of climate change.

[276] James Crawford, *Brownlie's Principles of Public International Law* (Oxford University Press, 2019).

[277] Verein KlimaSeniorinnen, supra [275]; UN Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (16 June 2011) UN Doc A/HRC/17/31, Commentary on Principles [1]; Claire Methven O'Brien, 'Guiding Principle 2: Expecting Business to Protect Human Rights' in Barnali Choudhury (Ed.) The UN Guiding Principles on Business and Human Rights: A Commentary (Edward Elgar Publishing, 2023).

permissible or reasonable and appropriate depends on the specific context. As O'Brien notices, effectively deterring third-party abuses may require various measures that exceed legislative authorities and rather focus on workplace matters, e.g. data protection, workplace surveillance, discrimination, bullying, harassment.[278] While such preventive measures fall within the scope of Guiding Principles 1-3, the distinctive contribution of Guiding Principle 2 may be in the explicit requirement that these measures include clear language on the corporate responsibility to respect human rights.[279]

As Augenstein observes, States have both substantial and procedural tasks in shaping their BHR policies.[280] Substantially speaking, the prevention of BHR abuses includes the obligation to license, set up and monitor business activities that could pose risks to human rights. In overseeing these conducts, States must provide crucial information to affected stakeholders and the public about potential human rights risks linked with corporate actions. For example, in evaluating compliance with these duties, the European Court of Human Rights evaluates the awareness of affected stakeholders about such risks, as a criterion of effective supervision.[281] Procedurally, this entails the obligation to guarantee an informed decision-making process that includes public participation, public investigations and consultation with affected individuals and groups about the human rights or environmental impact assessments.[282]

In our view, Pillar I reflects the principle of bona fides. The principle of bona fides is integral to the expectations surrounding the UNGPs particularly regarding the State's duty to protect human rights. Under traditional international law, the principle of good faith demands that States act with integrity, fairness, and honesty in carrying out their -conventional or inherent- obligations.[283] We claim that this principle is directly applicable to the UNGPs, as citizens inherently assume that their State is not only

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[278] O'Brien, supra [277].
[279] Ibid.
[280] Daniel Augenstein, 'Guiding Principle 1: Scope of Obligations' in Barnali Choudhury (Ed.) *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023).
[281] Ibid; Taskin v Turkey (2006) 42 European Human Rights Reports 50 [118]; Öneryildiz v Turkey (2005) 41 European Human Rights Report 20 [71].
[282] Augenstein, op.cit. [280].
[283] The principle of good faith has been particularly important in the evolution of treaty law. Prominent examples of international jurisprudence include the *Gabčíkovo-Nagymaros* case (*Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (Judgment) [1997] ICJ Rep 7); the *Temple of Preah Vihear* (*Case concerning the Temple of Preah Vihear (Cambodia v Thailand)* (Merits) [1962] ICJ Rep 6) and Pulp Mills on the River Uruguay (*Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14); See Ian Brownlie, *Principles of International Law* (Oxford University Press, 2008); Robert Kolb, *Good Faith in International Law* (Hart Publishing, 2017).

already ‘equipped’ with transparent and functional regulatory systems, but mostly that in case of BHR abuses by private actors, their State will undertake all the necessary measures to remediate them. Therefore, we argue that the UNGPs' First Pillar is built on this trust and the ethical and legal responsibilities embedded in the UNGPs underpin the assumption that States will diligently fulfil their role in ensuring that businesses respect human rights.

3.3.2. The ‘Respect’ Dimension (Pillar II): Human Rights Due Diligence and Salience

Moving our analysis to the Second Pillar (UNGPs 11-24), we underscore that the ‘Respect’ Pillar outlines the corporate responsibility to respect human rights. Consisting of 14 Guiding Principles, the fundamental notion of this Pillar is the Human Rights Due Diligence (UNGP 17).

Bridging Pillar I with II, the UN Committee on Economic, Social, and Cultural Rights asserts that the State’s obligation to prevent corporate human rights abuse involves implementing a legal framework that requires businesses to conduct Human Rights Due Diligence.[284] This means identifying, preventing, and mitigating the risks of violations, ensuring rights are not abused, and accounting for negative impacts caused by their operations and those of controlled entities. The Committee also views this obligation as having extraterritorial implications, expecting Corporations within the State’s jurisdiction to address human rights abuses by their subsidiaries and partners, regardless of their location. Similarly, the Inter-American Court of Human Rights, in its Advisory Opinion on Human Rights and the Environment, has affirmed that State obligations to prevent human rights abuses by non-State actors extend to protecting victims outside the State’s territory.[285]

Stemming from the Roman principle *bonus pater familias*, the principle of Due Diligence in Public International Law is associated with legal obligations and reasonable expectations. It encapsulates what is “reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an

[284] UN Committee on Economic, Social, and Cultural Rights, General Comment No. 24 (2017) UN Doc E/C.12/GC/24, para 10, 16.
[285] Inter-American Court of Human Rights, Advisory Opinion OC-23/17 (15 November 2017) para 42, 60.

obligation".[286] Due Diligence belongs to the broader concept of international states responsibility, concerning all the necessary measures that should be taken or omitted for the prevention or treatment of specific harms. However, as Chiussi-Curzi emphasizes, Due Diligence is inherently connected with state liability for unlawful acts, by describing the obligation to prevent transboundary harms.[287] Undoubtedly the contribution of this principle to BHR law is pivotal , especially for the prevention of human rights abuses and environmental harms,[288] constituting therefore "*[…]the backbone of the state duty to protect human rights, contributing to ease the public/private interplay[…]*"[289].

Although UNGP 17 does not explicitly define HRDD, the OHCHR's definition adapts to the BHR purposes: "*[…] comprises an ongoing management process that a reasonable and prudent enterprise needs to undertake, in the light of its circumstances , including sector, operating context, size and similar factors, to meet its responsibility to respect human rights*".[290] This definition consists both of corporate elements and human rights conceptions. As the SRSG stressed, the term of HRDD is a "*[…] comprehensive, proactive attempt to uncover human rights risks, actual and potential, over the entire life cycle of a project or business activity, within the aim of avoiding and mitigating those risks".*[291]

Consequently, Corporate HRDD serves as a key connector between business management broader social dimensions, such as human rights and moral responsibilities. By embedding HRDD into corporate processes, Corporations are not only managing risks to their operations, but also addressing the impact of their activities on human rights. This, in our opinion, demonstrates practically a counterbalance

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[286] Ludovica Chiussi-Curzi, *General Principles for Business and Human Rights in International Law* (Brill Nijhoff, 2020) and the references cited therein, pp. 240-250; 243. See also ICJ, United States Diplomatic and Consular Staff in Tehran (US v Iran) [1980] ICJ Rep 3, para 63.
[287] Chiussi-Curzi, ibid; 243.
[288] Ibid; See for instance, ICJ, Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] Rep 226, para 29; Pulp Mills on the River Uruguay (Argentina v Uruguay) [2010] ICJ Rep 14; Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua) and Construction of Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica) [2015] ICJ Rep 665, para 104.
[289] Chiussi-Curzi, supra [286].
[290] Ibid; See also OHCHR, 'The Corporate Responsibility to Respect Human Rights: An Interpretive Guide' (2012) UN Doc HR/PUB/12/02, 6.
[291] UN HRC, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie, Business and Human Rights: Towards Operationalizing the 'Protect, Respect and Remedy' Framework (2009) UN Doc A/HRC/11/13, para 71; Robert McCorquodale and Cristina Blanco-Vizarreta, 'Guiding Principle 17: Human Rights Due Diligence' in Barnali Choudhury (Ed.) *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023).

between profit orientation and human rights respect. Moreover, we believe that HRDD reflects Ruggie's principled pragmatism[292] because HRDD can act as a tool to facilitate consensus among different stakeholders.[293] Ruggie recognized the complexities and competing interests inherent in the global business environment, and his concept of HRDD is designed to facilitate collaboration and consensus among diverse stakeholders, including businesses, governments, civil society, and affected communities. HRDD, as envisioned in the UNGPs provides a pragmatic tool that allows for flexibility and adaptation across different industries and geographies while maintaining core human rights principles.[294] By prioritizing consensus-building, HRDD allows businesses to address social issues without being forced into rigid compliance models, thus encouraging broader participation and reducing resistance from stakeholders with divergent interests.

Moreover, Pillar II sets the minimum human rights standards for Corporations (UNGP 12). Those include the International Bill of Rights -comprising the Universal Declaration of Human Rights alongside the two International Covenants of 1966- and the ILO Declaration on Fundamental Principles and Rights at Work. UNGP 12 also references the 'principles concerning fundamental rights' detailed in the ILO Declaration on Fundamental Principles and Rights at Work (1998), which defines universal labor rights applicable to all ILO members, irrespective of their ratification of specific ILO treaties.

According to the Commentary on Guiding Principle 12, businesses may need to uphold additional rights in certain contexts, such as compliance with International Humanitarian Law when operating in a conflict zone. Moreover, specific groups, such as persons with disabilities, may require particular consideration, necessitating adherence to rights specified in the Convention on the Rights of Persons with Disabilities.

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[292] Chiussi-Curzi, supra [289]; Jonathan Bonnitcha and Robert McCorquodale, 'The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights' (2017) 28 Business and Human Rights Journal 899-919; OECD, 'Due Diligence Guidance for Responsible Business Conduct' (2018); Olga Martin-Ortega, 'Human Rights Due Diligence for Corporations: From Voluntary Standards to Hard Law at Last?' (2014) 32 Netherlands Quarterly of Human Rights 44-74.

[293] After the failure of the UN Draft Norms, Ruggie's main goal was the enhancement of pragmatism, described as "[…] an unflinching commitment to the principle of strengthening the promotion and protection of human rights as it relates to business, coupled with a pragmatic attachment to what works best in creating change where it matters most- in the daily lives of people[…]"; UN Commission on Human Rights, 'Interim Report', paras 56-69.

[294] Mark B. Taylor, 'Human Rights Due Diligence and the UN Guiding Principles on Business and Human Rights: An Analysis' (2014) 14 Human Rights Law Review 1, 47-74; Surya Deva, *Regulating Corporate Human Rights Violations: Humanizing Business* (Routledge, 2012).

Notably, Pillar II operates independently of the State's capacity or willingness to fulfill its own human rights obligations, and it does not reduce those obligations. Therefore, we notice that Pillar II is applicable regardless of Pillar I and stands above mere compliance with national human rights laws and regulations.[295]

However, it remains unclear whether the norms identified in UNGP 12 apply irrespective of a State's international obligations, focusing instead on the State's capacity and willingness to meet those obligations.[296] This raises questions about the responsibility of businesses operating in countries that have not ratified the ICCPR, such as China, or the ICESCR, such as the USA.[297] Therefore, we wonder for instance whether a business operating in the USA has a duty to respect the ICESCR rights. To answer this question, we base our argument on UNGP 12, which requires businesses to consider a broad spectrum of human rights.[298]

Acknowledging that certain human rights are more vulnerable in specific industries or context, businesses should be highly focused. As Joseph highlight, this concept, known as salience, emphasizes that businesses should prioritize human rights risks that pose the most severe threats in terms of scale, scope, and remediability during their Due Diligence processes.[299] For instance, Nestlé has identified ten key human rights issues in its operations, six of them concerning labor practices, while the remaining four concern safe water and sanitation, land acquisition, data protection and privacy, and the right to food and nutritious diets.

Despite this, the Commentary notes that the relevance of various human rights issues may shift over time, and therefore, all human rights should be periodically reviewed.[300] Joseph uses the example of Nestlé's baby milk formula scandal in the 1970s, which receives extensive analysis in Chapter 5. As we will see in Chapter 5, although Nestlé reports incidents of non-compliance with the WHO Code, it has chosen not to categorize

[295] United Nations Human Rights Council, '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; Commentary [12].
[296] Sarah Joseph, 'Guiding Principle 12: Minimum Human Rights Standards for Pillar II' in Barnali Choudhury (Ed.) *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023).
[297] Ibid.
[298] Ibid.
[299] Ibid; Ibid.
[300] Ibid; Ibid.

the right to health of consumers and the rights of infants—central to the baby milk formula controversy—as 'salient' issues for its business.[301]

Furthermore, another important issue highlighted in Pillar II concerns the corporate engagement in HRDD across all operations, exceeding to the entire value chain. UNGP 17(a) stresses that the corporate responsibility of upholding with HRDD concerns not only a company's own operational impact, but also the impacts directly linked to its operations, products or services from its business relationships. Unfortunately, research has shown that many companies apply HRDD only to the first tier of the supply chain – that is, to those entities with whom the company in question has direct contractual relationships.[302] The Working Group on Business and Human Rights considers this an apparent gap in current supply chain management and emphasises the need for going beyond the first tier.[303]

However, we clarify two issues: First, limiting HRDD to the first tier of a supply chain could exclude small companies, and potentially contribute to BHR abuses. In fact, as McCorquodale and Vizaretta highlight, this could intensify power imbalances in value chains, allowing larger companies to outsource labor-intensive tasks. Therefore, we share their view that voluntary standards such as codes of conduct, should be legally binding through contractual obligations, ensuring accountability across the supply chain.[304] This measure. as extended in Section 3.5, is already included in the EU Directive on Corporate Sustainability Due Diligence, covering first-tier suppliers, but also contractors and other business partners, regardless of their tier.

The second issue that we would like to point out concerns the 'tick-box' approach towards HRDD and legal liability. Our analysis leads to the conclusion that the requirement of HRDD should not be automatically perceived as legal liability. Legal liability continues to be widely defined by domestic legislation. However, businesses that thoroughly uphold HRDD can use it to show they took reasonable steps to avoid human rights abuses, potentially serving as a defence against legal claims or mitigating their responsibility.[305] That said, Companies should not assume that HRDD will always

[301] Ibid.
[302] McCorquodale and Vizaretta, op.cit.[291].
[303] Ibid; UN HRC, Report of the Working Group on the Issue of Human Rights and Transnational Corporation and Other Business Enterprises, Corporate Human Rights Due Diligence (2018) UN Doc A/73/163, para 48.
[304] Supra [302].
[305] Ibid.

protect them or absolve them from liability for causing or contributing to BHR abuses.[306] The OHCHR highlights that for HRDD to be a valid defense, it must be meaningful and fair to victims, not just a superficial compliance exercise.[307] This authentic HRDD conformity, bridges in our opinion, the 'Respect' with the 'Remedy' Pillars.

3.3.3. Access to Remedy (Pillar III): A connector between States' duties and corporate responsibility (UNGPs 25-31)

The Third Pillar embodies the rationale behind regulating corporate conduct: Providing access to remedy for victims of BHR abuses. Pillar III clarifies that effective access to remedy for individuals and communities is an equal mission for States and Enterprises. States are required to provide effective judicial and non-judicial remedies, while businesses are encouraged to establish or participate in grievance mechanisms. The key principles promote accountability, transparency, and fairness in addressing human rights violations through legal or alternative dispute resolution processes.

At first glance, Guiding Principle 25 appears to place a clear States' obligation on providing effective remedies. The language used in UNGP 25 resembles with the duty imposed on UNGP 1 "States must" protect against human rights abuses.[308] However, a combined analysis of UNGPs 29 and 30 leads us to the conclusion that it is not solely a state obligation, since it highlights the role of non-state mechanisms, by stressing the beneficial role of grievance mechanisms by businesses at the operational level.

Although the term "must" applies to States, businesses are expected to contribute to non-state mechanisms. In our opinion, this ambiguity surrounding the exact obligations of businesses, reflects Ruggie's argument on the social or moral expectations from Corporations and represents a broader bona fides reasoning. When Enterprises have a direct or indirect impact on human rights, they should provide grievance mechanisms.

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[306] Ibid.

[307] UN HRC, Report of the United Nations High Commissioner for Human Rights Improving Accountability and Access to Remedy for Victims of Business-related Human Rights Abuse: The Relevance of Human Rights Due Diligence to Determinations of Corporate Liability (2008) UN Doc A/HRC/38/20/Add.2, paras 25-29.

[308] Dalia Palombo, 'Guiding Principle 25: Access to Remedy-Foundational Principle' in Barnali Choudhury (Ed.) *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023).

This, reflects a broader corporate responsibility to prevent, mitigate and remediate abuses within their value chains.[309]

Moreover, UNGP 25 underscores the importance for both States and Enterprises to provide a broad range of effective remedies to those affected by business-related human rights abuses. This includes not only judicial mechanisms, but also non-judicial and operational-level grievance mechanisms.[310] As known in international law, States have both negative obligations (to avoid rights violations) and positive obligations (to protect victims from abuses by private parties). However, although International Human Rights law requires remedies, uncertainties persist about how remedies should be structured and whether they must include judicial avenues for individual complaints or administrative processes to meet effectiveness criteria.[311]

An example of non-judicial grievance remedies is Multi-stakeholder initiatives (MSIs) including various shareholders and stakeholders. However, MSIs are often criticized for their failure to ensure effective remedies due to the intense power asymmetries between Corporations and the other Parties involved.[312] An illustrative example of MSI's failure in addressing BHR abuses is the Roundtable on Sustainable Palm Oil (RSPO), which is criticized about its lack of transparency and efficiency, thereby enlarging the power imbalances between TNCs, States with weak institutions and affected communities.[313]

We notice two weaknesses in the Third Pillar, particularly in the UNGP 25: First, although UNGP 25 offers States the flexibility of choosing judicial, administrative, or soft-law solutions, we wonder whether such flexibility can lead to gaps in justice for victims of corporate human rights abuses. In this regard, Palombo stresses that counterbalancing State and corporate responsibilities with both hard and soft law remedies, is crucial to closing these gaps.[314] A second concern is the extraterritoriality. UNGP 25 refers to abuses that occur within the State's territory and/or jurisdiction. Consequently, a crucial issue that emerges concerns the authority of courts to adjudicate

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[309] Ibid.
[310] Ibid; Human Rights Watch, 'Access to Effective Remedy: The UN Guiding Principles and Emerging Challenges' (2015); John Sherman III, 'Beyond CSR: The Story of the UN Guiding principles on Business and Human Rights; (2020) 71 Working Paper (Harvard Kennedy School, Corporate Responsibility Initiative); Radu Mares, *The UN Guiding Principles on Business and Human Rights: A Commentary* (Oxford University Press, 2019).
[311] Palombo, supra [308].
[312] Ibid.
[313] Philip C Schlegel, Sustainability Standards and Certification in Palm Oil: The Case of the RSPO (Routledge, 2016).
[314] Palombo, supra [308].

cases on BHR abuses that happen abroad but have repercussions within the State's authority. This question is particularly important in the context of supply chains and TNCs.

Regarding the second question, we have found that the UN Treaty Bodies have established that home States must provide effective remedies for victims in host States affected by businesses based in their territory.[315] This approach is widely endorsed by the Inter-American Court of Human Rights.[316] Regarding the European Court of Human Rights, we have not found any decision on extraterritorial business-related human rights abuses.

Bridging Pillar I with Pillar III, 'Access to Remedy' requires States to provide effective remedies for severe human rights violations (UNGP 26). In addition to private law remedies, criminal justice is crucial for protecting the affected ones by BHR abuses.[317] Especially in jurisdictions where criminal liability for legal entities is not recognized, States should ensure that functionally equivalent laws are established. A step beyond corporate accountability for BHR abuses requires the adoption of appropriate dissuasive sanctions, for domestic or transnational violations.[318]

To accomplish this, States should ensure their domestic criminal law addresses the most severe business-related human rights violations, including those that are considered international crimes. For instance, States should ensure that legal entities and individuals can be held accountable; HRDD is legally enforceable and companies' acts or omissions are evaluated by their HRDD measures; sanctions are proportionate to the severity of the impact and corporate liability is evaluated based on the quality of corporate management and a company's acts or omissions.[319]

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[315] Ibid; Committee on the Rights of Child, 'General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights' (17 April 2013) UN Doc CRC/C/GC/16; CESCR (n 14).
[316] Palombo, supra [308]; The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-American Court of Human Rights (15 November 2017); Rantsev v Cyprus and Russia [2010] ECHR 25965/04.
[317] Penelope Simons, 'Guiding Principle 26: Domestic Judicial Mechanisms' in Barnali Choudhury (Ed.) *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023).
[318] See also, Marco Fasciglione, Impresa e diritti umani nel diritto internazionale: Teoria e prassi (Giappichelli, 2024).
[319] Simons, supra [317]; John Ruggie, *The UN Guiding Principles on Business and Human Rights: A Commentary* (Oxford University Press, 2019).

Table 1. Comparative outline of the most illustrative BHR scandals and their relation with the Pre-UNGPs and UNGPs

Year	BHR case	Summary	Relation with BHR framework	Case law
1984	Bhopal Disaster (India)	Chemical accident in which 45 tons of gas methyl isocyanate escaped from a plant owned by a subsidiary of the US-based Union Carbide Corporation	Preceded the 1990 Draft Code: Highlighted gaps in corporate accountability in developing countries.	(Civil and criminal cases in India) Union Carbide Corp. v Union of India (1989)[320]
1990s	Shell (Nigeria)	Shell was accused of complicity in BHR abuses	During the drafting of the 1990 Draft Code: Underscoring the need for clearer regulation of TNCs	Kiobel v Royal Dutch Petroleum Co. (2013) US Supreme Court case on Alien Tort Statute (dismissed due to lack of jurisdiction)[321]
1990s	Nike Sweatshops	Child labor, unfair wages and poor working conditions in Nike's supply chains	Raised concerns about supply chain responsibility, influenced discussions on corporate obligations under the 1990 Draft Code	Kasky v Nike (2002) California Supreme Court (addressed corporate free speech and labor rights)[322]
1998	ExxonMobil (Indonesia)	Complicity in BHR abuses by security forces guarding its facilities	Occurred around the time discussions about stronger frameworks, when the 2003 Draft Norms were getting attention	Doe v ExxonMobil Corp. (ongoing since 2011 in US Courts under the Alien Tort Statute)[323]

[320] *Union Carbide Corp. v Union of India (1989)* Supreme Court of India, (1991) 4 SCC 584.
[321] Kiobel v Royal Dutch Petroleum Co. 569 US 108 (2013).
[322] *Kasky v Nike, Inc.* 45 P.3d 243 (Cal. 2002).
[323] *Doe v ExxonMobil Corp*. 654 F.3d 11 (D.C. Cir. 2011).

1999	Unocal (Myanmar)	Forced labor in the construction of a pipeline	Influenced the 2003 Draft Norms	Doe v Unocal (2000, 2005 settled with compensation to the victims)[324]
2001	Trafigura Toxic Waste Dumping (Ivory Coast)	A ship chartered by Trafigura dumped toxic waste, causing widespread illness and deaths.	Occurred shortly after the adoption of the 2003 Draft Norms	Trafigura Beheer BV v Stichting Union des Victimes des Déchets de Côte d'Ivoire (UK settlement in 2009)[325] Public Prosecutor v Trafigura Beheer BV[326] (Dutch Courts convicted Trafigura for illegal waste exportation)
2010	Apple and Foxconn (China)	Poor working conditions, physical and mental exhaustion of workers, suicides.	Triggered the discussion of the UNGPs.	N/A
2010	BP Deepwater Horizon Oil Spill (USA)	Explosion on BP's oil rig caused the largest marine oil spill in history, resulting in immeasurable environmental and human rights impacts.	Occurred just before the release of the UNGPs.	In re: Oil Spill by the Oil Rig Deepwater Horizon[327] (2010) with BP paying over $ 20 billion in settlements.
1990s-2010s	Chevron (Ecuadorian Amazon)	Texaco's oil operations in the Amazon since the 1960s caused environmental damages.	Pollution occurred in the 1960s, but litigation occurred after the UNGPs, scoring the limits	Aguinda v Texaco Inc (1993); [328] Chevron Corp. V Donziger (2011);[329] Chevron was claiming fraud in the Ecuadorian

[324] *Doe v Unocal Corp*. 395 F.3d 932 (9th Cir. 2002), settlement reached in 2005.

[325] Trafigura Beheer BV v Stichting Union des Victimes des Déchets de Côte d'Ivoire [2009] EWHC 682 (QB) (UK settlement case).

[326] Public Prosecutor v Trafigura Beheer BV (Amsterdam District Court, 2010).

[327] *In re: Oil Spill by the Oil Rig Deepwater Horizon* (2010) MDL No. 2179 (US District Court for the Eastern District of Louisiana).

[328] *Aguinda v Texaco*, Inc. 142 F Supp 2d 534 (SDNY 2001).

[329] *Chevron Corp. v Donziger* 974 F Supp 2d 362 (SDNY 2014).

		Despite ongoing litigation, Texaco refused to pay damages, sparking global debates on corporate accountability.	of extraterritorial access to remedy.	proceedings, initiated multiple actions across jurisdictions, including the US.[330]
2011	Royal Dutch Shell (Niger Delta)	Environmental degradation and human rights abuses due to oil spills and pollution in the Niger Delta. The Ogoni population suffered health and livelihood impacts.	Post-UNGPs, emphasizing the ongoing relevance of corporate responsibility with access to remedy.	Kiobel v Royal Dutch Petroleum Co; Wiwa v Royal Dutch Petroleum Co. (dismissed by the US Supreme Court due to lack of jurisdiction)[331]
2013	Rana Plaza (Bangladesh)	Unsafe working conditions in global supply chains accompanied with a building collapse resulted in the death of over 1.100 workers.	Occurred after the introduction of the UNGPs, emphasizing the corporate responsibility of respecting human rights across supply chains.	Rahima Begum v Loblaw Companies Ltd (2015);[332] Bangladesh High Court Division State v Sohel Rana (2017)[333]
2015	Volkswagen Emissions (Globally)	VW was found to have deliberately cheated emissions tests, leading to severe environmental	Post-UNGPs, highlighting the need for corporate transparency and stronger regulations.	In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation.[334] Total Settlement $ 17 Billion

[330] *Chevron Corp. v Ecuador* (2018) PCA Case No. 2009-23 (Permanent Court of Arbitration, Hague).
[331] *Milieudefensie et al. v Royal Dutch Shell Plc* (2021) C/09/571932 / HA ZA 19-379 (District Court of The Hague).

[332] *Rahima Begum v. Loblaw Companies Ltd* (2015) ONSC 1672 (Ontario Superior Court of Justice) (Canada).
[333] Bangladesh High Court Division, *State v Sohel Rana* (2017).
[334] In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation (MDL 2672) (US District Court, Northern District of California).

		and health impacts.		
2020 & 2024	Shell Climate Change (Netherlands)	Dutch Courts ordered Shell to cut its global carbon emissions by 45% by 2030, holding the company accountable for climate change.	Post-UNGPs, showing how the Tripartite Pillars can pave a new way in corporate responsibility.	Milieudefensie et al v Royal Dutch Shell (2021):[335] Royal Dutch Shell was ordered to reduce its global emissions by 45% by 2030, in alignment with the Paris Climate Agreement. (2024): There is no specific obligation for the 45% reduction
2022-Present	'Forever Chemicals' (USA)	US Attorneys General have started lawsuits against 3M, Chevron, Chemours and other Corporations for the damage and risks they have caused to public health and the environment with the construction or disposal of PFAS chemicals.	Post-UNGPs and pending the Draft Treaty: Underscores the importance of judicial protection provided by public authorities	Pending lawsuits across several US Courts aim at restoring the environmental and public health harms occurred. (Extended analysis in Chapter 5)

[335] *Milieudefensie et al. v Royal Dutch Shell Plc* (2021) C/09/571932 / HA ZA 19-379 (District Court of The Hague); *Milieudefensie et al v Royal Dutch Shell Plc* (2024) ECLI: NL:GHDHA:2024:2100.

3.4. Critique on the UNGPs and thoughts on the Draft Treaty on BHR

The UNGPs have been undoubtedly a landmark step in the BHR embedment. Comparing the pre-UNGPs instruments, meaning the 1990 Draft Code, the Global Compact and the UN Draft Norms, with the UNGPs we reach out these conclusions:

First, the pre-UNGPs instruments were equally focusing on the debate States vs Corporations. As Deva stresses, two fundamental questions in this pre-UNGPs phase marked the legal discussion: First, whether Corporations should also bear responsibilities rather than just rights and second, if so, whether such responsibilities should be mandatory or not, and before whom.[336] On the other hand, the UNGPs adopt a multistakeholder approach, focusing not only in the binary relationship between States and Corporations, but extending their focus on communities and especially the affected ones from corporate abuses.

In our view, this enlarged approach was intentionally adopted from John Ruggie to show that the UNGPs aim at counterbalancing the power asymmetries between States and Corporations. Power asymmetries were the fundamental reason behind the escalation of famous BHR cases, e.g. the Nike's sweatshops, the Bhopal Disaster, because States with weak regulations failed to regulate the conduct of powerful Corporations in their territory.

Moreover, we consider that the UNGPs are more successful than the previous attempts because they show in a coherent way the interactions between States, Enterprises and individuals. Enshrined in the Tripartite 'Protect-Respect-Remedy' Framework, the three Pillars show the gradual steps of interaction. Pillars I and II show how States and Enterprises should interact in terms of human rights protection, while Pillar III shows what should happen in case the previous interaction fails (access to effective remedy).

A crucial element concerning this tri-dimensional interaction is the concept of bona fides, extensively analyzed in Section 3.3. In our interpretation, the States' duty to protect human rights from corporate abuses is a contemporary reflection of the principle of bona fides. In this context, bona fides works in a bilateral way:

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[336] Surya Deva, 'The UN Guiding Principles on Business and Human Rights and its Predecessors: Progress at a Snail's Pace?' in Ilias Bantekas and Michael Ashley Stein (Eds.) *The Cambridge Companion to Business and Human Rights Law* (Cambridge University Press, 2021).

Corporations have the legal expectations towards the State in which they operate, that if their corporate conduct will infringe human rights, the domestic legal order will offer effective legal protection to the victims, consisting of sanctions and remediation mechanisms. On the other hand, individuals have the social expectation both from the States and the Corporations, depicted in the following two assumptions: First, their State is already 'equipped' with effective legal system that will protect them in case of BHR abuses (first degree assumption: bona fides from individuals towards public authorities). Second, that Corporations will respect their human rights because they have no reason not to, since otherwise they will be sanctioned (second degree assumption: bona fides from individuals towards Corporations enforced by the first assumption).

Moreover, we highlight that HRDD bridges the gap between Pillars I and II, since it works as an 'enactor' of already recognized human rights. The UNGPs do not impose new human rights obligations, but 'remind' States and Corporations to comply with the International Bill of Human Rights and the ILO Conventions as a minimum level of obligation. However, we recognize that some human rights are more at risk in particular industries or contexts, and therefore businesses need to direct their focus accordingly. As Joseph points out, this idea—referred to as salience—suggests that businesses should prioritize human rights risks that present the greatest threats in terms of scale, scope, and ability to remedy during their Due Diligence processes.[337]

However, what remains a great concern is the corporate compliance with BHR and the HRDD. Although the UNGPs should not be viewed as a goal to be achieved in the short term, but as an evolving process,[338] the vast majority of legal scholars are sceptical.

Legal scholars attribute the failure of corporate compliance with BHR to company law, which has been regarded as 'irrelevant to the societal impact of business' despite the great potential of company law in regulating company decision-making and in influencing transnational operations.[339] Sjåfjell argues that company law does not explicitly clarify the social purpose of the corporation and this has led the shareholder

[337] Supra [299].
[338] Barnali Choudhury, *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023); John Sherman III, 'Beyond CSR: The Story of the UN Guiding principles on Business and Human Rights; (2020) 71 Working Paper (Harvard Kennedy School, Corporate Responsibility.
[339] Beate Sjåfjell, 'How Company Law has Failed Human Rights and What to Do About It' (2020), University of Oslo Faculty of Law Legal Studies, Research Paper Series No. 2020-07, 3.

primacy social norm to become the dominant driver of the company's purpose. Smit also highlights that the main obstacle to the achievement of BHR and true sustainable business could be overcome by giving contractual force to codes of conduct or other voluntary standards to incorporate them as legally binding obligations.[340]

In June 2014, the HRC adopted a resolution[341] drafted by Ecuador and South Africa, concerning the implementation of an international legally binding 'instrument' on TNCs and other business Enterprises for the respect of human rights. This initiative reflects growing concerns about the inadequacies of existing frameworks and the need for a more enforceable global standard in business and human rights.[342] From 2017 until 2021, the Chair of the open-ended intergovernmental working group[343] issued three drafts, listing as main principles of the future Treaty, the universality, indivisibility of human rights, the State's primary duty to protect human rights against third parties and the recognition of human rights primacy over trade and investment agreements.

During the 9th Session of the open-ended intergovernmental working group (OEIGWG) on TNCs and other business Enterprises an update draft on the legally binding instrument served as a basis for negotiations, while in July 2024 the Human Rights Council adopted the Decision 56/116 to enhance the support capabilities of the OEIGWG.[344] From the text we understand that the "legally binding instrument" will be a Treaty, because States are referred to as "States Parties", while in the UNGPs they were simply referred to as "States". Among the provisions of the latest updated Draft, we find that:

- "adverse human rights impact" means a harm which corresponds to a reduction in or removal of a person's ability to enjoy an internationally recognized human right. Moreover, "human rights abuse" means any acts or omissions that take

[340] Lise Smit et al, 'Human Rights Due Diligence in Global Supply Chains: Evidence of Corporate Practices to Inform a Legal Standard' (2020)25 International Journal of Human Rights 945.
[341] Res. A/HRC/26/L.22/Rev.1 Elaboration of an international legally binding instrument on transnational Corporations and other business Enterprises with respect to human rights (26th Session) (25 June 2014).
[342] UN Human Rights Council, 'Report of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights' (2019) A/HRC/43/50.
[343] Chairmanship of the OEIGWG established by the HRC Res. A/HRC/RES/26/9, Elements for the draft legally binding instrument on transnational Corporations and other business Enterprises with respect to human rights (29/9/2017); '
[344] Human Rights Council, Decision adopted by the Human Rights Council on 11 July 2024: 56/116. Enhancing the support capabilities off the open-ended intergovernmental working group on transnational Corporations and other business Enterprises with respect to human rights, established by Human Rights Council Resolution 26/9 [12 July 2024] A/HRC/DEC/56/116.

place in connection with business activities and results in an adverse human rights impact (Article 1.2).[345] This definition is simpler yet broader compared to the one provided in the previous version, which defined human rights abuse as "any direct or indirect harm in the context of business activities, through acts or omissions, against any person or group of persons, that impedes the full enjoyment of internationally recognized human rights and fundamental freedoms, including the right to a safe, clean, healthy and sustainable environment" (Article 1.2).[346]

- its purpose is the broader implementation of BHR, by taking into consideration different measures across different needs and stakeholders.

  Namely, "[…] (a) To clarify and facilitate effective implementation of the obligation of States to respect, protect, fulfill and promote human rights in the context of business activities, particularly those of transnational character; (b) To clarify and ensure respect and fulfillment of the human rights responsibilities of business Enterprises; (c) To prevent the occurrence of human rights abuses in the context of business activities by effective mechanisms for monitoring, enforceability and accountability; (d) To ensure access to gender-responsive, child-sensitive and victim-centred justice and effective, adequate and timely remedy for victims of human rights abuses in the context of business activities; (e) To facilitate and strengthen mutual legal assistance and international cooperation to prevent and mitigate human rights abuses in the context of business activities, particularly those of transnational character, and provide access to justice and effective, adequate, and timely remedy for victims. (Article 2).

- It stresses extensively that it is a binding instrument, for States and Corporations, underlining that "This (Legally Binding Instrument) shall apply to all business activities, including business activities of a transnational character.

[345] Updated draft legally binding instrument (clean version) to regulate, in international human rights law, the activities of transnational Corporations and other business Enterprises, available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf> (Access: 20 August 2024).

[346] Human Rights Council, Forty-ninth session Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Text of the third revised draft of legally binding instrument with the textual proposals submitted by States during the seventh session of the open-ended intergovernmental working group on transnational Corporations and other business Enterprises with respect to human rights, A/HRC/49/65/Add.1 (28 February 2022).

Notwithstanding Article 3.1. above, when imposing prevention obligations on business Enterprises [...] States Parties may establish in their law, a non-discriminatory basis to differentiate how business Enterprises discharge these obligations commensurate with their size, sector, operational context or the severity of impacts on human rights. This (Legally Binding Instrument) shall cover all internationally recognized human rights and fundamental freedoms binding on the State Parties of this (Legally Binding Instrument)". (Article 3).[347] [348]

- "States Parties shall regulate effectively the activities of all business Enterprises within their territory, jurisdiction, or otherwise under their control, including transnational Corporations and other business Enterprises that undertake activities of a transnational character" (Article 6.1). Among the judicial, regulatory and other measures that States should adopt for the prevention of involvement of Enterprises in BHR abuses and for the achievement of HRDD ("c) ensure the practice of human rights Due Diligence by business Enterprises") we find that Article 6 promotes a multistakeholder approach in the implementation of relevant policies against BHR abuses. This multistakeholder approach was also included in the previous version.
- Moreover, Article 6 paras 3 and 4 clarify that the competent authorities to implement such measures should be transparent, independent, effective, and should include legally enforceable measures for Enterprises to undertake their HRDD responsibility.
- Furthermore, concerning liability, the latest version stresses that although States maintain their 'traditional' margin of appreciation in determining with their domestic legislation the features of criminal, administrative or civil liability

[347] Ibid.
[348] Ibid; ''Article 7. Access to Remedy: "Art. 7.1., States must enable victims´ access to adequate, timely and effective remedy and access to justice and to overcome the specific obstacles which women, vulnerable and marginalized people and groups face in accessing such mechanisms and remedies. States must also ensure that their domestic laws facilitate access to information; enable courts to allow proceedings in appropriate cases; and "enact or amend laws allowing judges to reverse the burden of proof in appropriate cases to fulfil the victims´ right to access to remedy where consistent with international law and its domestic constitutional law.
Art. 7.3., States must provide adequate and effective legal assistance to victims throughout the legal process, including by: (a) making information available and accessible to victims of their rights and the status of their claims, (b) guaranteeing the rights of victims to be heard in all stages of proceedings; (c) avoiding unnecessary costs or delays for bringing a claim; and (d) "removing legal obstacles including the doctrine of forum non conveniens to initiate proceedings in the courts of another State Party in appropriate cases of human rights abuses resulting from business activities of a transnational character.".

(Article 8 paras 1 and 2), the Draft highlights the importance of the principle of proportionality ([…] the type of liability established under this article shall be a) responsive to the needs of victims as regards remedy; and b) commensurate to the gravity of the human rights abuse"). The Draft also emphasizes that liability is established even in case of conspiring to BHR abuses and aiding, facilitating and counselling (Article 8 para 3).

- In terms of extraterritoriality, the Draft is very specific, requiring either a causal link (partial or complete) between the harm and the territory or jurisdiction of a State Party, or a nationality or domicile between Enterprises or victims and that State Party. (Article 9 para 1). However, we do not find any reference on the extraterritorial jurisdiction of States that are not Parties to this (future to be) binding Treaty, when a BHR takes place. Therefore, we could argue that extraterritoriality is promoted even in terms of international cooperation provided that the States involved are Parties to the Treaty. (Article 9 para 4).

In our view, the Draft Treaty highlights that it will be legally binding, a feature that was only evident in the Pillar I of the UNGPs, concerning the States' duty to protect human rights from corporate abuses. However, both the UNGPs and the Draft Treaty share two main commons: First, they equally clarify that the BHR agenda is neither feasible nor sustainable in a reclusive context,[349] which justifies the promotion of multistakeholder approach in terms of policy drafting, adaptation and remediation. Second, they are equally criticized for their time-gap. They were equally completed after almost ten years from the relevant UN Resolutions that introduced their adoption.

Despite being a time-consuming process, they equally faced lack of consensus as a major obstacle. The UNGPs were criticized for introducing a regulatory, yet not mandatory, corporate compliance. On the other hand, the Draft declares that it is legally binding, however it remains a Treaty, therefore depends corporate compliance with the BHR framework on State's adoption. Nevertheless, we have witnessed that even when such measures fail, domestic legal orders might implement proactive BHR policies. The

[349]See also John Gerard Ruggie, 'Hierarchy or Ecosystem? Regulating Human Rights Risks of Multinational Enterprises' in César Rodriguez-Garavito (Ed.) *Business and Human Rights: Beyond the End of the Beginning* (Cambridge University Press, 2017); Amol Mehra, 'Always in All Ways: Ensuring Business Respect for Human Rights' in César Rodriguez-Garavito (Ed.) *Business and Human Rights: Beyond the End of the Beginning* (Cambridge University Press, 2017).

French Law on the Duty of Vigilance[350] is a prominent example; it was implemented in 2017 amidst the UNGPs criticism.

3.5. From the Business and Human Rights analysis to Public-Private Partnerships (PPPs) and Multistakeholder Partnerships (MSPs)

3.5.1. Is the previous legal framework assisting or undermining their dynamic?

The previous description of the BHR framework enables us to continue our analysis on the interaction between public and private actors from two perspectives that initially seem contradictory, but eventually turn out complementary. The interaction of public and private entities especially in the so-called Public-Private Partnerships (PPPs) is better analysed through the disciplines of global governance, legitimacy and political philosophy. This paragraph will provide a concise description of how PPPs affect health, either as a fundamental right or as a common. As we will conclude, the interplay between States and Enterprises seems inevitable for the realization of the 2030 Agenda, because multi-stakeholder partnerships (MSPs) facilitate Sustainable Development through dissemination of knowledge, technology and financial resources.[351]

For instance, SDG 17 includes measures that could be enacted by MSPs and therefore promote the environmental, social and economic concerns of the 2030 Agenda the strengthening of domestic resource mobilization, international support to developing countries, mobilization of additional financial resources for developing countries from multiple sources and assisting developing countries in attaining their long-term debt sustainability. Moreover, SDG 17 focuses on the importance of adoption and implementation of investment promotion regimes for the least developed countries and the enhancement of international cooperation for science, technology and innovation. To bridge the equality gaps between developed and less-developed countries, SDG 17 emphasizes the dissemination and promotion of environmentally sound technologies to

[350] Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre [2017] JO 0074; Elsa Savourey and Stéphane Brabant, 'The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption' (2021) 6 Business and Human Rights Journal 1, 141-152.

[351] See Goal 17 of the 2030 SDG Agenda.
See:https://www.undp.org/sustainable-development-goals/partnerships-for-the-goals?gclid=CjwKCAjw1YCkBhAOEiwA5aN4AQRm0pwPVtLrpTBDzv2v9W557ABZgpiYvKm5l3llqrjNCMeNnT72exoCuacQAvD_BwE (Access: 25/4/2023).

developing countries on favorable terms, the promotion of a universal, open and non-discriminatory and equitable trading system under the WTO and the enhancement of global macroeconomic stability through policy coordination and coherence. Noteworthily, SDG 17 does not 'overstep' in terms of State's sovereignty, stressing that MSPs should respect each State's policy space and leadership for the implementation of policies for poverty eradication and Sustainable Development. These measures prove that the realization of Sustainable Development is a process to be evaluated in the long-term. Given that this task that seems extensively challenging for less-developed countries, a regulated, fair and transparent cooperation between Public and Private Partnerships seems promising for the delivery of the SDGs.

Public-Private Partnerships or Multistakeholder Partnerships have drawn a dividing line in theory. From our analysis we have seen two main perspectives, each of them highlighting significant issues of functionality and transparency. The first perspective views equally private and public actors as ''villains"; This approach starts its position by taking for granted in a generalized way that Enterprises' policies and activities are shaped in a profit-driven way. There are many examples of corporate conduct demonstrating how easy it is for private actors to be involved in human rights violations. Based on this perspective, Enterprises primarily ignore their societal impact[352] and prioritize the shareholders' primacy model. Consequently, for this perspective there is not enough space for making a social change. Furthermore, based on this perspective States are condemnable for failing, or for being unwilling to provide effectively social goods and services, for not monitoring substantially the impact of business' activities on the environment and society, as well as for not taking any necessary punitive or proactive measures to comply and harmonize with international legal standards etc.[353]

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[352] Markus Kaltenborn, Markus Krajewski and Heike Kuhn, *Sustainable Development Goals and Human Rights-Interdisciplinary Studies in Human Rights* (Springer, 2020); Denice Kamugumya and Jill Olivier, 'Health System's Barriers Hindering Implementation of Public-Private Partnership at the District Level: A Case Study of Partnership for Improved Reproductive and Child Health Services Provision in Tanzania' (2016) 16 BMC Health Services Research, 596; Auret van Heerdenn and Sabrina Bosson, 'Private Actors and Public Goods-A New Role for the Multinational Enterprises in the Global Supply Chain' (2009) 23 Dans Management& Avenir, 36-46.

[353] Jale Tosun, Sebastian Koos and Jennifer Shore, 'Co-governing Common Goods: Interaction Patterns of Private and Public Actors' (2016) 35 Policy and Society, 1-12; Frank G.A. de Bakker, Andreas Rasche and Stefano Ponte, 'Multi-Stakeholder Initiatives on Sustainability: A Cross-Disciplinary Review and Research Agenda for Business Ethics' (2019) 29 Business Ethics Quarterly 3, 343-383; Sarah Cummings, Anastasia-Alithia Seferiadis and Leah de Haan, 'Getting down to Business? Critical Discourse Analysis of Perspectives on the Private Sector in Sustainable Development' (2020) Sustainable Development 28, 759-771.

Therefore, we deduce that the concept of Due Diligence, consisting of the aforementioned actions, is majorly relevant to States' actions rather than Enterprises: Despite the profit maximization from Companies over the social value, States are viewed as responsible for failing to fulfil their primary duty of respect and promote human rights.

Particularly, the opponents of the interplay between States and Enterprises justify their opposition on notorious BHR scandals, which continue to be present in our times, e.g. disrespect of local communities, female exclusion etc.[354] Consequently, in their perspective, nothing good could arise from the combined action of two "villains"; Corporations and public authorities that equally do not live up to their normative or moral standards. Based on Cumming's emphasis, Public-private partnerships, or Multistakeholder partnerships that aim at realizing social objectives, function as 'Trojan horses', because they essentially weakening the influence of public sector and exacerbating social inequalities.[355]

This is facilitated generally in a binary way: the first strand points out States with feeble government capacity, while on the other hand we find powerful Enterprises intervening in States' policies as if they were substitutes. Especially developing countries are a lucrative environment for this kind of partnerships, because the private parties involved manage to impose trade asymmetries and provide superficial support in national development.[356] Moreover, because Corporations will prioritize their market benefits over public social values, they will manage to establish a ''win-win'' situation; Martens

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[354] Seth Donnelly, *The Lie of Global Prosperity: How Neoliberals Distort Data to Mask Poverty and Exploitation* (NYU Press, 2019); Joseph E. Stiglitz, Dean Baker and Arjun Jayadev, 'Intellectual Property for the Twenty-First-Century Economy' (2017) available at: https://www.project-syndicate.org/commentary/intellectual-property-21st-century-economy-by-joseph-e--stiglitz-et-al-2017-10 (Access: 2/6/2023);
Max Lawson et Al., 'Public good or private wealth? Universal health, education and other public services reduce the gap between rich and poor, and between women and men. Fairer taxation of the wealthiest can help pay for them' (2019) Oxfam International Policy Papers, available at: https://www.oxfam.org/en/research/public-good-or-private-wealth (Access: 2/6/2023);
Hannah Ellis-Petersen, 'How formula milk firms target mothers who can least afford it' (2018) available at: https://www.theguardian.com/lifeandstyle/2018/feb/27/formula-milk-companies-target-poor-mothers-breastfeeding (Access: 2/6/2023).

[355] For an in-depth analysis on the main critiques on the public-private partnerships; Sarah Cummings, Anastasia-Alithia Seferiadis and Leah de Haan, 'Getting down to Business? Critical Discourse Analysis of Perspectives on the Private Sector in Sustainable Development' (2020) Sustainable Development 28, 759-771.

[356] For a critique on the EU's policy in the former African, Caribbean and Pacific colonies, which resulted in trade asymmetries, see Mark Langan, 'ACP-EU Normative Concessions from Stabex to Private Sector Development: Why the European Union's Moralised Pursuit of a 'Deep' Trade Agenda is Nothing 'New' in ACP-EU Relations' (2009) 10 Perspectives on European Politics and Society 3, 416-440.

suggests that PPPs' focus should be the restoration of socio-political imbalances (weak states vs powerful Corporations) by *"weaken[ing] the grip of corporate power on people's lives"*.[357]

Diametrically opposite to the view that PPPs threaten States' sovereignty for the sake of market purposes, we find the proponents of PPPs. Their main argument revolves around the States' failure or unwillingness which majorly justify how the realization of sociopolitical changes, including the realization of the 2030 Agenda, would be jeopardized without PPPs.[358]

As we analyzed in Sections 3.2 and 3.3, if States implemented thoroughly their policies, there would be no need for the concepts of corporate responsibility or BHR to even emerge. The main arguments that are in favor of MSPs outline the benevolent role of business actors in national and international development.[359] Specifically, since Corporations are powerful economic entities, they should assist rather than substitute States in addressing tasks that traditionally belonged in the realm of public policies, e.g. education, health, social security. In fact, there are TNCs voluntarily involved in the co-governance or co-delivery of common goods and social services in order to attract more profits through their philanthropy profile.[360] Even if it falls outside of the scope of this Chapter to critique the underlying moral issues behind such conditional acts, we stress that these initiatives can increase the environmental, health and safety standards of local Enterprises on the host states of their activities and potentially contribute to the financial and social well-being of society. However, as analyzed in Chapter 4, they do not represent genuine aspects of CSR.

In our opinion, there is a golden ratio between the proponents and opponents of PPPs and MSPs. On the one hand, States have the duty to safeguard the human rights and broader well-being of their individuals; a duty that has received particular attention in the BHR context, widely connected with the principle of bona fides. On the other hand,

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[357] Jens Martens, 'The Role of Public and Private Actors and Means in Implementing the SDGs: Reclaiming the Public Policy Space for Sustainable Development and Human Rights' in Markus Kaltenborn, Markus Krajewski and Heike Kuhn (Eds.) *Sustainable Development Goals and Human Rights* (Springer, 2020).
[358] Ibid.
[359] Joachim H. Spangenberg, 'Hot Air or Comprehensive Progress? A Critical Assessment of the SDGs' (2017) 25 Sustainable Development 25, 311-321; Cummings et al., supra [365].
[360] supra [365].

Corporations are economic agents, whose impact is not restricted solely to economy, but also to society and the environment.

However, we underscore that PPPs can be effective, first, if States promote cohesive and harmonized policies and second, if all Parties involved coordinate their commercial and sustainability goals with their wider impact on communities. [361] This golden ratio can be achieved in our opinion by using frameworks that will mediate as commonly understood languages between public and private entities: BHR and CSR can epitomize in our view such coordination.

3.5.2. Converging 'different worlds' for the achievement of the common goal: BHR and CSR as features of Partnerships

The question that rationally emerges from the last argument is how would it be feasible to achieve the partnerships' social goals, if multiple stakeholders have different priorities? To answer this, the supporters of PPPs and Multistakeholder Partnerships in general, mainly rely on the disciplines of liberal-deliberative approach and political philosophy, by stressing inter alia the importance of CSR, Due Diligence, social inclusion and social entrepreneurship, as well as the role of precise contractual ex ante agreements.

It is suggested that there should be a control concerning the Corporations that are involved in PPPs or MSPs; namely Corporations that adopt socially and environmentally responsible business conduct are highly encouraged by the international community to be engaged in projects endorsed by PPPs or MSPs. This suggestion brings up the vital role of CSR, because as a concept of corporate governance it depicts the integration of social and environmental concerns in business' operations. This is strengthened by the perception that CSR is an extended, multistakeholder model of corporate governance: in this way, Sacconi stresses, the stakeholders' interests should be equally important and substantially integrated as a matter of corporate governance in the same way that shareholders' interests are.[362] While the concept of CSR is extensively analyzed in the following Chapter, we briefly outline that CSR is defined as "*umbrella term for all those debates that deal with the responsibilities of business and*

[361] Cummings, ibid.
[362] Lorenzo Sacconi, 'Corporate Social Responsibility and Corporate Governance' (2012) 38 EconomEtica.

its role in society, including subfields like business and society, business ethics, or stakeholder theory."[363]

Having analyzed the emergence of BHR as a response to severe human rights and environmental harms, we wonder why an agent would enact a morally good behavior, unless compelled by law. This fine outcome seems therefore supererogatory and resembles Kant's imperfect obligations,[364] i.e. acts that are morally required, but with a discretion on their content and way of their fulfillment. We have stressed the shortcomings in the BHR framework, which primarily concerned how to regulate, yet in a not regulatory way, corporate conduct. Even if CSR is a completely different framework, it is equally essential for counterbalancing corporate interests with society's values.

What should also be taken into consideration is that a successful interplay between public and private actors requires resilient legal orders at substantial and procedural levels and transparency. The combination of these two will enhance social inclusion and participation of affected communities and other stakeholders. On the one hand, social inclusion is a key feature of deliberative democracy, aiming at safeguarding that the voices of the parties involved/concerned are heard. The interplay between private and public actors should also involve other stakeholders, such as society and local communities, to make sure that their voices -as affected/concerned parties- are heard. We deduce that this need is intensified especially with development projects that seem to rely mostly on the agreements of the 'powerful players', i.e. States and Enterprises, leaving the local communities out of discussion, as the Vedanta case has shown.[365]

In our case, regarding health, PPPs or MSPs can increase innovation and sustainability, if the relevant partnerships have as primary goal the realization of their social aim; i.e. prioritization of health as a public good over corporate benefits. Therefore, partnerships that comply with BHR and CSR standards seem successful at improving and making accessible healthcare or reducing the corporate externalities on health and the

[363] Florian Wettstein, 'CSR and the Debate on Business and Human Rights: Bridging the Great Device' (2012) 22 Business Ethics Quarterly 4, 739-770; Kunal Basu and Guido Palazzo, 'Corporate Social Responsibility: A Process Model of Sensemaking' (2008) 33 Academy of Management Review 1, 122-136.
[364] Ibid; Mary J. Gregor, *Kant: The Metaphysics of Morals* (Cambridge University Press, 1996); Simon Hope, 'Perfect and Imperfect Duty: Unpacking Kant's Complex Distinction' (2022) 28 Kantian Review 1, 63-80.
[365] England and Whales Court of Appeal, Lungowe and Others v. Vedanta Resources Plc and Konkola Copper Mines Plc [2017] Civ1528 (13 October 2017); UKSC, Vedanta Resources PLC and another (Appellants) v Lungowe and Others (Respondents) [2019] UKSC 2017/0185 (10 April 2019).

environment. From our analysis we cite as examples of successful partnerships the BeWell European Multistakeholder Partnership,[366] the Planetary Health Alliance,[367] the Health Impact Project[368] and the WHO's Making Cities Resilient 2030.[369] The BeWell European MSP involves a range of entities, including governments, educational institutions, and industry stakeholders, focusing on the identification of workforce needs and skill-building and developing new health-related occupations. The Planetary Health Alliance emphasizes the interconnection between human health and the environment, promoting sustainable practices to improve global health outcomes. The Health Impact Project focuses on addressing health inequities by fostering collaboration between state agencies and community organizations, engaging multisector efforts to tackle social, economic, and environmental factors that contribute to poor health outcomes. The WHO's Making Cities Resilient 2030, led by the WHO and the UN Office for Disaster Risk Reduction (UNDRR), is designed to strengthen urban resilience against climate-related and other disasters. The project works with city governments, businesses, and communities to promote sustainable urban development that accounts for the health and well-being of residents.

Even if the BHR and CSR are different frameworks, they prioritize socially responsible business conduct, embracing the interests of various stakeholders. We argue that they can act as common languages facilitating the dynamic of partnerships. Elaborating on the strengths and weaknesses of CSR falls within the scope of Chapter 4, but we briefly argue that a first step towards rendering both frameworks effective, is to overcome their contextual weaknesses. This will in our opinion facilitate their convergence in providing an authentically social and sustainable behavior.

[366] https://bewell-project.eu/ (Access: 25/4/2023).
[367] https://www.planetaryhealthalliance.org/about-pha (Access:25/4/2023).
[368] https://www.pewtrusts.org/en/projects/archived-projects/health-impact-project (Access: 25/4/2023).
[369] https://mcr2030.undrr.org/ (Access:25/4/2023).

3.6. Conclusions

The Chapter described the legal framework that regulates the interplay between public and private actors. This interaction has been viewed either in a negative or in a positive way.

On the one hand, the interplay between States and Corporations reveals exacerbating power imbalances, which have resulted in many human rights abuses. **Section 3.1** described that the interaction between States and Corporations should be thoroughly regulated, due to the underlying power asymmetries and diverse interests. A typical example of power asymmetries concerns the activities of powerful Corporations in States with weak or almost non-existent regulatory frameworks. Power asymmetries become more complicated when powerful TNCs operate in such States and their corporate conduct results in severe human rights and environmental abuses. Exacerbated power asymmetries undermine States' sovereignty, while when corporate conduct is thoroughly regulated in a transparent and solid legal framework can contribute to the broader common good.

Sections 3.2 drew specific attention to the emergence of BHR showing its gradual evolution from the Nuremberg Trials which established the international responsibility of Corporations in human rights abuses, to the Sullivan Principles against apartheid-friendly policies and the first UN attempts. The latter, referred to as the pre-UNGPs instruments, were compared in terms of effectiveness. **Section 3.3** extensively highlighted that the UNGPs represent an extension of the principle of bona fides in a tripartite way, evident in all of the three Pillars. Namely, bona fides in Pillar I concerns the State's duty to protect their individuals' human rights by regulating business conduct. Bona fides in Pillar II concerns the corporate respect towards human rights, based on the assumption that in case of violation, Corporations will face severe consequences based on the strong domestic legal framework that protects the victims. Last, bona fides in Pillar III is based on the individuals' assumption that in case of corporate violations, the victims will receive effective judicial protection.

In **Section 3.4** we criticized the effectiveness of UNGPs compared to the provisions of the Draft Treaty on BHR. Being introduced in 2014, the Treaty, referred to as 'an internationally binding instrument', aims at overcoming the shortcomings of the UNGPs, i.e. the voluntariness. We highlighted that the Draft Treaty extensively highlights that it will be legally binding, a feature that was only evident in the Pillar I of

the UNGPs. However, both the UNGPs and the Draft Treaty share two main commons: They equally clarify that the BHR agenda is neither feasible nor sustainable in a reclusive context,[370] which justifies the promotion of multistakeholder approach in terms of policy drafting, adaptation and remediation. Second, they are equally criticized for their time-gap. They were equally completed after almost ten years from the relevant UN Resolutions that introduced their adoption.

Despite being a time-consuming process, the UNGPs and the Draft Treaty have equally faced lack of consensus as a major obstacle. The UNGPs were criticized for introducing a regulatory, yet not mandatory, corporate compliance. On the other hand, the Draft declares that it is legally binding, however it remains a Treaty, therefore depends corporate compliance with the BHR framework on State's adoption. Nevertheless, we have witnessed that even when such measures fail, domestic legal orders might implement proactive BHR policies. The French Law on the Duty of Vigilance is a prominent example; it was implemented in 2017 amidst the UNGPs criticism.

In our last **Section 3.5** we closed the 'circle' that we opened in the introduction of this Chapter, regarding the interplay between public and private entities. We described whether the aforementioned legal framework is effective for Public-Private Partnerships (PPPs) or Multistakeholder Partnerships (MSPs), whose role is crucial for the delivery of the 2030 Agenda (SDG 17). We criticized the major arguments for and against PPPs or MSPs, highlighting that it would be unnecessarily dogmatic to hold that PPPs or MSPs result only in human rights abuses or that threaten States' authority. MSPs are vital for the realization of the 2030 Agenda and the current legal framework on sustainability and BHR promotes partnerships as a powerful means to attain their specific social and environmental goals. States will continue having the primary duty to tackle inequalities, attain Sustainable Development, implement human rights and address any potential or actual violation but in a complementary way, alongside other stakeholders.

In conclusion, we underscored that MSPs can be effective when all Parties with different interests involved, use a 'common language' to facilitate their cooperation. In this

[370] John Gerard Ruggie, 'Hierarchy or Ecosystem? Regulating Human Rights Risks of Multinational Enterprises' in César Rodriguez-Garavito (Ed.) *Business and Human Rights: Beyond the End of the Beginning* (Cambridge University Press, 2017); Amol Mehra, 'Always in All Ways: Ensuring Business Respect for Human Rights' in César Rodriguez-Garavito (Ed.) *Business and Human Rights: Beyond the End of the Beginning* (Cambridge University Press, 2017).

regard, we argued that BHR and CSR can act as a common language, provided that their contextual weaknesses are overcome.

Chapter 4

"Applying the Corporate Social Responsibility to Health and Sustainability: An interdisciplinary perspective"

Keywords: Legal personality, Corporate Social Responsibility (CSR), Capability Approach (CA), environmental & health degradation

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Introduction

In the previous Chapter, we analyzed the interplay between public and private actors, describing how the legal personality of Corporations entails rights and responsibilities. Historically, States monopolized the protection of human rights, but the emergence of Transnational Corporations (TNCs) and their involvement in human rights abuses has reshaped this landscape, leading to the development of BHR. We highlighted the importance of Human Rights Due Diligence as a component of bona fides, setting the foundation for this Chapter, which focuses on the ethical principles underpinning corporate accountability for social and environmental impacts through CSR.

This Chapter shifts from BHR to CSR to provide an interdisciplinary perspective that transcends previous legal frameworks. For instance, while Stakeholder Theory emphasizes the importance of considering diverse stakeholder interests, CSR offers a more concrete and actionable framework for enhancing corporate social and environmental outcomes. Our main arguments include the assertion that CSR can strategically embed SDGs into corporate operations, enhancing resilience and adaptability to challenges. We explore the interconnections among CSR, health and environmental sustainability, positing that both Corporations and governments play vital roles in addressing social and environmental issues, ultimately reducing vulnerability within the business environment. We assert that CSR can contribute to achieving the SDGs and mitigating economic inequalities, provided its inherent structural issues, particularly concerning its 'voluntariness' and content, are addressed.

The Chapter begins with a discussion of corporate moral agency, examining the arguments for and against granting Corporations moral accountability. This marks a transition from the legalistic focus of Chapter 3 to broader ethical considerations. Sections 4.1 and 4.2 outline corporate moral agency, examining whether corporate actions reflect a company's moral responsibility. The focus is on agency as the intentional and conscious capacity to act, aware of potential outcomes. Moral agency adds empathy, encompassing ethical decision-making based on right and wrong. This moral competence, traditionally viewed as a human trait, translates into concepts like 'intentionality', 'dolus' and 'liability' in legal terms.

We question whether moral agency can extend to Corporations: Should they be held accountable for objectively harmful actions? This inquiry, posed in Section 4.2 emphasizes that corporate moral responsibility transcends legal frameworks, addressing gaps that often lead to a "tick-box" approach to compliance. While legal responsibility tends to focus on agency and intentionality, corporate behavior should be assessed on broader grounds, particularly when laws are vague or ineffective against morally objectionable actions.

Section 4.3 traces the history of CSR, noting its roots in ancient Roman laws related to asylums. We emphasize Bowen's insights that effective management goes beyond profits to address social challenges, which laid the groundwork for viewing CSR as a moral responsibility, especially during the socio-political upheavals of the 1960s. We notice that the simultaneous rise of Stakeholder Theory, has shifted focus from shareholders to stakeholders-individuals or groups affected by a firm's activities. Integrating Stakeholder Theory is crucial in explaining CSR, as both encourage a transition from shareholder primacy to consideration of all stakeholders' interests. Section 4.3 concludes by drawing on Sacconi's theory, which clarifies the misconception about CSR's 'voluntariness'.

Section 4.4 compares CSR and BHR, highlighting their ambitious aims and functional implications. We chose to compare these frameworks due to their shared focus on responsible corporate behavior, striving for corporate engagement that benefits society and the environment. Both CSR and BHR have gained traction through initiatives like the UNGPs and the Corporate Sustainability Due Diligence Directive (CSDDD), even if the last one has undergone recent revisions under the Omnibus proposal. However, we stress that the enforceability of BHR versus the vague definitions of CSR and

misconceptions about its voluntary nature hinder their synergy. We argue for a unified application of BHR and CSR, provided their conceptual differences are reconciled and we emphasize strengthening ex-ante CSR approaches to address challenges outlined in the 2030 Agenda.

Section 4.5 discusses the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD), by comparing their adopted provisions with the European Commission's latest proposal in February 2025 for uniting them in a common framework, the Omnibus. While both Directives aim to promote responsible business practices, they differ in scope and weaknesses. The CSRD enhances transparency and accessibility of sustainable corporate conduct, whereas the CSDDD ensures thorough Due Diligence across business operations and value chains.

Finally, Section 4.6 examines the relationship between CSR and the Capability Approach, incorporating insights from Sacconi and Fia. They suggest shifting the Capability Approach from a State-to-citizens framework to a Corporations-to-citizens model, enhancing stakeholders' freedoms. This section, building on Chapter 2, emphasizes health's central role in human flourishing and workplace well-being. By integrating Sen's Capabilities into CSR, companies can prioritize health, ensuring safe working conditions and promoting well-being. Such expansion constrains managerial authority, preventing practices that undermine employee health, while presenting a framework for companies to meet ethical responsibilities and support societal flourishing. However, applying this framework presents practical challenges, such as measuring and prioritizing capabilities, especially where regulatory systems are weak.

4.1. Corporate Moral Agency: Could corporate actions account as consequences of a company's moral agency?

4.1.1. Kantian morality and CSR

As previously highlighted, the aim of this Chapter is to provide an interdisciplinary perspective on why and how health should be prioritized in corporate actions. In the previous Chapter we analyzed how the legal personality of Corporations entails rights and responsibilities. This was crucial for the emergence of the BHR literature, which reversed the monopoly of responsibility; States, traditionally viewed as the only rule shapers and duty bearers in implementing human rights, started sharing this responsibility with Corporations. This expansion, as described in the previous Chapter,

was justified due to the excessive, or inadequately regulated, interplay between public and private actors, exacerbating power asymmetries.[371]

If we would like to provide a brief definition of legal personality, we could summarize it as a natural or legal entity's ability to bear rights and relevant obligations.[372] Building on the concept of legal personality, which grants Corporations rights and responsibilities under the law, we can extend this understanding to corporate moral agency, where businesses are seen not only as legal entities but also as ethical actors capable of making decisions that impact society. The questions that arise include first, whether Corporations can be qualified as moral agents and be held accountable for their impact on society and the environment, and second whether their business conduct can be evaluated on the basis of intentionality, self-awareness, empathy and even morality.

Drawing on Kant's definition of rights, we observe that their enforceability presupposes the following conditions: First, rights are actions which directly or indirectly affect others; second, rights do not concern wishes or mere desires, but refer to choices and decisions that generate specific actions. Lastly, rights concern the form instead of the matter of the others' acts.[373] Concerning duties, the Kantian perspective revolves around two kinds of imperatives: the hypothetical and the categorical ones. Hypothetical imperatives are specific duties whose fulfilment depends on our desires to receive specific benefits in return, e.g. to become a successful athlete, one must train consistently. On the contrary, the fulfillment of categorical duties is unconditional, independent of any aspirations or consequences.[374] Particularly, Kant defined categorical imperatives by introducing the principle of universalizability, i.e. acting according to the maxim that one would wish all other rational people to follow as a universal law.[375]

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[371] Karl P. Sauvant, 'The Negotiations of the United Nations Code of Conduct on Transnational Corporations: Experience and Lessons Learned' (2015) 16 Journal of World Investment and Trade, 11-87.
[372] See the Hohfeldian analysis on Shyamkrishna Balganesh, Ted M. Sichelman and Henry E. Smith, *Wesley Hohfeld: A Century Later. Edited Work, Select Personal Papers and Original Commentaries* (Cambridge University Press, 2022); John Dewey, 'The Historic Background of Corporate Legal Personality' (1926) 35 Yale Law Journal, 655.
[373] Lara Denis, *Kant: The Metaphysics of Morals* (Cambridge University Press, 2017); Frederick Rauscher, 'Kant's Social and Political Philosophy' in Edward N. Zalta and Uri Nodelman (Eds.) *The Stanford Encyclopedia of Philosophy* (Fall 2022 Edition) available at: https://plato.stanford.edu/entries/kant-social-political/ (Accessed: 10/11/2023).
[374]Norman E. Bowie, 'A Kantian Approach to Business Ethics' in Th. Donaldson, Patricia H. Werhane, *Ethical Issues in Business: A Philosophical Approach* (Prentice Hall, 2002); Norman E. Bowie, *Business Ethics: A Kantian Perspective* (Cambridge University Press, 2017).
[375] Ibid; (2002).

In parallel, what plays a fundamental role in Kantian ethics is free will, as it is the main human feature that renders us rational, moral and worthy of dignity.[376] Therefore, Kantian ethics are duty-based rather than consequence-based, with moral worth resting on the rightness of intentions.[377] One of the main Kantian principles is the respect for human dignity, which mandates that humans should be treated as ends per se, not as means to an end. Applying this principle to corporate entities suggests that businesses should engage in positive actions beyond simply adhering to the "no harm" principle.

As Bowie emphasizes *"[…] Kant's moral philosophy enables business ethicists to develop a useful definition of meaningful work and that Kantian ethics would require companies to provide meaningful work so defined. […] For a Kantian, meaningful work is freely chosen and provides opportunities for the workers to exercise autonomy on the job; supports the autonomy and rationality of human beings; work that lessens autonomy or that undermines rationality is immoral; provides a salary sufficient to exercise independence and provide for physical well-being and the satisfaction of some workers' desires; enables a worker to develop rational capacities; and does not interfere with a worker's moral development".*[378]

The application of Kantian moral imperatives to Enterprises implies that organizations should prioritize human dignity in all their actions, as Enterprises are composed of individuals. Treating people as ends rather than means, implies that the internal rules governing Enterprises must be universally applicable and just. This mutual respect between supervisors and subordinates manifests in several key ways, such as considering the interests of all affected stakeholders in any corporate decision; involving parties who are or may be affected by the company's policies in discussions prior to their implementation; fulfilling the duty of beneficence;[379] and ensuring that relationships among stakeholders are governed by fairness and justice.[380]

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[376] Onora O'Neill, *Acting on Principle: An Essay on Kantian Ethics* (Cambridge University Press, 2013).
[377] Ibid.
[378] Bowie, supra [374].
[379] According to Kant everyone has a duty to help others unconditionally, according to one's means, but he hasn't provided a specific clarification on the limits of beneficence, as Beauchamp emphasizes. See more on Tom Beauchamp, 'The Principle of Beneficence in Applied Ethics' in Edward N. Zalta (Ed.) *The Stanford Encyclopedia of Philosophy* (Spring 2019 Edition), available at:
< https://plato.stanford.edu/entries/principle-beneficence/#BeneActiObliMereMoraIdea> (Accessed: 1/10/2023).
[380] Ibid.

As Corporations influence and benefit from society, they have a duty of beneficence,[381] that encompasses both internal and external obligations. Internally, they must respect employees' human rights and ensure workplace safety. Externally, they should take measures to prevent environmental harm. Conversely, employees, as members of the Corporation bear a threefold duty: to respect themselves, other members of the Corporation, and the Corporation as a community working toward common goals.[382]

However, applying Kantian ethics to Corporations presents significant challenges not only due to the complexity of businesses, but also because they may not meet Kant's standard of moral "purity". For one, Kant's ethics require moral actions to be completely free from self-interest, a standard that may be too idealistic, or even utopian for corporate entities, which are by nature, profit-driven agents.[383] Despite the responsibilities they bear towards society and the environment, it is challenging to expect that they will adopt purely unconditional practices. Furthermore, another difficulty with applying Kantian ethics to Corporations lies in the scope of beneficence: To what extent should employees and supervisors perform unconditional beneficent acts, and how should Corporations navigate situations where conflicting interests arise?

4.2. Corporate moral responsibility: Legal personality equals moral personality?

Agency refers to the capacity to act intentionally, consciously, and with awareness of the expected outcomes of those actions.[384] Moral agency adds another layer to this concept by incorporating empathy and the ability to make ethical decisions based on the sense of right and wrong.[385] Since moral competence is a distinguishing characteristic of human beings, often translated in legal terms as 'intentionality', 'dolus', or 'liability', this raises a pressing question: Can this feature be extended to Corporations? Put differently, when corporate actions result in objectively harmful and unethical outcomes, should Corporations be held morally accountable, just as individuals would be?

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[381] Bowie, supra [374].
[382] Ibid.
[383] O'Neel, supra [376]; Mark S. Schwartz, 'Universal Moral Values for Corporate Codes of Ethics' (2005) 59 Journal of Business Ethics 1, 27-44.
[384] Matthew Talbert, 'Moral responsibility' on Edward N. Zalta and Uri Nodelman (Eds.) *Stanford Encyclopedia of Philosophy* (Fall 2023), available at: < https://plato.stanford.edu/entries/moral-responsibility/> (Accessed: 1/11/2023); David Shoemaker, 'Attributability, Answerability and Accountability: Toward a Wider Theory of Moral Responsibility' (2011) Ethics 121 (3), 602-632.
[385] Kristian Høyer Toft, Corporate Responsibility and Political Philosophy: Exploring the Social Liberal Corporation (Routledge, 2020).

This question is particularly compelling because the idea of corporate moral responsibility goes beyond the legal framework, address gaps where the law may fall short. On the one hand, legal responsibility often operates within a 'tick-box' approach, focusing on the narrow definitions of agency, intentionality, and compliance, and applying established methodologies when laws are in conflict. [386] However, we argue that corporate behavior can, and should be evaluated on broader ethical grounds that transcend legal limitations. This is especially important when the law is ambiguous, outdated or silent on certain issues, yet the actions in questions are clearly morally unacceptable. In such cases, corporate moral responsibility becomes a necessary complement to legal accountability, ensuring that Corporations are held to higher ethical standards when legal remedies are lacking.

A key example illustrating this dilemma is Apple's supply chain and the mental health crises among workers at Foxconn, one of its major suppliers in China. Between 2010 and 2012, a wave of suicides among Foxconn workers drew attention to the grueling working conditions, excessive overtime, and severe mental health issues faced by employees.[387] In response to public outrage, Apple and Foxconn reached an agreement to improve working conditions, reducing hours and increasing wages.[388] Although the legal resolution—focused on labor reforms—was seen as a step in the right direction, it raises the ethical question of whether the negotiation outcome was truly sufficient. The negotiations did little to address the underlying issues of worker exploitation, emotional well-being, and corporate moral responsibility. Although Apple fulfilled its legal obligations, the scandal highlights the gap between legal compliance and the ethical imperative to ensure the dignity and mental health of workers, prompting ongoing debate about whether such settlements adequately address the human costs involved.[389]

This case among many other BHR scandals that have not escalated yet in legal proceedings exemplify how legal solutions, while necessary, may be insufficient when dealing with profound ethical issues. For instance, the "Forever Chemicals" case, elaborated in Chapter 5, is a recent example that generates such concerns: Legal

[386] Ibid.
[387] Charles Duhigg and David Barboza, 'In China, Human Costs are Built into an iPad' (25 January 2012) The New York Times, available at: https://www.nytimes.com/2012/01/26/business/ieconomy-apples-ipad-and-the-human-costs-for-workers-in-china.html (Accessed: 10/9/2024).
[388] Jenny Chan, Ngai Pun and Mark Selden, 'The Politics of Global Production: Apple, Foxconn and China's New Working Class ' (2013) 28 New Technology, Work and Employment 2, 100-115.
[389] David Barboza, 'After Suicides, Scrutiny of China's Grim Factories' (27 May 2010), The New York Times, available at: https://www.nytimes.com/2010/06/07/business/global/07suicide.html (Accessed: 10/9/2024).

proceedings are time consuming, especially when numerous legal actions are brought simultaneously against the same Respondents. We know that the legal actions brought by the US General Attorneys are to be discussed, however, if negotiations take place, will the outcomes be proportionate to the gravity of the environmental and public-health harms?

The concept of corporate moral agency, or corporate moral responsibility, began gaining significant traction in the 1970s, coinciding with Milton Friedman's famous assertion that a company's sole social responsibility is to maximize profits.[390] This era also saw heightened awareness of the environmental consequences of corporate actions, particularly after major oil spills in the Gulf of Mexico, which underscored the devastating effects of offshore oil and gas operations. [391] As Corporations increasingly came under scrutiny for their environmental and social impact, questions arose about whether legal personhood could, or should, imply moral personhood. This debate gained even more attention as large-scale operation activities, such as those responsible for human rights abuses or severe environmental harm, clarified that legal compliance alone was insufficient or ineffective to address the broader ethical responsibilities of business.

The inquiry of whether a Corporation as a legal person should also be treated as a moral actor continues to spark discussions in business ethics and corporate governance, particularly in cases where legal framework fall short in preventing harm or ensuring justice. [392]

In the literature we found a compelling discussion by Donaldson, who draws upon the example of a merchant during a famine, referencing the contrasting approaches of Cicero and Aquinas.[393] In this case, a merchant travelling to a famine-stricken city is faced with a moral dilemma: Informing the starving population that other merchants with larger supplies are on their way, or withholding this information and inflate the prices of his goods? Cicero asserted that the merchant had a moral obligation to disclose

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[390] Sigmund Wagner-Tsukamoto, 'Moral Agency, Profits and the Firm: Economic Revisions to the Friedman Theorem' (2007) 70 Journal of Business Ethics, 209-220.
[391] Elmer P. Danenberger, 'Oil Spills: 1971-1975, Gulf of Mexico, Outer Continental Shelf: Statistics and discussion of oil spills resulting from offshore operations on the Federal oil and gas leases in the Gulf of Mexico' (1976) Geological Survey Circular 741, available at:
< https://pubs.usgs.gov/circ/1976/0741/report.pdf> (Accessed: 2/12/2023).
[392] N. Craig Smith, 'The Moral Responsibility of the Firms: For or Against?' available at: <https://knowledge.insead.edu/responsibility/moral-responsibility-firms-or-against>
(Accessed: 3/12/2023).
[393] Thomas Donaldson, *Corporations and Morality* (Prentice Hall, 1982).

the truth, while Aquinas argued that although it would be commendable, there was no strict moral obligation to reveal something speculative and uncertain. Donaldson uses this analogy to underscore a critical ethical issue that remains relevant to corporate conduct:

"the moral issue is the same for Corporations as it is for persons: namely, must Corporations divulge information contrary to their interests when it would significantly benefit the consumer? And regardless of the correct answer, it should apply just as well to Corporations as to individuals".[394]

Must Corporations divulge information that might contradict their interests when doing so would significantly benefit the consumer? Regardless of the specific answer to this question, Donaldson argued that Corporations should be held to the same moral standards as individuals.

Nearly forty years later, Donaldson's insights remain pertinent, as corporate violations continue. For instance, could Royal Dutch Shell be held inherently culpable for the environmental damage it has caused over the years? Could the victims of the Vedanta case hold the company or its subsidiary in Zambia responsible beyond the individual liability of any of its members for the harm caused to health, the environment and the quality of life of the communities?

The current debate on corporate moral agency does not challenge the idea that companies can be morally responsible, but rather focuses on how such responsibility should be introduced and the extent to which it applies.[395] The debate revolves around individual responsibility versus collective responsibility. For individualists like Pettit and List, there is no additional responsibility beyond the individual responsibility of the members of the Corporations.[396] Based on this perspective, the distribution of corporate responsibility is limited to the extent of individuals' share of the harm. In contrast, collectivists contend that moral responsibility can be attributed to the firm itself, independent of individual guilt, "*[…] no particular individual in the organization can be found guilty or responsible for some harm done, the corporation [….] can still be*

394 Ibid.
395 Kristian Høyer Toft, supra [385].
396 Philip Pettit, 'The Conversable, Responsible Corporation' in Eric Orts and N. Craig Smith (Eds.) *The Moral Responsibility of Firms* (Oxford University Press, 2017); Christian List and Philip Pettit, *Group Agency: The Possibility, Design and Status of Corporate Agents* (Oxford University Press, 2011).

considered culpable [...]".[397] For collectivists, the moral responsibility of the firms and their members coexists, rather than being mutually exclusive.[398]

The primary objections to corporate moral agency stem from both theoretical and practical concerns. Velasquez, argues that corporate actions originate from the individuals within the corporation, not from corporation itself, therefore challenging the idea of corporate moral agency.[399] Maitland, on the other hand, emphasizes that extending moral agency to Corporations risks dehumanizing individuals, by diverting accountability from persons to organizations, especially in cases where no individual responsibility can be attributed.[400] Moreover, equating Corporations to moral agents could also imply that firms should enjoy human rights, such as voting. This raises the broader question: to what extent should we diminish the exclusivity of human moral and legal status by attributing these features to Corporations?

Mulgan proposed a typology to classify various perspectives on corporate moral agency, outlining four distinct positions:[401]

1. Individualists: According to this view, Corporations are not moral agents per se, but are instead instruments operated by humans. They are granted legal personality because of their role in facilitating human transactions and their broad influence across social, political and economic domains. Although Corporations are recognized as holders of specific rights and obligations, there is no rationale for holding them morally blameworthy in isolation from the individuals within them.[402]
2. Minimal collectivists: This position acknowledges that some Corporations can act independently, as agents capable of promoting their own interests. However, for minimal collectivists, Corporations cannot be considered moral agents due to their lack of inherent autonomy or moral consciousness.
3. Moderate collectivists: This position adopts a more nuanced approach, arguing that certain types of corporate groups can be considered as moral agents, though

[397] Ibid.
[398] Høyer Toft, supra [385].
[399] Manuel Velasquez, 'Debunking Corporate Moral Responsibility' (2003) 13 Business Ethics Quarterly 4, 531-562.
[400] Ian Maitland, 'The Morality of the Corporation: An Empirical or Normative Disagreement?' (1994) 4 Business Ethics Quarterly 4, 445-458.
[401] Tim Mulgan, 'Corporate Agency and Possible Futures' (2019) 154 Journal of Business Ethics 901-916.
[402] Velasquez, supra [399].

none of them are entirely, *"[…] fledged moral persons […]"*.[403] In that sense, Corporations can hold rights and responsibilities in contractual or property related issues, but do not enjoy human rights. Corporate moral responsibility exists but is limited in scope.

4. Extreme collectivists: This view equates the moral status of Corporations with that of human beings, arguing that Corporations enjoy rights and responsibilities akin to those of individuals, including full moral agency and human rights.

From this typology, we conclude that individualists believe that the absence of individual responsibility negates the need to assign blame to Corporations. They emphasize that consciousness is crucial for any kind of agency, and without it, corporate groups cannot be considered independent or moral agents. In contrast, collectivists generally seek to hold Corporations accountable, even when direct individual culpability is not met. However, the extent of corporate responsibility and rights varies across the minimal, moderate and extreme collectivist approaches. For instance, although collectivists reject the concept that consciousness is indispensable for corporate moral agency, they also limit the scope of rights that Corporations can possess. For example, a Corporation can own property, engage in transactions and be held legally accountable for its violations, however it cannot possess inalienable human rights, e.g. right to life, [404] freedom from slavery or from torture. [405]

The broader debate over corporate moral agency intersects with other philosophical questions, especially those regarding the interpersonal conception of legal personality.[406] These issues engage with deeper concerns in normativity, metaphysics and pragmatism, as explored by scholars such as Velasquez,[407] Donaldson[408] and Werhane.[409] Mulgan, argues that a stable society relies on patterns of moral development that ensure most individuals can recognize moral reasons and respond to

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[403] Mulgan, supra [401].
[404] Tim Mulgan, 'Corporate Agency and Possible Futures' (2019) 154 Journal of Business Ethics, 901-916; Frank Hindirks, 'How Autonomous are Collective Agents? Corporate Rights and Normative Individualism' (2014) Erkenntnis 79, 1565-1585.
[405] See also James Griffin, *On Human Rights* (Oxford University Press, 2008); Ryan Goodman and Thomas Pegram (Eds.) *Human Rights, State Compliance and Social Change* (Cambridge University Press, 2012).
[406] See also Peter A. French, 'The Corporation as a Moral Person' (1979) 16 American Philosophy Quarterly 3, 207-215.
[407] Manuel G. Velasquez, 'Debunking Corporate Moral Responsibility' (2003) 13 Business Ethics Quarterly 4, 531-562.
[408] Thomas Donaldson, *Corporations and Morality* (Prentice -Hall, 1982).
[409] Patricia H. Werhane, *Persons, Rights and Corporations* (Prentice-Hall, 1985).

them appropriately.[410] Therefore, he continues, a functioning moral framework assumes individuals as morally reliable until proven otherwise. Even those proven to be morally unreliable cannot be ignored or simply eliminated without significant moral consequences. However, if a corporate group is structured to pursue any legal goal without recognizing and addressing moral considerations, it is inherently flawed and unstable. Therefore, he concludes that a first step towards professional recognition is the demonstration, on behalf of the Corporation, of its moral reliability.[411]

For the purposes of this Chapter we adopt a moderate collectivist position, arguing that corporate legal personality entails the responsibility to actively address the externalities emerging from corporate actions. Moreover, addressing the complexities of BHR and sustainability requires moving beyond traditional ideologies of moral agency. Recognizing the role of Corporations in society goes beyond simple legal compliance and moral conformity; it demands a proactive and accountable engagement with the broader social and environmental impacts of their operations.

4.3. Corporate Social Responsibility: Going beyond legal compliance

4.3.1. Historical roots of CSR and its relationship with Stakeholder Theory

Chaffee traces the origins of corporate social concerns back to ancient Roman Laws, where institutions like asylums were established to support the poor and elderly.[412] During the Middle Ages, Corporations were viewed both as cultural institutions promoting social welfare and as tools for societal development under the English Empire, particularly in the colonies.[413] In the 18th and 19th centuries, as urbanization and industrialization started rising, the English crown encouraged companies to engage in philanthropy, partly to placate labor unions demanding better working conditions.[414]

From the 1920s to the 1940s, profit maximization became the primary focus for business managers. However, the 1950s marked the emergence of the CSR movement. Howard

[410] Mulgan, op.cit.[401],[404].
[411] Ibid.
[412] See the historical analysis of Mauricio Andrés Latapì Agudelo, Làra Jóhannsdóttir and Brynhildur Dávidsdóttir, 'A Literature Review of the Historical Evolution of Corporate Social Responsibility' (2019) 4 International Journal of Corporate Social Responsibility 1.
[413] Ibid.
[414] Ibid; Morrell Heald, *The Social Responsibilities of Business: Company and Community, 1900-1960* (Press of Case Western Reserve University, 1970).

Bowen, often referred to as the 'father of CSR', [415] stressed that large Corporations should depart from purely profit-driven decision making and adopt principles that enhance social welfare.[416] Specifically, Bowen, defined CSR as "*[…] the social responsibilities [….] of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society[…]*".[417] Bowen's work was groundbreaking in emphasizing that effective management is not restricted to creating superficial and short-term monetary value. In contrary, management should be viewed as a responsible practice that effectively addresses broader societal challenges.

Bowen's ideas laid the groundwork for other scholars, who further developed CSR into a concept of moral responsibility, particularly in light of the socio-political and financial problems of the 1960s.[418] Scholars like Frederick expanded upon Bowen's theory by introducing a five-step strategy for market and socially responsible management. Frederick suggested that Corporations should first, clear criteria for their value creation; second, comply with the latest standards of responsible management; third, acknowledge the historical and cultural aspects of the current social contract; fourth, recognize that individual corporate behavior reflects and influences society and vice versa and last, understand that "*[…] responsible business behavior does not happen automatically, but […] is the result of deliberate and conscious efforts […]*".[419] McGuire and Walton further elaborated that Corporations have a responsibility that goes beyond legal and economic obligations. They advocated for businesses to essentially improve the current social and financial conditions, thus fostering a more equitable society.[420]

Ironically, as scholars began exploring the concept of CSR, Milton Friedman published his influential article in the New York Times, where he clarified that the sole responsibility of a firm is profit maximization.[421] In his view, adopting CSR-friendly strategies would unjustifiably increase the costs of a firm, without even being part of its

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[415] Agudelo et al, supra [422]; Archie B. Carroll, 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) 38 Business& Society 3, 268-295.
[416] Ibid; Howard R. Bowen, *Social Responsibilities of the Businessman* (University of Iowa Press, 1953).
[417] Ibid.
[418] Agudelo, supra [415] and the references cited therein.
[419] Ibid.
[420] Clarence Cyril Walton, *Corporate Social Responsibilities* (Wadsworth Publishing Company, 1967); Jean B. McGuire, Alison Sundgren and Thomas Schneeweis, 'Corporate Social Responsibility and Firm Financial Performance' (1988) 31 Academy of Management Journal 4, 854-872.
[421] Milton Friedman, 'The Social Responsibility of Business is to Increase its Profits' (1970) The New York Times Magazine.

main responsibilities. The (mis)conception of CSR as a primarily voluntary activity was reinforced by two other factors. First, the concept and boundaries of CSR were not concretely defined. Second, States began to adopt a less interfering attitude towards Enterprises, promoting economic liberalization and the free flow of capital.[422]

In parallel, business ethics literature witnessed a shift from focusing solely on shareholders to considering a broader range of stakeholders.[423] While the term 'stakeholders' was already introduced as a management concept in the 1960s, it gained prominence in the 1980s with the onset of globalization.[424] Notably, 'stakeholders' are individuals or groups who hold significant interests in the management of the firm that are able to materially influence or be influenced by the achievement of its objectives.[425] The stakeholder approach emerged as a promising tool for addressing the societal and environmental challenges posed by globalization, particularly the actions of TNCs, while simultaneously promoting Sustainable Development.[426]

The nearly simultaneous evolution of CSR and Stakeholder Theory resulted in misconceptions about their respective scopes. For example, some scholars conflated the two as being identical, while others viewed them as mutually exclusive. These misunderstandings in our opinion have hindered the realization of their full potential, where CSR focuses on businesses contributing to a better society, and Stakeholder Theory emphasizes achieving success by considering the broader impacts on all affected parties.[427]

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[422] Carroll, supra [415].
[423] According to Freeman, the term 'stakeholder' was first introduced in the Stanford Research Institute in the 1960's as a management practice. The SRI argued that managers should understand the concerns of employees, customers, suppliers, lenders, the society, as well as other shareholders in order to develop goals that would receive the support of stakeholders. As Freeman adds, the focus on stakeholders was crucial for the development of business strategies with long-term success. Edward R. Freeman and John McVea, 'A Stakeholder Approach to Strategic Management' in Michael A. Hitt, Edward R. Freeman and Jeffrey S. Harrison (Eds.) *The Blackwell Handbook of Strategic Management* (Blackwell Publishers, 2005).
[424] Agudelo, supra [412].
[425] Ibid; Lorenzo Sacconi, 'Corporate Social Responsibility and Corporate Governance' (2012) 38 Econometica Working Papers.
[426] Notably, during that period the international community understood the necessity to move towards Sustainable Development, e.g. through the establishment of the European Commission's Environment Directorate-General (1980), the World Commission on Environment and Development (1983), the Chernobyl disaster (1986), the UN adoption of the Montreal Protocol (1987) as well as the creation of the Intergovernmental Panel on Climate Change (1988). See more on Agudelo, supra [41].
[427] Sergiy D. Dmytriyev, R. Edward Freeman and Jacob Hörisch, 'The Relationship between Stakeholder Theory and Corporate Social Responsibility: Differences, Similarities and Implications for Social Issues in Management' (2021) 58 Journal of Management Studies 6, 1441-1470.

The concept of CSR has been significantly evolved throughout the years. For instance, as a general definition, CSR encompasses the economic, ethical, legal and discretionary expectations that society has of its organizations. Carroll highlighted that companies are socially expected to act as '*good corporate citizens*'.[428] This, reminds us of Ruggie's description of Corporations being socially expected to respect human rights, as discussed in Chapter 3.[429] On the other hand, Jones, framed CSR as a decision-making process that influences business conduct,[430] while for Lantos, CSR adheres to an implicit social contract between business and society, which becomes strategic when integrated into a firm's profit generating plans.[431] For Husted and Allen, CSR represents an opportunity for value creation closely linked to social demands.[432] For the EU Commission, CSR serves as an umbrella term describing the responsibilities of Enterprises concerning their societal impact.[433] However, Sacconi offers a compelling definition that underscores the non-voluntary nature of CSR. According to Sacconi, CSR serves as a social norm or model of corporate governance which extends the fiduciary duties from the firm's shareholders to all stakeholders.[434] This view reinforces the argument that CSR should not be seen as a voluntary activity, but as an essential aspect of corporate governance, which by definition consists of rights and duties.

[428] Archie B. Carroll, 'The Four Faces of Corporate Citizenship' (2003) 100 Business and Society Review 1, 1-7; Archie B. Carrol, 'Corporate Social Responsibility: The Centerpiece of Competing and Complementary Frameworks' (2015) 44 Organizational Dynamics, 87-96.
[429] Dalia Palombo, 'Guiding Principle 25: Access to Remedy-Foundational Principle' in Barnali Choudhury (Ed.) *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023); John Sherman III, 'Beyond CSR: The Story of the UN Guiding principles on Business and Human Rights; (2020) 71 Working Paper (Harvard Kennedy School, Corporate Responsibility Initiative); Radu Mares, *The UN Guiding Principles on Business and Human Rights: A Commentary* (Oxford University Press, 2019).
[430] Thomas M. Jones, 'Corporate Social Responsibility Revisited, Redefined' (1980) 22 California Management Review 3, 59-67.
[431] Geoffrey P. Lantos, 'The Boundaries of Strategic Corporate Social Responsibility' (2001) 18 Journal of Consumer Marketing 7, 595-632.
[432] Bryan W. Husted and David B. Allen, 'Strategic Corporate Social Responsibility and Value Creation among Large Firms: Lessons from the Spanish Experience' (2007) 40 Long RNAGE Planning 6, 594-610.
[433] See also European Commission, 'A Renewed EU Strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681 Final.
[434] Lorenzo Sacconi, 'Corporate Social Responsibility and Corporate Governance' (2012) 38 Econometica Working Papers.

4.3.2. The application of the CSR and Stakeholder Theory

Dmytriyev et al. provide a detailed comparison of CSR and Stakeholder Theory, emphasizing their origins, focus, and perspectives.[435] Stakeholder Theory is primarily concerned with the firm itself and the benefits it provides to its stakeholders, including customers, employees and suppliers. It limits responsibility to the firm's operational scope and focuses on the interactions between the firm and its stakeholders, as well as the relationships among stakeholders.[436]

In contrast, CSR addresses the broader impact of business on society, aiming to resolve significant societal issues at both community and international levels. CSR extends responsibility beyond the firm's immediate operations, emphasizing the firm's obligations to society and the global community. Dmytriyev and Freeman stress that although CSR and Stakeholder Theory focus on proper management, they differ in perspective, focus and responsibilities.[437] Stakeholder Theory adopts a holistic approach, while CSR focuses on the firm's role in addressing societal concerns. In practice, implementing Stakeholder Theory involves the fulfilment of CSR obligations, because these responsibilities should not be viewed as separate from a firm's core responsibilities.

For example, applying Stakeholder Theory would involve establishing beneficial stakeholder relations through responsible business practices that address social issues, as part of the firm's operations. However, some Corporations engage in socially-friendly activities primarily to enhance their public image, without genuinely addressing social and environmental issues, directly connected with their conduct. For instance, Coca Cola was one of the first companies to prioritize women empowerment and invest in its employees' well-being, while also running a water stewardship program.[438] Their 2030 Water Security Strategy aims at "[…] accelerating the actions needed to increase water security where (they) operate, source ingredients and touch people's lives". At the same

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[435] Sergiy D. Dmytriyev, R. Edward Freeman and Jacob Hörisch, 'The Relationship Between Stakeholder Theory and Corporate Social Responsibility: Differences, Similarities and Implications for Social Issues in Management' (2021) 58 Journal of Management Studies 6, 1441-1470.
[436] Ibid.
[437] Ibid.
[438] Amish Shah, 'How Companies can Avoid Greenwashing and Make a Real Difference in Their Environmental Impact' (8/8/2022); https://www.forbes.com/sites/forbesbusinesscouncil/2022/08/08/how-companies-can-avoid-greenwashing-and-make-a-real-difference-in-their-environmental-impact/> (Accessed: 1/12/2023); 'The Coca-Cola Company and PepsiCo named top plastic polluters for the fourth year in a row' (25/10/2021) <https://www.breakfreefromplastic.org/2021/10/25/the-coca-cola-company-and-pepsico-named-top-plastic-polluters-for-the-fourth-year-in-a-row/> (Accessed: 1/12/2023).

time, it was ranked alongside PepsiCo as the world's top plastic polluters. Similarly, Unilever was appointed as a "Principal Partner for the UN Climate Change Summit COP26 in Glasgow, despite selling 1700 highly polluting throwaway plastic sachets per second.[439] These activities often criticized as 'greenwashing' undermine the value of CSR initiatives.

On this front, Dmytriyev and Freeman argue that firms adopting Stakeholder Theory to address social issues are likely to develop more effective strategies for the mitigation of societal concerns, compared to those focusing solely on CSR. They support this view by discussing the concept of "*beneficiaries of responsibility*" , which refers to prioritizing the protection of specific groups from the company's perspective, even if these groups do not fall strictly within the company's immediate stakeholders.[440] For instance, companies might prioritize the employment of people with disabilities and implement inclusive programs that enhance their skills and accessibility. While access to labor should be universally respected, prioritizing historically marginalized groups, such as individuals with disabilities, aligns with, "*narrowing down the focus of corporate responsibility*".[441]

Dmytriyev and Freeman emphasize that both Stakeholder Theory and CSR are crucial, though they serve different purposes. Stakeholder Theory offers broader protection by involving a wider range of stakeholders and entails 'multidirectional' responsibilities. For example, responsibilities between suppliers and the company, the company and its employees, the company and the environment. In contrast, CSR is often seen as a framework with a 'unidirectional' responsibility, primarily focusing on the firm's obligations towards society.[442]

While the discussion acknowledges the importance of Stakeholder Theory for its comprehensive approach to business responsibility, it is essential to reassess the notion of CSR's voluntariness. This perception is increasingly challenged by regulatory

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[439] 'Unilever sells 1700 highly-polluting throwaway plastic sachets per second, Greenpeace reveals' (28/11/2023); < https://www.greenpeace.org/international/press-release/63892/unilever-sells-1700-highly-polluting-throwaway-plastic-sachets-per-second-greenpeace-reveals/> (Accessed: 1/12/2023); 'Activists send plastic waste back to Nestle, call out company for greenwashing' (23/3/2022); < https://www.greenpeace.org/southeastasia/press/45221/activists-send-plastic-waste-back-to-nestle-call-out-company-for-greenwashing/> (Accessed: 1/12/2023).

[440]Sergiy D. Dmytriyev, R. Edward Freeman and Jacob Hörisch, 'The Relationship Between Stakeholder Theory and Corporate Social Responsibility: Differences, Similarities and Implications for Social Issues in Management' (2021) 58 Journal of Management Studies 6, 1441-1470.

[441] Ibid.

[442] Ibid.

frameworks that embed CSR principles into legal obligations. While Stakeholder Theory is undeniably important for its holistic approach to business, the misconception that CSR is merely voluntary results in further misunderstandings. CSR has been indeed associated with philanthropies as a part of a company's self-imposed commitments. This perception of voluntariness is better described as internally-driven or endogenous actions, that a company undertakes without direct external pressure or repercussions for non-compliance. However, the increasing scrutiny of CSR through compliance with environmental and legal mandates demonstrates that CSR is not optional, and can be more than 'unidimensional'.

For instance, the latest EU Corporate Sustainability Due Diligence Directive[443] requires companies operating within the EU to identify, assess, and report all actual and potential adverse impacts on the environment and human rights, associated with their upstream and downstream partners.[444] Moreover, the Corporate Sustainability Reporting Directive[445] requires companies operating in the EU to disclose detailed and standardized information on their environmental, social and governance (ESG) impacts, aiming to enhance transparency and accountability in corporate sustainability practices.

Sacconi's theory provides clarity on CSR's perceived voluntariness. He defines CSR as a multistakeholder model of corporate governance in which managerial fiduciary duties towards the firm's owners extend to similar duties towards all stakeholders.[446] Fiduciary duties which involve a trustor-trustee relationship, are applied to both stakeholders stricto sensu, i.e. those who have made specific investments in the firm, like employees and investors, and stakeholders lato sensu, e.g. individuals or groups who might be affected by the firm, such as local communities. Engaging in CSR activities can enhance

[443] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on the Corporate Sustainability Reporting Directive (CSRD) and amending Directive (EU) 2013/34 [2022] OJ L322/1.

[444]European Commission, Executive Agency for Small and Medium-sized Enterprises, 'Uptake of Corporate Social Responsibility (CSR) by European SMEs and Start-Ups: Good Practice Document', Publications Office (2021) available at: <https://op.europa.eu/en/publication-detail/-/publication/069c66f2-570c-11ec-91ac-01aa75ed71a1> (Accessed: 1/1/2024).

[445] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on the Corporate Sustainability Reporting Directive (CSRD) and amending Directive (EU) 2013/34 [2022] OJ L322/1; Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups [2014] OJ L330/1.

[446] Lorenzo Sacconi, 'Corporate Social Responsibility and Corporate Governance' (2012) 38 EconomEtica,

both the company's reputation and its societal impact, attracting new employees and investors, while improving human rights and sustainability.[447]

Although CSR and Stakeholder Theory each have their trade-offs, viewing CSR as a model of corporate governance that focuses on the impact on multiple stakeholders offers valuable insights. This perspective clarifies that a firm's compliance with legal and environmental mandates should not be viewed as voluntary; instead, it reflects inherent behaviors that a company would adopt regardless of external penalties or repercussions. In parallel, we stress that the term 'Corporate Social Responsibility' inherently implies that it cannot be voluntary, as such notion would contradict the very essence of responsibility, entailing binding obligations to address social and environmental impacts, e.g. respecting the employees' health and human dignity, restoring environmental externalities etc.

4.4. Conceptual differences with the BHR framework and the impact of social determinants of health

In our opinion the BHR framework shares similarities with CSR, particularly in their focus on responsible corporate behavior. Both frameworks aim to promote activities that benefit society and the environment and have garnered increasing attention over the years through instruments such as the UNGPs, the Draft Treaty on BHR and the EU Corporate Sustainability Due Diligence Directive. Despite their shared goal of fostering responsible business conduct, they are often viewed with scepticism due to their different origins and evolutions. Some scholars regard them as *"[….] close cousins"*[448], yet with clear boundaries, while others see them as conflicting or advocate for their interconnectedness, with BHR addressing CSR's weaknesses and vice versa.

A primary difference between BHR and CSR is their enforceability. The debate between hard law vs. soft law in BHR, coupled with the unclear definition and misconception of CSR's voluntariness, impedes their potential synergy. This Chapter suggests that both CSR and BHR narratives should be applied in tandem once their conceptual differences are understood and addressed. Although both frameworks are evolving and have

[447] Ibid.
[448] See the analysis of Anita Ramasastry and Florian Wettstein; Anita Ramasastry, 'Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability' (2015) 14 Journal of Human Rights, 237-259; Florian Wettstein, 'CSR and the Debate on Business and Human Rights: Bridging the Great Divide' (2012) 22 Business Ethics Quarterly 4, 739-770.

imperfections, their integration could serve as the missing piece in the puzzle of ''good business conduct".[449]

BHR emphasizes formalistic rights and remedies to mitigate human rights externalities from business activities, as reflected in Ruggie's 'Protect-Respect-Remedy' framework. This framework extends responsibility from the State to companies, acknowledging that businesses must respect human rights even beyond their local operations.[450] States continue bearing the primary duty to protect human rights (UNGP 3), but companies have been acknowledged to bear the responsibility to respect them.[451]

In contrast, CSR's focus is on optimizing societal well-being by regulating business activities. Key issues impacting CSR's effectiveness include the lack of a concrete framework and the erroneous belief that CSR is voluntary. Unlike the ''no harm'' principle often associated with BHR, CSR aims to implement proactive solutions. Therefore, we argue that extending beyond the "no harm" principle to seeking and implementing proactive solutions and even blending principles from other disciplines in a coherent way seem effective for achieving the BHR and CSR objectives.[452]

The differences between BHR and CSR reflect the ongoing evolution of responsible business practices, in the same way as human rights and sustainability should be viewed; as living instruments. However, the COVID-19 pandemic and rising sustainability challenges have heightened the urgency for both BHR and CSR to adapt and collaborate in strengthening societal and environmental resilience. We believe that

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[449] As Wettstein notices, "[...] BHR has the potential to correct some of the main criticisms that are frequently voiced against CSR [....] and CSR can enrich BHR[...]". Florian Wettstein, 'From Side Show to Main Act: Can Business and Human Rights Save Corporate Responsibility?' in Dorothee Baumann-Pauly and Justine Nolan (Eds.) Business and Human Rights: From Principles to Practice (Routledge, 2016).

[450] Angelica Bonfanti, Business and Human Rights in Europe: International Law Challenges (Routledge, 2018); Ludovica Chiussi-Curzi, General Principles for Business and Human Rights in International Law (Brill, 2020); Mallika Tamvada, 'Synthesising Synergies Between CSR and BHR for Corporate Accountability: An Integrated Approach' (2023) 8 International Journal of Corporate Social Responsibility 9, 1-15.

[451] John Ruggie, Caroline Rees and Rachel Davis, 'Ten Years After: From UN Principles to Multi-Fiduciary Obligations' (2021) 6 Business and Human Rights Journal 62, 179-197; 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 European Journal of International Law 3, 921-928; John Gerard Ruggie and Tamary Nelson, 'Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges' (2015) 22 Brown Journal of World Affairs.

[452] European Commission, Executive Agency for Small and Medium-sized Enterprises, 'Uptake of Corporate Social Responsibility (CSR) by European SMEs and Start-Ups: Good Practice Document', Publications Office (2021) available at: <https://op.europa.eu/en/publication-detail/-/publication/069c66f2-570c-11ec-91ac-01aa75ed71a1> (Accessed: 1/1/2024); Karin Buchmann, *Human Rights: A Key Idea for Business and Society* (Routledge, 2021).

their equal focus on health and sustainability can facilitate their synergy in addressing these critical issues. By aligning their priorities, BHR and CSR can play complementary roles in shaping responsible corporate conduct.

Moreover, the recent recognition of a human right to a healthy, clean, and sustainable environment[453] creates an important bridge between BHR and CSR. This new right, grounded in international law, reinforces the call for Corporations to embed health and environmental protection at the core of their governance decision-making and practices. Ex ante corporate measures, such as proactive regulations that anticipate harm, can be enacted across jurisdictions to address both public health crises and sustainability challenges. These forward-looking policies ensure companies act preventively rather than reactively, contributing to a more resilient and sustainable global society.

In fact, the UN traditionally viewed CSR as an "*[…] enabler of green growth and climate action",*[454] but the intensified sustainability challenges resulted in viewing it currently also as a meaningful tool that can address various social inequalities.[455] As stressed previously, companies often strive to position themselves as socially responsible organizations that seek to align their corporate image with social causes, with those efforts being typically driven by economic rather than social or environmental concerns.[456] On the other hand, as Galuppo stresses, stakeholders show interest in social sustainability because it is potentially aligned with a company's environmental and economic objectives.[457]

There is limited literature exploring the relationship between CSR, health and Sustainable Development, despite its critical importance. We notice that although

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[453] UNGA, The human right to a clean, healthy and sustainable environment, A/RES/76/300 (28 July 2022); UNEP, UNDP and OHCHR, 'Joint statement of United Nations entities on the right to healthy environment' (8 March, 2021), available at https://www.unep.org/news-and-stories/statements/joint-statement-united-nations-entities-right-healthy-environment (Accessed: 10/9/2023).

[454] UNDP, 'Corporate Social Responsibility as an enabler of Green Growth and Climate Action' (12 February 2016) available at: < https://www.undp.org/publications/corporate-social-responsibility-enabler-green-growth-and-climate-action> (Access: 10/9/2024).

[455] Anupam Ghosh and Chhanda Chakraborti, 'Corporate Social Responsibility: A Developmental Tool for India' (2010) 9 IUP Journal of Corporate Governance 4, 40-56.

[456] Alejandro Alvarado-Herrera, Enrique Bigne et al, 'A Scale for Measuring Consumer Perceptions of Corporate Social Responsibility Following the Sustainable Development Paradigm' (2017) 140 Journal of Business Ethics 2, 243-262; Rajiv Nair et al, 'Reprioritising Sustainable Development Goals in the Post-COVID-19 Global Context: Will a Mandatory Corporate Social Responsibility Regime Help?'(2021) 11 Administrative Sciences-MDPI Leibniz-Informationszentrum Wirtschaft 4, 1-16.

[457] Laura Galuppo, Maria Gorli et at. 'Building Social Sustainability: Multi-stakeholder Processes and Conflict Management' (2014) 10 Social Responsibility Journal, 685-701.

Sustainable Development is often associated with environmental concerns and the green transition, health occupies a unique position as the intersection of Economic, Social and Environmental Pillars. As elaborated in Chapter 2 on the essence of health as a human right and a global common, health impacts and is impacted by all aspects of Sustainability, making it a crucial factor the achievement of the 2030 Agenda. For instance, climate change and environmental degradation exacerbate public health issues, whereas economic inequality and social injustice disproportionately affect vulnerable populations' access to healthcare.

Moreover, even if the WHO has not extensively mentioned CSR as a direct tool for achieving SDG 3 (health and well-being), we see other UN bodies, such as the UN Global Compact and the UN Development Programme emphasize the role of CSR's in advancing the SDGs through strategic corporate reporting and Partnerships.[458] Concerning the WHO, it has highlighted the importance of Partnerships across sectors, including businesses, to address health issues. This aligns indirectly with CSR and BHR efforts. Therefore, while CSR and BHR are not explicitly mentioned as tools by the WHO, the broader focus on Public-Private Partnerships to improve health and sustainability outcomes aligns within CSR's scope of fostering social responsibility.

Consequently, integrating health into CSR strategies is crucial not only for addressing environmental and social challenges, but also for fostering resilient communities. Moreover, we argue that the integration of health into CSR also aligns with BHR principles, as prioritizing health within corporate decisions and actions helps safeguard fundamental human rights, ensuring that businesses contribute to the well-being of stakeholders, while addressing environmental and social sustainability. These arguments, in our opinion, are strengthened by Sacconi's theory, since CSR is a governance model, consisting of rights and duties.[459]

Moreover, the term 'social determinants of health' encompasses a range of non-medical factors and conditions that significantly impact health quality and well-being. For instance, economic stability, social and community context, environmental quality, shape individuals' health outcomes based on their living and working conditions. The

[458] Norma Schönherr, Florian Findler and André Martinuzzi, 'Exploring the Interface of CSR and the Sustainable Development Goals' (2017) 24 Transnational Corporations 3, 33-47.
[459] Lorenzo Sacconi, 'A social contract account for CSR as an extended model of corporate governance (I): Rational bargaining and justification' (2006) Journal of Business Ethics, 68(3): 259-281.

conditions upon which people live, age and work profoundly influence their health and necessitate a synergy between public and private actors to improve outcomes.

For instance, the 74th World Health Assembly adopted the Resolution EB148.R2, which encourages WHO Member States to collaborate with the private sector, the civil society and other stakeholders for the improvement of the social determinants of health.[460] Though the WHO resolutions do not directly call on CSR and BHR, they emphasize the importance of multisectoral efforts to address the social determinants of health, which could involve BHR and CSR principles. The PPPs promoted by the WHO are crucial for addressing not only health emergencies but also climate concerns which directly affect health outcomes.

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[460] WHO, Executive Board 'Recommendation to the 7rth World Health Assembly for the Adoption of Resolution EB148.R2' (21 January 2021); ".Recognizing the need to do more at all levels to accelerate progress in addressing the unequal and inequitable distribution of health, as well as conditions damaging to health; Recognizing also that achieving health equity requires the engagement and collaboration of all sectors of government, all segments of society, and all members of the international community, in "all-for-equity" and "health-for-all" global actions;
Further recognizing the benefits of achieving universal health coverage, including financial risk protection, access to quality health care services and access to safe, effective, quality and affordable medicines and vaccines, in enhancing health equity and reducing impoverishment;
Reaffirming the political will to make health equity a national, regional and global goal and to address current challenges, such as: eradicating hunger and poverty; ensuring food security and improved nutrition; ensuring inclusive and equitable quality education; addressing gender-, age and disability-related inequalities in health; ensuring access to health promotion, preventative and community health services; ensuring access to safe, effective, quality and affordable medicines and vaccines; ensuring access to safe and affordable drinking-water, and adequate and equitable sanitation and hygiene; fostering employment and decent work and social protection; protecting the environment and addressing ambient and household air pollution; ensuring access to safe and affordable housing; and promoting sustained, inclusive and sustainable economic growth through resolute action on social determinants of health across all sectors and at all levels;
[....]Further recognizing the need to establish, strengthen and maintain existing monitoring systems, including platforms and mechanisms, such as observatories, that provide disaggregated data, to assess inequities in health, their relation to social determinants of health and the impacts of policies on the social determinants of health at the national, regional and global levels [...]
1. CALLS ON Member States to strengthen their efforts on addressing the social, economic and environmental determinants of health with the aim of reducing health inequities, and to accelerate progress in addressing the unequal distribution of health resources within and among countries, as well as conditions detrimental to health at all levels and in support of the 2030 Agenda for Sustainable Development;
2. FURTHER CALLS ON Member States to monitor and analyse inequities in health using cross-sectoral data in order to inform national policies that address social determinants of health, to which end Member States may establish monitoring systems of social determinants of health, including platforms and mechanisms, such as observatories, or rely on, or strengthen, as appropriate, existing structures, such as national public health institutes or national statistical offices;
3. ENCOURAGES Member States to integrate considerations related to social determinants of health in public policies and programmes, by applying a health-in-all-policies approach and in order to improve population health and reduce health inequities;
4. INVITES Member States, international organizations and other relevant stakeholders, including intergovernmental and nongovernmental organizations, academia and the private sector, and to mobilize financial, human and technological resources to enable the monitoring and addressing of social determinants of health; [...]".

In our opinion, this is where CSR and BHR frameworks are pivotal. CSR, as a model of corporate governance, involves proactive measures to address these determinants through practices that enhance working conditions, fair wages and community empowerment. Similarly, BHR focus on the corporate responsibility to respect and protect human rights, including health, by mitigating adverse impacts on communities and the environment. We highlight that by aligning CSR and BHR practices with the social determinants of health, companies not only improve health outcomes, but also advance broader sustainability goals. This alignment is essential for developing integrated approaches that address both immediate and systemic health and sustainability challenges, ultimately fostering a more equitable society.

4.5. CSR and EU Directives: The Corporate Sustainability Reporting Directive (CSRD), the Corporate Sustainability Due Diligence Directive (CSDDD) and Recent Developments on the Omnibus Framework

The Corporate Sustainability Reporting Directive (CSRD)[461] and the Corporate Sustainability Due Diligence Directive (CSDDD)[462] seek to enhance corporate transparency and accountability regarding human rights and sustainability. Both Directives reflect the evolution of CSR from voluntary initiatives to mandatory requirements, ensuring that businesses contribute to Sustainable Development through human rights, environmental and social considerations in their core governance and operations.

Both Directives have undergone multiple revisions between the initial drafting and the final discussion of this thesis. The latest revision from the European Commission occurred on February 26,2025, with the proposal of the introduction of the Omnibus ESG Regulation, a framework designed to unite CSRD, CSDDD and the EU Taxonomy Regulation, for the elimination of bureaucratical obstacles and better harmonization

[461] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on Corporate Sustainability Reporting [2022] OJ L 322/1.
[462]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.

with the ESG.[463] The latest revision, introduced briefly after their implementation, reflects that sustainability and transparency undergo ongoing political negotiations.

These amendments have significantly shaped the scope, obligations and enforcement of both Directives. In this Section we will analyze the most substantial changes to ensure a coherent understanding of how these legislative developments align with the broader concepts of corporate accountability, Sustainable Development and the protection of human rights. This comparative approach not only highlights the evolution of the Directives, but also supports the internal consistency of our analysis.

Concerning the CSRD, it was adopted in 2022, revising the previous Non-Financial Reporting Directive (NFRD),[464] and enlarged significantly the scope of sustainability reporting for businesses operating in the EU.[465] Its predecessor, the NFRD, primarily targeted large-public interest entities, whereas CSRD applies to all large companies and listed SMEs, promoting greater transparency for sustainability-related information. Article 29(b) requires from companies to report on a range of environmental, social and governance factors (ESG), upholding the European Sustainability Reporting Standards, which cover especially climate change, biodiversity, human rights and anticorruption. A crucial element in the CSRD is the introduction of the *double materiality* approach,[466] which entails that companies must report not only how their sustainability-related issues affect their business, but also how their operations influence society and the environment as equal stakeholders.

The 2025 amendment introduces two major changes. First, it excludes listed SMEs from CSRD reporting when included in the value chains of larger companies or from financial institutions, which fall in the scope of CSRD and CSDDD. Consequently, all companies with up to 1000 employees and 50 million turnover will be outside the scope of the CSRD. Currently, the CSRD covers all large companies that fall within the following

[463] European Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Directive (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' COM (2025) 80 final, 26 February 2025, SWD (2025) 80.
[464] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups [2014] OJ L 330/1.
[465] The Directive applies to EU companies that meet two of the following criteria: their net turnover exceeds €50 million or €25 million in assets and/or exceeds 250 employees. In addition, non-EU companies with a turnover exceeding €150 million in the EU will also have to comply. The CSRD applies also to SMEs that are listed on European markets and that meet at least two of the following conditions: exceeding €8 million in net turnover, exceeding €4 million assets and/or has more than 50 employees.
[466] Articles 19-29.

three categories: €50 million net turnover, €25 million balance sheet total (250 employees) and SMEs whose securities are listed on an EU regulated market. For the companies in scope, the Commission will adopt a delegated act to revise the existing sustainability reporting standards.[467] Second, concerning Article 11(7), it introduces an ‘’ambiguous’’ clause regarding the mitigation of potential direct risks, by stressing that if the prevention action plan is reasonably expected to succeed, then the continuation of engagement with the business partner shall not trigger the liability of the company. What poses concerns here is that the conformity with transparency and accountability, will mostly turn out as a “tick-box” approach. If termination with business partners is “foreseen” only as a last resort, then we fear that these could provoke more companies to engage in “greenwashing” activities, distorting the nature of CSR as a guiding framework for compulsory commitment.

On the other hand, the CSDDD[468] poses obligations that exceed the mere reporting of sustainability standards. Adopted in July 2024 it underwent significant discussions and political drawbacks.[469] CSDDD seeks better protection of human rights, including the right to health (Preamble para 33), labor rights and the human right to a healthy, clean and sustainable environment. In fact, Article 1 (l) includes in the notion of adverse human impact as “‘[…] especially significant on account of its nature, such as an impact that entails harm to human life, health or liberty, or on account of its scale, scope or irremediable character, taking into account its gravity, including the number of individuals that are or may be affected, the extent to which the environment is or may be damaged or otherwise affected, its irreversibility and the limits on the ability to restore affected individuals or the environment to a situation equivalent to their situation prior to the impact within a reasonable period of time.”

Regarding its scope, it applies to large EU limited liability companies and partnerships with more than 1000 employees and with a net turnover exceeding €450 million worldwide. Also large non-EU companies fall within its provisions, as long as they generate a net turnover of more than €450 million in the EU (Article 1). However, the exemption of micro companies and SMEs from its application has faced criticism,

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[467] https://ec.europa.eu/commission/presscorner/detail/en/qanda_25_615 (Access: 1/3/2025).
[468] 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 (5/72024).
[469] ‘Italy and Germany block EU agreement on business ethics just before the finish line’ (9/2/2024) available at: < https://www.eunews.it/en/2024/02/09/italy-and-germany-block-eu-agreement-on-business-ethics-just-before-the-finish-line/> (Access: 25/8/2024).

though it provides support to SMEs that could be directly affected as business partners in value chains.

Two fundamental issues should be considered, especially compared to the UNGPs:

First, in the context of Due Diligence, the UNGPs avoid using the term 'abuse' of rights.[470] By contrast, the UNGPs focus on describing adverse impacts as actions or omissions that hinder an individual's ability to fully enjoy their human rights. In 2024, the Directive's extensive reference of the term 'abuse' could imply a violation of State duties under international human rights law, potentially raising the threshold for determining when an impact falls under a company's Due Diligence obligations.[471] 'Abuse' could ironically work as a barrier for the victims, especially in cases of civil liability. The 2024 provisions of Article 29 could narrow the scope of Due Diligence requirements and the liability framework, for two main reasons: First, breaches of international law are not typically grounds for civil claims under domestic law and second, because direct obligations are limited for only large companies.

However, the amended version seems to address this uncertainty because:

i. The EU-wide liability regime of Article 29 (12) will be removed, while ensuring victims' protection against human rights violations and environmental harm caused by business operations. The amendments maintain the right to effective access to justice, including full compensation for damage caused by a company's failure to comply with Due Diligence requirements, as per national law. Companies are also protected from over-compensation.
ii. Specific requirements for representative actions will be removed, given the varying national rules
iii. Member States are no longer required to make liability rules of overriding mandatory application, where the law applicable to the claim is not the national law of the Member State.

[470] Danish Institute for Human Rights, 'The EU Corporate Sustainability Due Diligence Directive: Maximizing Impact through Transposition and Implementation' (2024) available at: https://www.humanrights.dk/files/media/document/DIHR_The%20EU%20Corporate%20Sustainability%20Due%20Diligence%20Directive_0.pdf (Access: 25/8/2024).
[471] Ibid; "[…] Introducing the concept of 'abuse' carries the connotation of a breach of duty by States under international human rights law and risks inadvertently raising the threshold for when an impact would be covered by the proposal and thereby should be part of a company's due diligence obligation".

The European Commission's press release of Feb 26, 2025 confirmed that the scope of the rules remains intact, however the deadline for the companies' reporting extends from mid-2027 to mid-2028. Concerning the status of stakeholders, the new suggestions clarify that stakeholder's definition is limited to workers, their representatives and individuals/communities directly affected by the company's operations (Article 3(1) n). Paragraph 4 seeks to promote maximum harmonization for the inclusion of core Due Diligence aspects:

"[…] on identifying and assessing actual and potential adverse impacts […] to limit due diligence measures, as a general rule, to the companies' own operations, those of their subsidiaries and, where related to their chains of activities, those of their direct business partners. […] when it comes to business relationships, following a mapping of their value chains, companies […] carry out an in-depth assessment only at the level of direct business partners. […] there can be situations where companies have to look beyond their direct business partner, namely where they have plausible information that suggests an adverse impact at the level of an indirect business partner. […] In these cases, companies should be required to further assess the situation. Where the assessment confirms the likelihood or existence of the adverse impact, it should be deemed to have been identified. In addition, a company should seek to ensure that its code of conduct – which is part of its due diligence policy and sets out the expectations as to how to protect human, including labour, rights and the environment in business operations – is followed throughout the chain of activities (contractual cascading)".

Moreover, the amended version considers the termination of relations for actual or potential impact as an ultimum refugium, eliminating the initial respective duty-a 'discouragement' similar with the CSRD amendment. The assessment of Due Diligence effectiveness in supply chains, changes from annual to quinquennial assessments, extending intervals for monitoring and ad hoc assessments for evolving risks or inefficient measures.

The initial and the amended provisions commonly prove that for the CSRD and CSDDD to be fully effective, operational-level grievance mechanisms, multistakeholder initiatives (MSIs), and broader legal remedies to overcome existing barriers, should be implemented. Both versions of the Directives lack explicit guidance on governance structures and the exercise of the duty of care.

Nevertheless, the relevance of the Directives to health is particularly evident, underscored in the broader context of how corporate conduct affects public health. For instance, both Directives emphasize the importance of reporting and addressing environmental risks, which are directly linked to implications for public health. Indicatively, pollution, climate change, exposure to hazardous substances are acknowledged as significant health concerns and by mandating companies to report and mitigate such risks, we see that the CSRD incorporates in its context the right to a healthy, clean and sustainable environment.

Comparing the two Directives, we notice that CSDDD provides a clearer connection with BHR and health, by requiring companies to address unsafe working conditions, exposure to toxic materials and other harms that affect their employees and communities. By ensuring that companies mitigate such risks, the CSDDD is a meaningful tool in protecting the right to health, particularly for vulnerable populations. On the other hand, the double materiality principle in the CSRD confirms the interconnection between corporate activities and social well-being, ensuring that health-related outcomes, e.g. access to healthcare and occupational health and safety, are incorporated into corporate governance.

Several concerns have been raised against both Directives, especially in terms of increased compliance costs for SMEs, the complexities of reporting and the limited enforcement mechanisms.[472] For instance, the CSRD was viewed as a financial and administrative burden for SMEs, because the expanded scope of the Directive required companies to produce comprehensive sustainability reports, adhering to European Sustainability Reporting Standards and seek third-party verification. Moreover, the introduction of double materiality has seen as a complex implementation especially for businesses with no significant experience in ESG reporting, resulting in uneven application across different sectors.[473] In parallel, despite the improvements in reporting obligations, some critics believe that the CSRD lacks robust enforcement mechanisms to ensure that companies truly act on the sustainability risks they disclose.

[472] See also "ESG round-up: Draghi report warns of 'regulatory burden' from EU sustainability rules' at: https://www.responsible-investor.com/esg-round-up-draghi-report-warns-of-regulatory-burden-from-eu-sustainability-rules/ (Access: 10/9/2024); 'The future of European competitiveness: Part A- A competitiveness strategy for Europe' (2024) available at: https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en (Access: 10/9/2024).

[473] 'The future of European competitiveness', ibid.

Therefore, even if the Directive promotes transparency, it is questioned whether disclosure alone can necessarily strike substantive corporate behavioral change.[474]

On the other hand, we analyzed in Chapter 3 that the main critiques against the CSDDD concern its ambiguity, especially in terms of ensuring due diligence compliance, given the insufficient clarity that this entails in practice. Moreover, another debatable aspect concerns transparency through access to information, reducing litigation costs, and ensuring the availability of injunctive relief, all of which are measures that require substantial improvement in national legal frameworks. To ensure the full effectiveness of the CSDDD it is essential to develop additional avenues for remedies, consistent with the UNGPs. We highlighted in Chapter 3 that this includes operational-level grievance mechanisms, MSIs and broader legal remedies, such as tort claims, to help overcome these existing barriers.[475]

4.6. CSR, Capabilities and reflections on health

As discussed in Chapter 2, the Capability Approach, pioneered by Sen and Nussbaum, positions health at the core of human development. Despite their differing perspectives, both agree that health transcends mere considerations of equity and justice; it is profoundly influenced by a combination of individual choices and social factors. Sen, in particular, frames health as a critical issue of justice and social equity, emphasizing that it is an essential component of human capabilities that individuals have a compelling reason to value.[476]

Any robust theory of social justice that aims to prioritize the fair distribution and enhancement of human capabilities must account for the pivotal role of health in human life.[477] This encompasses the opportunities individuals have to achieve good health—

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[474] Ibid.

[475] Danish Institute for Human Rights, 'The EU Corporate Sustainability Due Diligence Directive: Maximizing Impact through Transposition and Implementation' (2024) available at: https://www.humanrights.dk/files/media/document/DIHR_The%20EU%20Corporate%20Sustainability%20Due%20Diligence%20Directive_0.pdf (Access: 25/8/2024).

[476] Amartya Sen, 'Why Health Equity?' (2002) 11 Health Economics, 659-666; Amartya Sen, 'Well-being Agency and Freedom: The Dewey Lectures 1984' (1985) 82 Journal of Philosophy, 169-221; Enrica Chiappero-Martinetti, Siddiqur Osmani and Mozaffar Qizilbash, *The Cambridge Handbook of the Capability Approach* (Cambridge University Press, 2020); Séverine Deneulin, *The Human Development and Capabilities Approach* (Earthscan, 2009).

[477] Marta Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard University Press 2011); Marta Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*

specifically being free from preventable illness, avoidable suffering, and premature death.[478] In this context, health equity becomes an integral part of a broader understanding of justice. It represents a profound injustice when individuals are denied the chance to achieve good health due to systemic deficiencies in social arrangements, rather than as a result of personal choices or behaviors.[479]

The Capability Approach, in essence, revolves around the concept of empowerment, primarily through two dimensions: opportunity freedom and process freedom.[480] According to Sen, opportunity freedom pertains to whether an individual has the genuine ability to achieve various outcomes through their effective capacities. Particularly, Sen stresses that opportunity freedom concerns the individual freedom to achieve various outcomes, through an individual's effective powers.[481] González-Cantón adds that is crucial *"[…]the size and scope of the set of individual and collective options. Process freedom, for its part, is about "whether the person is himself exercising control over the process of choice" (Sen 1985b), which he (1985a) also calls "procedural control, or control (for short)". It is not about freedom of choice but freedom from coercion. […]".*[482]

Recent studies have shown that Sen's Capabilities can offer valuable insights into the normative dimensions of CSR, as Sacconi and Fia stress.[483] Consequently, though traditionally associated with States-to-individuals relationships, extending the Capability Approach in the CSR results in the following: First, as a framework for corporate governance that encompasses rights and duties, CSR inherently integrates the notion of capabilities as fundamental rights. Second, this intersection highlights the necessity for Corporations to recognize their role in fostering not only economic success, but also the health and well-being of the communities they serve. Therefore, by aligning CSR with Capability Approach, businesses can contribute to creating an environment

(Harvard University Press, 2006); Govin Persad, 'Justice and Public Health' in Anna C. Mastroianni et Al. (Eds.) *The Oxford Handbook of Public Health Ethics* (Oxford University Press, 2019).
[478] Sen [476].
[479] Sen, ibid.
[480] Ingrid Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (Cambridge: Open Book Publishers, 2017); Erik Schokkaert, 'Capabilities and Satisfaction with Life' (2007) 8 Journal of Human Development 3, 415–30.
[481] Amartya Sen, *Commodities and Capabilities* (Oxford University Press, 1987).
[482] César González-Cantón, Sofia Boulos and Pablo Sánchez-Garrido, 'Exploring the Link Between Human Rights, the Capability Approach and Corporate Responsibility' (2019) 160 Journal of Business Ethics 160, 865-879.
[483] Magali Fia and Lorenzo Sacconi, 'Justice and Corporate Governance: New Insights from Rawlsian Social Contract and Sen's Capabilities Approach' (2018) 160 Journal of Business Ethics 4, 937-960.

where individuals have equal opportunities to achieve optimal health, -also referred to from the WHO as the '*highest attainable standard of health*'-[484].

Health, as both a capability and a human right, is interesting to study in the context of Capability Approach and corporate governance. Corporations, through their governance and operations, have a crucial role in expanding individuals' opportunities to achieve and maintain good health. By fostering a safe and environmentally sustainable environment, CSR practices can contribute to economic objectives and uphold the fundamental capabilities that are necessary for human flourishing.

An essential concept that binds Sen's Capabilities and CSR are entitlements, referring to the rights and freedoms that individuals possess, which empower them to achieve their desired capabilities and well-being.[485] When introducing Sen's capabilities and entitlements into the corporate governance domain through CSR, it entails establishing a framework where stakeholders, such as employees, customers and local communities, are recognized as having inherent rights to health, safety and dignity and meaningful participation in decision-making processes. Indicatively, this transformation would involve redefining managerial power to prevent abuses, such as coercing employees into unsafe working conditions or unreasonably long hours, thereby protecting their health and well-being. By embedding entitlements into corporate governance, Corporations would ensure that the voices of all stakeholders are considered, promoting an environment where their health and well-being are prioritized.

Furthermore, this approach would advocate for transparency and accountability mechanisms, enabling stakeholders to hold Corporations accountable for respecting their rights and maintaining healthy work environments. Ultimately, integrating Sen's capabilities and entitlements into CSR practices would create a more equitable corporate landscape that fosters long-term social and economic well-being, aligning business objectives with the broader principles of social justice and human flourishing. In our case, health is not viewed as an access to medical services (which falls within the interpretation of Capability Approach in a States-to-individuals relationship) but

[484] Paul Hunt, 'The Human Right to the Highest Attainable Standard of Health: New Opportunities and Challenges' (2006) 100 Transactions of the Royal Society of Tropical Medicine and Hygiene, 603-697; WHO and Office of the UN High Commissioner for Human Rights 'Fact Sheet No.31 The Right to Health'.
[485] Supra [481], [483].

encompasses the broader societal and environmental conditions that affects an individual's ability to live and grow in a healthy environment.[486]

Moreover, Sen articulates that health equity is not merely about the distribution of healthcare services; it is influenced by a multitude of factors, including income levels, employment conditions and environmental contexts.[487] These factors, collectively shape the capabilities available to individuals and impact their ability to lead healthy lives. We could argue that for Sen, it is much more crucial to focus and improve the social determinants of health, i.e. the non-medical conditions that affect health, than health in itself. He emphasizes that "[…] *health is among the most important conditions of human life and a critically significant constituent of human capabilities which we have reason to value. Any conception of social justice that accepts the need for a fair distribution as well as efficient formation of human capabilities cannot ignore the role of health in human life and the opportunities that persons, respectively, have to achieve good health – free from escapable illness, avoidable afflictions and premature mortality. Equity in the achievement and distribution of health gets, thus, incorporated and embedded in a larger understanding of justice. What is particularly serious as an injustice is the lack of opportunity that some may have to achieve good health because of inadequate social arrangements, as opposed to, say, a personal decision not to worry about health in particular*."[488] Notably, he points out that health equity is not merely a question of healthcare distribution per se, as it is influenced by a range of circumstances and factors, including individual incomes, nutrition, genetics, and working and environmental conditions. As we argued previously, the social determinants of health prove that health is a matter of social justice, since its determinants are connected with primary goods that also reflect issues of justice, e.g. the ability to grow in a healthy environment, access to effective healthcare, income levels, working conditions etc.

Furthermore, capabilities and functionings are not solely influenced by States. Businesses also play a key role in enabling these capabilities, especially in terms of fundamental human rights, as stressed extensively in Chapter 3. In the context of the right to health and the right to a healthy, clean and sustainable environment,

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[486] Jean D Brender, Juliana A. Maantay and Jayajit Chakraborty, 'Residential Proximity to Environmental Hazards and Adverse Health Outcomes' (2011) S1 American Journal of Public Health 101, S37-S52
[487] Sen, supra [481].
[488] Amartya Sen, 'Why Health Equity?' (2002) 11 Health Economics, 659-666.

Corporations must ensure that their actions align with these rights. For example, the achievement of "good health" includes safe and clean working environments for the prevention of work-related accidents, but also support for the physical and mental health of the employees and prevention of environmental degradation for the sake of public health. We believe that such promotion of health can be achieved with the adherence to BHR and CSR standards, provided that public legal orders introduce effective measures for their application.

The inclusion of Capability Approach as a lens in the assessment of an ethical and socially responsible business behavior aligns with the general principles of BHR and CSR, since capabilities represent rights which should be included in corporate governance structures.[489] As Fia and Sacconi highlight, incorporating Capabilities into CSR provides a transformative framework for businesses, aiming to implement socially responsible and ethical practices. By recognizing employees as more than mere participants in labor, but as individuals with different capabilities and potential, companies can create governance structures that empower economic success but also personal growth, social and physical well-being. Sacconi and Fia emphasize that such inclusion would mean that employes are not "[…] *just entitled to equal and fair pay, or to safe working conditions or to join trade unions. They should be seen as individuals who form part of social groups and can realize their full human potential through interaction, learning, solidarity, playing, living aesthetic experiences, being able to participate in processes that influence their own fate, being respected, being safe and so on. CA helps employees and employers to form policies that take into account all what really matters. […]".*[490] Consequently, this approach aligns with the core principles of BHR and CSR and ensures that businesses contribute to a more equitable and humane society.

Moreover, we argue that the relationship between health, or other rights as capabilities, and corporate governance hinges on counterbalancing managerial discretion (as property rights) and stakeholder entitlements. Monistic governance models, in which the company's management is delegated to a unitary body, the Board of Directors, falling under the supervision of a special Control Committee, might prioritize efficiency but risk favoring shareholder interests, therefore enabling authority abuses. On the

[489] Fia and Sacconi, supra [483]
[490] Ibid.

other hand, dualistic governance models, in which the company's administration is divided between a Management Board and a Supervisory Board, might offer stronger monitoring and balances to protect stakeholder rights, e.g. health-related goals. Greater managerial discretion might promote long-term health objectives, as soon as it is counterbalanced by institutional mechanisms that limit potential abuses of authority. This, in our opinion, aligns with the introduction of Capability Approach as a part of CSR, since the increase of stakeholder entitlements does not inherently limit property rights, but rather redefines them in a pluralistic governance framework that integrates both economic efficiency and social responsibility.[491]

However, we highlight Sen's notion of "reasons to value" which emphasizes that capabilities are not just about the resources available to individuals but also about their genuine opportunities to achieve well-being and lead fulfilling lives.[492] This perspective challenges CSR initiatives to move beyond superficial measures of success, such as profit maximization or compliance with regulations, and to consider the intrinsic value of enhancing human capabilities.

However, integrating Sen's capabilities into CSR can be complicated. We use as an example the difficulty of classifying or 'measuring' which specific capabilities should be prioritized, and this procedure seems particularly difficult in contexts where States have weak regulatory systems. In such situations, the lack of clear guidelines and support can lead to inconsistencies in identifying and addressing the most pressing needs of individuals and communities. Moreover, companies operating in these environments may struggle to assess local conditions effectively and prioritize capabilities that genuinely enhance well-being. Without strong regulatory frameworks, there can be a greater risk of businesses prioritizing short-term gains over long-term social impact.

This weakness could be addressed through sufficientarianism, which emphasizes the importance of ensuring that all individuals reach a certain threshold of capabilities necessary for a decent quality of life.[493] By incorporating sufficientarian principles into the CSR framework, companies can prioritize the health and well-being by promoting equitable access to essential resources, enabling vulnerable populations to achieve the

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[491] See Massimiliano Vatiero, 'Varieties of Capitalism, Competition, and Prosocial Corporate Purposes' in Florence Thèpot and Anna Tzanaki (Eds.) *Research Handbook on Competition and Corporate Law* (Edward Elgar Publishing).
[492] Ingrid Robeyns and Morten Fibieger Byskov, 'The Capability Approach' in Edward N. Zalta and Uri Nodelman (Eds.) *The Stanford Encyclopedia of Philosophy* (Summer 2023 Edition).
[493] Ingrid Robeyns, 'Having Too Much' (2017) 58 Wealth, 1-44.

capabilities necessary for fulfilling life and fostering a more just and inclusive corporate responsibility model.

However, doubts remain regarding the practical implementation of capabilities within the corporate governance especially due to their subjectivity—what one group values may differ from another for cultural or personal reasons—adds another layer of difficulty. In weak regulatory contexts, where voices of marginalized communities might not be adequately represented, companies might inadvertently reinforce existing inequalities instead of fostering inclusive development. Additionally, without robust accountability mechanisms, there is a risk that businesses might superficially adopt sufficientarian principles without genuinely committing to meaningful improvements in well-being. This, in our opinion, highlights the need for businesses to engage meaningfully with stakeholders to understand their specific needs and aspirations, ensuring that capability enhancement efforts are both relevant and effective. In conclusion, aligning CSR with the Capability Approach highlights the critical intersection of corporate responsibility and health equity, urging businesses to contribute to creating conditions that enable individuals to thrive, while recognizing the broader social determinants of health as fundamental to achieving justice and equity.

4.7. Conclusions

In the previous Chapter we argued that Enterprises should adhere to Human Rights Due Diligence as an aspect of bona fides, laying the groundwork for this Chapter's focus on the ethical foundations for holding Corporations accountable for their social and environmental impact. In shifting our focus from BHR to CSR, we aimed at presenting an interdisciplinary perspective beyond the legal framework. While Stakeholder Theory has long emphasized the importance of addressing various stakeholders' interests, CSR offers a more tangible framework for achieving concrete outcomes. Unlike Stakeholder Theory, which often remains abstract and lacks clear implementation strategies, CSR provides actionable guidelines and practices that companies can adopt to enhance their social and environmental impact.

The main arguments of this Chapter are: First, CSR's strategic approach enables Corporations to integrate the SDGs into their core operations, thereby improving resilience and adaptability in the face of challenges. We explored the connection

between CSR, health, and environmental sustainability, asserting that both Corporations and governments can play crucial roles in addressing social and environmental challenges, while reducing vulnerability in the business environment. Furthermore, we argued that CSR, when properly structured, can promote the achievement of SDGs and reduce economic inequalities. However, this requires overcoming its structural shortcomings, particularly in terms of its content. Drawing from Sacconi's definition of CSR as a model of extended corporate governance, we stressed that stakeholders' interests should be treated with equal importance to shareholders' interests, incorporating them into corporate governance. This approach addresses the misconception of CSR's voluntariness, emphasizing that sporadic CSR-friendly activities do not automatically equate to genuine CSR engagement.

In connecting this Chapter with the previous one and the subsequent discussion, we argued that health—both as a human right and a global common linked to environmental resilience—can serve as a unifying principle between CSR and BHR, bridging their normative gap.

We began this Chapter by discussing the conferral of moral agency to Corporations, outlining the key arguments for and against it. **Section 4.1** delved into the concept of corporate moral agency, exploring whether Corporations, like individuals, can be considered moral agents responsible for their actions' consequences. Building on the notion of legal personality, which grants Corporations rights and responsibilities, we found that these suggestions could extend to moral accountability for the firms' societal and environmental impacts. The key question posed was whether corporate actions can be evaluated based on intentionality, self-awareness, and morality—concepts traditionally reserved for individuals.

In Section 4.1 we briefly introduced Kantian ethics as a framework for evaluating corporate moral agency, highlighting Kant's focus on duty rather than consequences, and the importance of free will and human dignity. We described that Kantian ethics would require Corporations to provide meaningful work, fostering autonomy and ensuring the well-being of employees. This translates to treating people as ends in themselves, not just means to an end. Corporations, as collectives of individuals, should respect the dignity and rights of employees and stakeholders in their decision-making processes, considering the interests of all affected parties. However, we concluded that the application of Kantian ethics to Corporations poses challenges, particularly because

Corporations are rational economic actors with self-interest. The ideal of unconditional moral action, free from self-interest, may be unrealistic for businesses, leading to questions about how far Corporations can be expected to act purely on moral grounds.

In **Section 4.2** we discussed whether Corporations can be held morally accountable when their actions result in harmful outcomes. Therefore, we questioned whether legal personality implies moral personality, especially when laws fall short of preventing harm. For instance, case studies like the Apple-Foxconn labor scandal demonstrate the gap between legal compliance and ethical responsibility. While Apple met its legal obligations, the scandal raised questions about whether the company truly addressed the underlying ethical issues affecting workers' dignity and well-being. This highlighted the need for corporate moral responsibility as a complement to legal accountability. Moreover, Section 4.2 presented that the debate over corporate moral agency centers on whether responsibility is individual or collective. For saw that for individualists like Pettit and List, corporate responsibility is limited to individuals' actions, while for collectivists, Corporations, as entities, can bear moral responsibility independent of individual guilt. However, we described that objections to corporate moral agency refer to the divergence of accountability from individuals to Corporations.

In our analysis we adopted a balanced perspective, asserting that a Corporation's legal personality creates an obligation to proactively address the externalities stemming from its actions. To effectively tackle the challenges in BHR protection and sustainability, we should transition from merely assigning ex post (legal) responsibilities to adopting an ex-ante approach that reshapes corporate conduct. This proactive framework aligns with CSR principles, emphasizing harm prevention over reactive measures by integrating CSR as a model of corporate governance.

The latter set the stage for our analysis of CSR's main features. **Section 4.3** briefly traced the history of CSR, revealing that corporate social concerns date back to ancient Roman laws regarding asylums. We noted that from the 1920s to the 1940s, profit maximization became the primary focus for business managers, but by the 1950s, the CSR movement began to gain momentum. Bowen, often regarded as the father of CSR, argued that Corporations should adopt principles that enhance social well-being, asserting that business actions should align with societal objectives and values. His forward-thinking theory emphasized that effective management transcends monetary gains and addresses social challenges, inspiring further development of CSR as a moral

responsibility, particularly during the socio-political upheavals of the 1960s. In contrast, while scholars like McGuire and Walton emphasized that companies should exceed legal and economic obligations to improve social conditions, Friedman famously argued that a firm's sole social responsibility is profit maximization, dismissing CSR as unnecessary.

This historical context was valuable as we explored the near-simultaneous emergence of Stakeholder Theory, which shifted the focus from shareholders to stakeholders—individuals or groups affected by a firm's objectives. We intentionally included the fundamentals of Stakeholder Theory when discussing CSR since both concepts advocate for a transition from shareholder primacy to considering all stakeholders in corporate decision-making. The concurrent rise of CSR and Stakeholder Theory has led to misconceptions, with some viewing them as identical or mutually exclusive, which hampers their potential to promote responsible corporate conduct while ensuring business success. Section 4.3 concludes with an examination of the main weaknesses of these frameworks, highlighting that CSR's ineffectiveness often stems from misconceptions about its voluntary nature. This Chapter follows Sacconi's theory, which interprets CSR as a social norm—a distinctive multistakeholder model of corporate governance that extends fiduciary duties from shareholders to stakeholders. According to this theory, the fiduciary responsibilities of firm owners or shareholders towards the firm are equally important as those owed to other stakeholders.

Section 4.4 compared the dynamics between CSR and BHR, emphasizing that while both are ambitious, they have different functional implications. We chose to compare CSR with BHR because they emphasize responsible corporate behavior and aim for companies to engage in diligent activities benefiting society and the environment. Over the years, CSR and BHR have received increasing attention, as reflected in initiatives like the UNGPs, the Draft Treaty on BHR, and the Corporate Sustainability Due Diligence Directive. However, BHR and CSR have distinct boundaries. In our analysis we highlighted that some scholars view them as similar disciplines with clear distinctions, while others argue their conflict due to their different origins and developments. Some advocate for their interconnectedness, suggesting that BHR addresses CSR's shortcomings and vice versa. A key point of debate between BHR and CSR is enforceability, highlighted by the hard law vs. soft law discussion surrounding BHR and its emphasis on the 'no harm' principle for Enterprises.

Conversely, the vague definition of CSR and misconceptions about its voluntary nature impede synergy between the two frameworks. We argued that both BHR and CSR should be applied in tandem once their conceptual differences are understood and reconciled. Despite their evolving nature and inherent flaws, integrating both frameworks could provide a missing link for responsible business conduct. Therefore, we emphasized the need to strengthen the effectiveness of ex-ante CSR law approaches to tackle the challenges outlined in the 2030 Agenda. Having analyzed BHR's strengths and weaknesses, we contend that new regulatory approaches could guide Companies in formulating strategies and policies as part of their corporate governance, effectively addressing sustainability-related risks and uncertainties. In doing so, businesses could reassess their corporate strategies and allocate CSR resources toward fostering long-term resilience and strategic agility. By embracing true CSR strategies, Companies can enhance their long-term resilience, address systemic inequalities, and adapt to ongoing Sustainable Development challenges.

Moreover, **Section 4.5** provides an overview of the CSRD and the CSDDD which are relevant to corporate governance and sustainability, highlighting their roles in shaping business practices. We described that the ongoing changes of the Directives, especially after the European Commission's proposal of integrating them in one, unified framework, the Omnibus, highlight the complexities of securing political consensus. Indeed, one of the remaining challenges is counterbalancing interests, because even if the Directives intend to promote responsible corporate behavior, ensuring companies' legal compliance is not sufficient. Companies should also demonstrate that they actively contribute to social and environmental well-being. We stressed the Directives' weaknesses and added that if implemented effectively and backed by strong enforcement mechanisms, they have the potential to promote more responsible corporate behavior, improve access to justice for victims of corporate harm, and make significant strides toward a more sustainable and equitable global economy. Ultimately, their success hinges on striking a balance between stringent regulatory requirements and practical support for companies, ensuring meaningful protection for both individuals and the environment.

In conclusion, **Section 4.6** drew insights from the recent theoretical development by Sacconi and Fia, which reframes CSR as an expanded social model of corporate governance that integrates Sen's capabilities and Rawls's primary goods. This perspective shifts the Capability Approach from a traditional State-to-citizens

framework to a Corporations-to-citizens orientation, asserting that incorporating Sen's Capabilities within corporate governance will enhance stakeholders' (republican) freedoms. This Section is particularly significant because, as elaborated in Chapter 2 regarding the philosophical interpretation of health, Sen places health and well-being at the heart of human flourishing. By applying Sen's Capability Approach to the CSR model, it underscores the vital role of health in promoting employees' well-being—such as workplace safety and physical and mental capabilities—as well as recognizing health as a public good when corporate actions do not jeopardize it.

Moreover, we stressed that for Sen, it was far more essential to focus on and improve the social determinants of health—the non-medical conditions that impact health—rather than health itself. As previously discussed, these social determinants underscore that health is a matter of social justice, as they are connected to primary goods that reflect issues of justice, such as the ability to grow up in a healthy environment, access to effective healthcare, income levels, and working conditions. Moreover, capabilities and functionings are not solely shaped by States; businesses also play a significant role in enabling these capabilities, particularly regarding fundamental human rights, as emphasized in Chapter 3. In terms of the right to health and the right to a healthy, clean, and sustainable environment, Corporations must ensure their actions align with these rights. Achieving "good health" encompasses providing safe and clean working environments to prevent work-related accidents, supporting employees' physical and mental health, and preventing environmental degradation for the sake of public health. We stressed that promoting health in this manner can be realized through adherence to BHR and CSR standards, provided that public legal frameworks introduce effective measures for their implementation.

Chapter 5.

'The case studies of 'Nestlé baby formulae', 'Forever Chemicals' and 'Royal Dutch Shell': A Critical Examination of Public Health Risks and Corporate Responsibility'

Keywords: Infant Nutrition, Environmental Externalities, Strategic Litigation, PFAS, Right to Health, Bona Fides

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Introduction

The intersection of corporate activities and human rights has become a focal point of global discourse, particularly through the lenses of BHR, CSR and Sustainable Development. The theoretical analysis that was provided in the preceding Chapters emphasized the ethical and legal obligations of businesses to operate in a manner that is not only profitable but also socially and environmentally responsible. This need becomes more evident especially in light of 2030, which is supposedly the target year for achieving Sustainable Development. This Chapter delves into three illustrative case studies, each of them elaborated in three relevant Sections, that highlight significant business and human rights abuses, shedding light on how corporate actions can deeply impact fundamental rights and environmental sustainability.

The three distinct case studies have been selected for affecting diversely different aspects of the right to health: 'Nestlé baby formulae' concerns children's nutrition and development; the 'Forever Chemicals' case, concerns direct public health and severe environmental harm; and the 'Royal Dutch Shell' case, addresses environmental harms indirectly affecting well-being. This tripartite analysis offers valuable insights into the extraterritorial implications and access to justice, as these cases present unique dimensions. The 'Nestlé' case involves a European company accused of extraterritorial harm, which has yet to be brought to courts. In contrast, the 'Forever Chemicals' case concerns U.S.-based Enterprises whose severe impact in the U.S. has recently initiated numerous legal proceedings from many Attorney Generals. Finally, the 'Royal Dutch

Shell' involves a European company judged for its territorial and potentially global environmental impacts, providing interpretation within the European legal order. By analyzing these cases together, we aim to complete their individual gaps and offer a holistic understanding of corporate responsibility across jurisdictions.

Part I (Sections 5.1.1-5.1.6) focuses on the **'Nestlé case'**, describing the accusations that the global giant in the food and beverage industry faced in April 2024 of incorporating excessive sugars into baby products (Cerelac and Nido) marketed in middle-income countries. Despite promoting itself as indispensable for children's nutrition and CSR-friendly, Nestlé's practices have raised concerns about health risks such as obesity, diabetes, and cardiovascular diseases especially for vulnerable population. While no judicial decision has been reached, the case provides a critical lens to assess its CSR's claims and legal responsibilities. The three main takeaways that we highlight are: First, that the company's marketing mechanisms are effective in building parental trust in its products, for instance by involving pediatricians in their commercials. Second, the consumers of Cerelac and Nido are de jure and de facto vulnerable, therefore it is important to evaluate the corporate responsibility in terms of children nutrition and future development. Third, the case offers significant insights especially in terms of the OECD Guidelines, the BHR and the CSR framework, especially because it involves a European-based company accused of extraterritorial harms.

Part I is structured as follows:

Section 5.1.1 provides a historical overview of the accusations faced by the company in the 1980s, specifically concerning its aggressive marketing techniques of infant formula. The company's advertisements for powdered milk formula in less developed countries convinced mothers that Nestlé's products were superior to breast milk. As a result, many mothers switched to powdered milk, which made their children more vulnerable to diseases and dependent on the formula. Additionally, due to a lack of awareness, many mothers prepared the formula using unsterilized or unboiled water, which led to contamination. These issues sparked a boycott campaign against Nestlé and ultimately prompted the intervention of the World Health Organization (WHO), which introduced the International Code of Marketing of Breast-Milk Substitutes-a global public health policy that promotes breastfeeding and restricts the excessive marketing of breast-milk substitutes.

Section 5.1.2 outlines the relevant Swiss legal provisions regarding baby formula, which leads to controversy. Specifically, as Nestlé's headquarters are based in Switzerland, the company falls under Swiss commercial legislation. While Nestlé has adopted some aspects of the WHO Code—such as the prohibition on advertising bottle-feeding as equal or superior to breastfeeding—the Swiss Special Food Ordinance excludes cereal- and milk-based products for infants and toddlers from the category of "baby products".

Section 5.1.3 explains how Nestlé's actions reflect a double standard, particularly in lower-income countries, where the sugar content of their products is unjustifiably higher compared to those sold in European markets.

Section 5.1.4 analyzes the findings of investigations by Public Eye and IBFAN, revealing that Nestlé's baby products, namely Cerelac and Nido, contain disproportionately high levels of sugar when sold in Asian and Latin American countries. These products are marketed in a "tailor-made" way, using pediatricians and social media influencers to gain parental trust. However, a controversy emerges: the countries with the highest sugar content in baby products are also those that have implemented the WHO Code on breast-milk substitutes. This raises questions about the effectiveness of this implementation if national legislation does not require transparent monitoring independent of commercial interests.

Section 5.1.5 evaluates the case study in terms of corporate responsibility and public legitimacy. We emphasize that Nestlé could be held accountable for violating the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, the OECD Principles of Corporate Governance, and the UNGPs. Additionally, we highlight the role of States in enforcing mechanisms that prevent exploitative practices against consumers, noting that this is crucial to maintaining public legitimacy. When States fail to regulate the quality of baby food produced or sold within their territories, thereby failing to protect their citizens from unethical practices, it undermines their public legitimacy. The States' public authorities have the duty to ensure first, that the products sold in their territories meet international health and safety quality standards and second, that their marketing and promotion are not deceptive to parents. These measures are crucial for protecting the public interest, particularly given the significant implications for children's well-being.

Lastly, the conclusions of **Section 5.1.6** outline the connection of the Nestlé case with the theoretical framework of our thesis. We emphasize the critical need for stringent enforcement of public health policies and corporate accountability, especially because the case shows how multinational Corporations exploit regulatory gaps in both domestic and international frameworks, particularly in lower-income regions. Moreover, the Nestlé case underlines the importance of robust, independent monitoring mechanisms for the effective implementation of health-related codes and guidelines, like the WHO Code. Ultimately, the case reinforces the argument that Corporations have a responsibility to align their practices with the principles of human rights and corporate responsibility, as outlined in frameworks such as the UNGPs and OECD Guidelines.

On the other hand, **Part II** (Sections 5.2.1-5.2.6) is dedicated to the **'Forever Chemicals case'**. This case concerns a lawsuit filed in January 2024 by the General Attorney of the State of Connecticut against DuPont, 3M and Chemours companies to compensate for the damages they have caused to the environment and public health with their PFAS (Per- and polyfluoroalkyl) substances. PFAS, also known as Forever Chemicals, are extremely persistent in the environment, posing serious environmental and health risks, including various types of cancer, infertility issues and serious immune system suppression.

The case has been selected because it reflects recent judicial and political efforts to address environmental and public health damages by the PFAS contamination. In 2023 alone, thirteen (13) Attorneys General joined the litigation, while since April 2024 around thirty (30) others have pursued legal actions against PFAS manufacturers.[494] Despite substantial proposed settlements, e.g. $10.3 billion from 3M and $1.8 billion from Dow, DuPont and Chemours, estimated cleanup costs far exceed these amounts, reaching up to $400 billion nationwide. States like Minnesota project costs between $14 billion and $28 billion, while others, including Maine, have allocated funds to mitigate PFAS pollution. This case exemplifies strategic litigation's potential to enforce corporate accountability and influence public policy, setting a significant precedent for advancing BHR and CSR. To render our analysis more concrete, we focus on the lawsuit filed by A.G. Tong, following a number of preceding lawsuits, against 3M, DuPont and

[494] These states include Arizona, Arkansas, Illinois, Maine, Maryland, New Mexico, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, and Washington. Earlier settlements include Minnesota (2018), Delaware (2021), Michigan (2023), and New Jersey (2023). See more information at: www.safestates.org

Chemours. Many people were exposed to PFAS from indoor air and dust (i.e. PFAS included in domestic cleaning products, cosmetics and personal care products), food and drinking water, due to the PFAS' extreme persistence in crops, fish, livestock and landfills (e.g. PFAS found in food packaging, firefighting foam, spreading of sludge etc.).

More specifically:

Section 5.2.1 provides a historical trajectory of PFAS and the emerging awareness of their dangers. Introduced in the 1940s, PFAS gained popularity due to their remarkable properties, however as industrial production evolved, concerns began to emerge regarding the persistence of these chemicals in the environment and their accumulation in human bodies.

Section 5.2.2 conducts a deeper analysis of the responsibility borne by the companies involved in the production and distribution of PFAS. Interestingly, from a legal perspective, in cases of environmental damage, threat of the public health and consumer fraud, Attorneys General have significant latitude to initiate lawsuits independently, ensuring they can effectively protect the public interest within their jurisdiction.[495] We focus on the accountability of DuPont, 3M and Chemours for concealment, as they were already aware of the dangers of Forever Chemicals for public health and the environment, long before public knowledge caught up. Based on the lawsuit filed by AG Tong, we find that internal documents and communications among the Respondents illustrate how the companies were engaged in a pattern of concealment regarding health risks associated with their products. We emphasize the need of regulatory oversight and corporate accountability in light of substantial evidence of public health risks and environmental harm.

Section 5.2.3 offers an overview of the federal investigations and regulatory frameworks concerning PFAS in the United States. We notice that although public awareness of the dangers of PFAS has grown, regulatory action has often lagged behind scientific findings. Key investigations by agencies such as the Environmental Protection Agency (EPA) will be overview, including their role in assessing the environmental of PFAS and the efforts made to establish regulatory limits on their use.

[495] For instance, in the State of Connecticut, the State Attorney General establishes his independent jurisdiction based on the Connecticut Unfair Trade Practices Act (CUTPA).

In **Section 5.2.4** we review previous legal actions against the same companies regarding PFAS contamination. As elaborated in that Section, the lawsuits filed by US Attorney Generals have not been judged yet, however we consider this common strategic litigation an ambitious step towards robust public policy reformations and more responsible business conduct. In the absence of a decision on AG Tong's lawsuit, we cite previous examples of BHR misconduct involving 3M, Chemours and DuPont. We notice that decisions on previous lawsuits against these companies have been questioned for their effectiveness and demonstrate the legal hurdles and challenges in proving causation. In contrast, we believe that the current 'Forever Chemicals' strategic litigation is framed as a more promising avenue for accountability and remediation, given the collective strength of Attorneys General and the increasing public awareness of PFAS issues.

In concluding Part II, we connect our reflections with the thesis' main theoretical framework. Our main conclusions and reflections regarding BHR, CSR, and the right to health are summarized as follows:

i. The individual right to access a safe, healthy and clean environment (Human Rights Council Res. 48/13) is in a causal relationship with the right to health, and such causality must be protected.
ii. We argue that the right to a healthy clean and sustainable environment bridges two generations of human rights, i.e. the right to health as an aspect of fundamental physical and social well-being (2nd generation) with the right to a healthy and sustainable environment (3rd generation).
iii. The case exemplifies how retributive and restorative justice should be promoted by legal and political authorities. Persistent gaps in regulatory frameworks allow human rights- and environmental abuses to occur. The lawsuit, among other States Attorneys General actions against powerful Corporations, illustrates the critical need for robust integration of human rights and environmental considerations into the corporate decision-making process, advocating for a more just and sustainable global business environment.
iv. We underscore the significance of public awareness and civil engagement in promoting public policy reforms that will further scrutinize the negative corporate externalities. For instance, Safer States, an alliance of environmental health organizations led by state-based organizations, has managed to promote state policies that reform corporate conducts, hold polluters accountable and

protect public health. Starting with the severe impact of PFAS on the environment, their collaboration with state, local, and national partners promotes policies and market actions for safer chemicals and materials, aiming for a healthier future. They unite allies to identify strategic opportunities, create a shared agenda, and coordinate actions. Collaborating with small stakeholder groups, e.g. Alaska Community Action on Toxics and Clean Cape Fear, they ensure that the perspectives of impacted communities are heard and considered in their efforts. Their pressure and collaboration with the public sector have accomplished the judicial and legislative recognition, i.e. through House Bills or Senate Bills, that PFAS should be banned.

Last, **Part III** (Sections **5.3.1-5.3.4)** concerns the 'Royal Dutch Shell' case, based on the climate change lawsuit *Milieudefensie v Royal Dutch Shell*.[496] The case describes how the lawsuit filed by Milieudefensie, an environmental group, among other NGOs and citizens, managed to gain global attention, for successfully holding Royal Dutch Shell globally responsible for climate change, given Shell's inadequate environmental policies. In May 2021, the Hague District Court ruled that Royal Dutch Shell must reduce its CO_2 emissions by 45% by 2030, and that Shell's inefficient environmental policies posed a serious risk to the right to life (Article 2) and the right to private and family life (Article 8) under the European Convention on Human Rights (ECHR),[497] creating a duty of care (under Dutch Law and international law) for the company to align its actions with the Paris Agreement.[498]

The 2021 decision was considered a forerunner in climate litigation and corporate accountability. However, in November 2024, the Dutch Court of Appeal overturned part of this decision.[499] While affirming that Shell bears a duty of care regarding climate change, the appellate Court held that imposing a specific emission reduction target is a matter for policymakers, not the judiciary, since there is no scientific consensus so far on which degree the CO_2 emissions reduction is sufficient. Moreover, the appellate Court stressed that the developments in Due Diligence and sustainable corporate orientation through the CSDDD and the CSRD do not set binding reduction targets.

[496] District Court of The Hague, Milieudefensie et al. v. Royal Dutch Shell, Judgment of 26 May 2021, Case C/09/571932 / HA ZA 19-379.
[497] European Convention on Human Rights (1950) 213 UNTS 221.
[498] Paris Agreement, UN Framework Convention on Climate Change, 12 December 2015, entered into force 4 November 2016.
[499] Milieudefensie et al. v Royal Dutch Shell PLC (Court of Appeal of the Hague, 12 November 2024, Case No. 200.302.332/01).

These rulings underscore the tension between legislative authority and corporate accountability in corporate governance. However, the *Milieudefensie* decisions remind that TNCs like Shell still hold human rights obligations related to climate change, despite leaving open future avenues for litigation on these duties.

When comparing these decisions, we notice that the right to health has not been explicitly included as a standalone legal basis. Both decisions focus widely on corporate responsibility to climate change and environmental harm, with limited and localized references to the right to health. We spot this paradox: The 2021 decision held Shell globally accountable for its CO_2 emissions, but framed the right to health a few times, mainly through the lens of Dutch citizens' well-being, despite acknowledging the transboundary nature of climate change. This narrowness seems puzzling and reflects a legal strategy focused on Shell's general duty of care under Dutch law. We presume that the Court used the connection to Dutch residents to strengthen the argument that Shell's emissions created foreseeable and immediate risks within the Netherlands, while still issuing a global emissions reduction order. The 2024 appellate decision upheld this approach, acknowledging environmental accountability and maintaining a domestic focus on health impacts.

Part III is structured as follows:

Section 5.3.1 offers a historical background of Shell's involvement in BHR scandals, concerning environmental degradation and human rights. For instance, one of the most notable cases involved the Ogoni population in Nigeria during the 1990s. The procedures in the 'Royal Dutch Shell' started by the environmental organization *Milieudefensie* arguing that Shell's continued investments in fossil fuels constituted a violation of the right to health and well-being, while harming seriously the environment.

Section 5.3.2 describes the 2021 and 2024 decisions, highlighting their main differences. The 2021 decision mostly established corporate accountability under the Paris Agreement which aims to limit global temperature rise to well below 2°C, with efforts to keep it below 1.5°C. Although the Paris Agreement primarily targets States, the Court expanded this interpretation also to Corporations for their role in mitigating climate change. However, the 2024 Court of Appeal significantly altered this outcome. It retained Shell's duty of care toward climate change mitigation, but rejected the enforceability of quantified reduction targets against Corporations, reasoning that such

targets are appropriately established by legislative and governmental bodies rather than the judiciary.

Furthermore, **Section 5.3.3** links the case study as a whole with the theoretical framework of our thesis, claiming that despite the 2024 decision, it still offers a uniquely European perspective on corporate accountability for global environmental harm. As a Dutch company with operations around the world, Shell was held accountable (in both 2021 and 2024) by a European court for its role in contributing to climate change. In our opinion even if the 2024 decision is a setback in terms of immediate corporate accountability, it maintains the broader impact of the 2021 ruling. The legal and societal momentum for holding corporations responsible for climate harms is still advancing, showing that legal systems could address extraterritorial environmental impacts.

Last, in **Section 5.3.4** we present our conclusions regarding the differences among all three case studies of Parts I, II and III. We notice that the 'Royal Dutch Shell' focuses on environmental resilience and the need to actively promote environmental sustainability, while the right to health gets indirect attention, compared to the previous case studies. For instance, the 'Nestlé' case shows direct concerns on children's nutrition and healthy development, while the 'Forever Chemicals' illustrates environmental harm with direct effects on public health.

Furthermore, we highlight that the 'Nestlé' case involves a European company, accused of extraterritorial damages, yet without having escalated to legal proceedings. On the other hand, the 'Forever Chemicals' case, concerns US-based companies with territorial harms, judged at US Courts. In parallel, the 'Royal Dutch Shell' includes a European company causing territorial and extraterritorial harms, judged by a European court, whose first-instance judgment aimed at having a global impact in the mitigation of climate change.

Therefore, the inclusion of all cases serves as potent examples of the challenges and complexities in holding Corporations accountable for environmental degradation. The Nestlé case, though lacking legal proceedings, demonstrates how an enterprise which remains in the consciousness of consumers as an indispensable brand for nutrition, with infinite participations in Partnerships and Alliances for the realization of the SDGs, substantially falls short of its intrinsic (i.e. object: healthy nutrition) and CSR values.

On the other hand, the 'Forever Chemicals' case illustrates the critical need for robust BHR, CSR and public health policies. We perceive the ever-increasing lawsuits of General Attorneys against Corporations with long-standing BHR abuses a highly ambitious initiative. We recognize the implications in holding these Corporations accountable for their acts or omissions. However, we highlight that these legal battles reflect a new attitude towards responsible business conduct, as Böhm, Carrington et al., stress.[500]

[500] Steffen Böhm, Michal Carrington et al, 'Ethics at the Centre of Global Challenges: Thoughts on the Future of Business Ethics' (2022) 180 Journal of Business Ethics, 835-861.

Table 1. Overview of the differences between the cited case studies.

	Nestlé Baby Formulae	'Forever Chemicals'	Royal Dutch Shell
Companies involved and main corporate purpose	Nestlé| nutrition	3M| technical safety products, office supplies, tools & medical equipment, cosmetics Chemours| innovator in titanium technology (Teflon etc) DuPont| fabrics, fibers, non-wovens	Royal Dutch Shell plc (the parent company of the Shell group) |energy
Alleged violations	-Adding unjustifiably excessive sugars on "Cerelac" and "Nido" baby products when sold in low and middle-income countries -Aggressive promotion and use of health professionals and influencers to amplify parental trust in the aforementioned products -Breach of the OECD Guidelines	-Conscious contamination of various territories with PFAS, resulting in severe environmental damage and potentially fatal disease for the local communities -Willingly concealing their awareness about the hazardous effects of PFAS both from public authorities and from local communities -Absence of restorative or preventive mechanisms for the mitigation of contamination and exposure	-Failure to take adequate actions for carbon emissions reduction -Contribution to climate change -Violation of the duty of care to protect human rights, including the right to life and well-being (indirectly mentioned health)
Legal procedures	Allegations upon the investigation of Public Eye and IBFAN. No lawsuits have been filed yet	One of the 30 pending lawsuits against the same Companies filed by Attorneys General in the United States	Milieudefensie et al. v. Royal Dutch Shell (2021 & 2024)

Reforms & Strategic litigation	-Nestlé has not admitted anything but declares it will improve its practices, learning from its past mistakes (the 1980s scandal with baby milk)	-Alongside the pending AGs' lawsuits there have been extrajudicial settlements for the imposition of fines (for clean-out phases and restorative damages for the victims) -Adoption and entry into force of approximately 500 Bills and Policies in more than 30 States banning the use of PFAS in various products -Strengthening of the monitoring of companies involved in PFAS manufacture and reporting obligation -Empowered civil engagement in public health initiatives, which have substantially contributed to the adoption of these legislative measures	-In 2021, the Court ruled that the company has a duty of care to reduce its carbon emissions and cut its global emissions by 45% by 2030 compared to 2019 levels. The reduction applied not only to Shell's direct emissions, but also to its indirect emissions, which include emissions produced by consumers using Shell's products -In 2024, the Court of Appeals stressed that the imposition of 45% is "impractical", due to lack of scientific consensus -Legal precedent: The first company to be held responsible for aligning its corporate policies with the Paris climate goals on a global scale
Relevance with BHR& CSR	Unethical marketing practices in developing countries, leading to health risks for infants	Toxic environmental pollution, raising questions about the long-term responsibility for public health & environmental harm	Legally accountable for its contribution to climate change, demanding corporate action to meet international environmental standards

Part I. The Nestlé case

5.1.1. The Nestlé boycott and the 1981 WHO Code of Marketing Breast-Milk Substitutes

Business Ethics and Business and Human Rights often use a few well-known corporate behavior cases to illustrate key issues of corporate accountability. Among these prominent examples is Nestlé S.A., the Swiss food conglomerate whose controversial history is particularly intriguing to these research fields.

In the mid-1970s, Nestlé faced criticism from social activists for marketing powdered milk formula to infants in less developed countries. Particularly, the aggressive marketing of powdered milk convinced mothers in developing countries that Nestlé's infant formula was superior to breast milk. As a result, once mothers switched to powdered milk, their milk production ceased, resulting in the toddlers' addiction to the product. However, addiction was not the only problem; Infants and toddlers were affected in various ways:

First, depriving infants from essential antibodies found in breast milk, left them vulnerable to illnesses. Additionally, mothers often lacked awareness of the need to use sterilized or boiled water for the preparation of the formula, resulting in the use of contaminated water. Last, financial constraints led some mothers to dilute the formula, causing malnutrition.

The infant formula sparked a significant boycott campaign against Nestlé, demonstrating the importance of companies maintaining public legitimacy and managing public issues effectively to avoid severe consequences. Initially, the boycott against Nestlé appeared to be a broader critique of the infant formula industry's practices rather than a targeted attack on the company itself. Despite the boycott's impact, Nestlé's unethical practices persisted, indicating deeper issues within its corporate culture.

Notably, among the company's marketing techniques were the use of 'humanitarian aid' to create markets, the failure of labelling products in appropriate languages for the countries where they were sold and the provision of gifts and sponsorships to influence health workers to promote its products. What ignited the almost ten-year-old boycott against the company was the distribution of free samples of the formula in maternity

units by sales representatives, known as 'milk nurses' that used to visit mothers in hospitals and at home to promote the benefits of the formula. In the United States, the Infant Formula Action Coalition started the boycott, which quickly extended to Canada, Australia and Europe.[501]

The 34th Session of the World Health Assembly (WHA) of the World Health Organization (WHO) intervened against the company's conduct by introducing the International Code of Marketing of Breast-milk Substitutes. The WHO Code was passed by 118 votes to 1, with the US being the only negative vote.[502] The Code is a global public health policy framework aimed at promoting the benefits of breastfeeding both for mothers and infants[503] by imposing restrictions on the excessive marketing breast milk substitutes. Ensuring that mothers are not discouraged from breastfeeding and that substitutes are used safely, when necessary, [504] the Code addresses ethical considerations and regulations for the marketing of feeding bottles and breast milk substitutes.

Despite being a set of recommendations and therefore lacking legal enforcement, many countries have enacted in their national legislation the Code's provisions and the subsequent WHA resolutions.[505] In an effort to mediate the excessive use of substitute

[501] Melissa Sartore, 'Remembering the Nestle Baby Formula Scandal that Rocked the 1970s', available at: https://www.ranker.com/list/nestle-baby-formula-boycott/melissa-sartore (Accessed: 12/7/2024).
[502] June Pauline Brady, 'Marketing breast milk substitutes: Problems and perils throughout the world' (2012) 99 BMJ Journal 6, 529-532.
[503] See indicatively, WHO, 'Evidence on the long-term effects of breastfeeding: Systematic reviews and meta-analyses' (Geneva: World Health Organization, 2007); WHO, 'Effect of breastfeeding on infant and child mortality due to infectious diseases in less developed countries: a pooled analysis. WHO Collaborative Study Team on the Role of Breastfeeding on the Prevention of Infant Mortality'(2000) 355 The Lancet, 451–455.
[504] Indicatively, WHA Resolution 39.28, 'Infant and Young Child Feeding' (16 May 1986) clarified not only that the distribution of substitute breast milk products should be regulated by Member States, but also that their distribution at hospital and maternity units is available through normal public procurement instead of free and uncontrolled supplies. Article 2 urges Member States to "…implement the Code if they have not yet done so; (2) to ensure that the practices and procedures of their health care systems are consistent with the principles and aim of the International Code; (3) to make the fullest use of all concerned parties- health professional bodies, nongovernmental organizations, consumer organizations, manufacturers and distributors- generally, in protecting and promoting breast feeding and, specifically, in implementing the Code and monitoring its implementation and compliance with its provisions; (4) to seek the cooperation of manufacturers and distributors of products within the scope of Article 2 of the Code, in providing all information considered necessary for monitoring the implementation of the Code; […] (6) to ensure that the small amounts of breast-milk substitutes needed for the minority of infants who require them in maternity wards and hospitals are made available through the normal procurement channels and not through free or subsidized supplies […]'.
[505] Among the most important WHA Resolutions on this regard we cite WHA Resolutions 61.20 (2008) which urges Member States to scale up efforts for the monitoring and enforcement of national measures and the avoidance of conflicting interests; WHA Resolution 63.23 (2010) which urges States to strengthen the implementation of the 1981 Code and the WHA Resolutions by ending all forms of inappropriate

milk to infants and toddlers, the WHA Resolutions stress the necessity for Member States to intervene and promote the benefits of breastfeeding in their public health policies, with Corporations and States sharing the responsibility of ensuring that inappropriate promotion of such products (especially by health professionals) would end.[506] The latest WHA Resolutions of 2016 and 2022 reaffirm two issues;[507] First, the need to promote exclusive breastfeeding practices in the first six months of life with the suggested continuation up to two years old. Second, that States, Corporations in the infant food sector and health professionals must end all forms of inappropriate promotion of their products that violently exploit parental trust.

5.1.2. National legislative controversies

Since the adoption of the WHO Code in 1981, more than 80 countries have enacted totally or partially the provisions and resolutions of the WHA. Nestlé replied to the WHO's accusations regarding its marketing techniques by denying responsibility for the lack of clean water in developing countries and arguing that selling the infant formula in less-developed markets is a matter of consumers' freedom of choice. Justifying the necessity of the product and the chosen marketing campaigns based on industry-based interests, Nestlé collaborated closely with the International Council of Infant Food Industries (ICIFI), its self-regulatory body. In parallel, they launched a campaign to sway public opinion against the WHO's agenda on breastfeeding encouragement. The company's tactic failed, reinforcing suspicions, and after negotiations with the WHO, the boycott ceased by 1984, when the company decided to follow the provisions of the WHO Code.[508]

Nestlé's headquarters are in Switzerland, which means the company is regulated by the provisions of the Swiss commercial legislation. In 1982, Switzerland adopted some provisions of the WHO Code as a voluntary agreement. The agreement has been reinforced by the Swiss federal legislation,[509] which especially prohibits the

promotion of foods for infants and toddlers and that Corporations should also comply with the responsibilities of the Code.

[506] See respectively WHA Resolutions 49.15 (1996), Resolution 55.25 (2002), Resolution 58.32 (2005), Resolution 61.20 (2008), Resolution 61.20 (2008), Resolution 63.23 (2010), Resolution 65.6 (2012), Resolution 67.9 (2014) and Resolution 69.9 (2016).

[507] WHA Resolution 69.9 (2016) and Resolution 75.21 (2022).

[508] Colin Boyd, 'The Nestle Infant Formula Controversy and a Strange Web of Subsequent Business Scandals' (2012) 106 Journal of Business Ethics, 283-293; James E. Post, 'Assessing the Nestle Boycott: Corporate Accountability and Human Rights' (1985) 27 California Management Review 2, 113-131

[509] Article 14 'Limitation of the Advertising of Infant Formula' of the Ordinance on Foodstuffs and Common Objects (ODAIOUs) 817.02 (16 December 2016, revised on 1 February 2024). Available at:

advertisement of bottle-feeding as equal or superior to breast-feeding (Article 41 paras 1 and 2). In addition, the distribution of samples, coupons, reductions or relevant special offers especially to pregnant women and mothers directly or indirectly through health institutions or counselling centers are also banned (Article 41 paras 3 and 4).[510]

Nevertheless, Articles 17 and 18 of the Swiss Special Food Ordinance are controversial regarding the aforementioned provisions of Article 41. Article 17 requires manufacturers or distributors of protein hydrolysates (the main substance of infants' formulae) to announce it to the Food Safety and Veterinary authority before placing the product on the market.[511] The controversy mostly concerns Article 18, which defines cereal-based preparations and baby foods intended for infants and young children as foodstuffs that meet the special nutritional needs of healthy infants and young children between four (4) months and three (3) years.[512] They are intended for consumption during the weaning period, as a supplement to their diet or as a gradual adaptation to normal

https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/2017/63/20240201/fr/pdf-a/fedlex-data-admin-ch-eli-cc-2017-63-20240201-fr-pdf-a-2.pdf (Accessed: 10/6/2024).

[510] Ibid; 'Art. 41: Restrictions de la publicité pour les préparations pour nourrissons:
1) La publicité pour les préparations pour nourrissons doit être limitée aux publications scientifiques et aux publications spécialisées en puériculture.
2) Elle ne doit contenir que des informations de nature scientifique et factuelle. Ces informations ne peuvent laisser entendre ou accréditer l'idée que l'utilisation du biberon est égale ou supérieure à l'allaitement au sein.
3) La publicité pour les préparations pour nourrissons assortie de pratiques promotionnelles de vente directe au consommateur, telles que distribution d'échantillons, bons de réduction, primes, ou autres moyens publicitaires ayant ce but, tels qu'étalages spéciaux, offres spéciales ou ventes couplées, est interdite. Cette interdiction est applicable par analogie à la communication à distance.
4) Il est interdit de fournir à la population, notamment aux femmes enceintes, aux méres ou aux membres de leur famille, des produits gratuits ou à bas prix, des échantillons ou tout autre cadeau promotionnel, directement ou indirectement par l'intermédiaire d'institutions de santé ou de centres de conseil.

[511] 'Art. 17 Obligation d'annoncer:
1) Quiconque fabrique ou importe et entend mettre sur le marché des préparations de suite à base d'hydrolysats de protéines ou des préparations de suite contenant des substances et composés autres que ceux mentionnés à l'annexe 1 doit l'annoncer à l'OSAV avant la première mise sur le marché et à chaque modification de la composition ou changement d'étiquetage.
2) Il joint à l'annonce un exemplaire original de l'emballage et de l'étiquette ou une copie laser de ceux-ci.' Ordonnance du DFI sur les denrées alimentaires destinées aux personees ayant des besoins nutritionnels particuliers (OBNP) 817.022.104 (16 December 2016, revised 1 February 2024), available at: https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/2017/180/20240201/fr/pdf-a/fedlex-data-admin-ch-eli-cc-2017-180-20240201-fr-pdf-a-1.pdf (Accessed 10/6/2024).

[512] Ibid, Article 18 'Section 3 Préparations à base de céréales et denrées alimentaires pour bébés destinées aux nourrissons et aux enfants en bas âge Art. 18 Définition:
1) Les préparations à base de céréales et denrées alimentaires pour bébés destinées aux nourrissons et aux enfants en bas âge sont des denrées alimentaires qui répondent aux besoins nutritionnels particuliers des nourrissons et des enfants en bas âge en bonne santé entre 4 mois et 3 ans.
2) Elles sont destinées à la consommation: a. durant la période de sevrage des nourrissons, b. comme complément à l'alimentation des nourrissons et des enfants en bas âge, ou c. en vue de leur adaptation progressive à l'alimentation normale.
3) Les boissons lactées destinées aux enfants en bas âge ne sont pas considérées comme des "denrées alimentaires pour bébés'.

nutrition. However, paragraph 3 abruptly clarifies that milk drinks intended for infants and toddlers are not considered to be 'baby food' (!).

The cited provisions clarify that the measures introduced by the Swiss federal legislation fall short of the WHO Code for the following reasons: First, Swiss legislation excludes bottles and milk, focusing instead on formulae for infants under six (6) months old. Second, it promotes the advertisement of cereals from four (4) months onwards. Cereals are considered non-vital foods and not comparable to formulae. Lastly, Switzerland has been criticized for not controlling '*the commercial financing of congresses and trainings, resulting in conflicts of interests between health and marketing'*.[513]

5.1.3. Is 'Good Food, Good Life' negotiable in low and middle-income countries? Establishing Nestlé's responsibility after recent double standards on 'sugar intake' investigation

Nestlé summarizes its ideology with the motto 'Good Food, Good Life'.[514] More than forty (40) years from the 'infant formula scandal' described above, the company claims to have learned from its past mistakes and seeks to enhance its reputation as a pioneer and indispensable ally of parents in their children's nutrition. A closer look at the company's public profile shows that the company's goal is *"[...] to provide age-appropriate, sound nutrition. Quality and safety are non-negotiable*".[515]

However, a recent study by the Swiss NGO 'Public Eye' raises questions about whether Nestlé's corporate conduct actually aligns with its stated standards. Namely, in April 2024 the joint investigation of the Swiss NGO 'Public Eye' and the International Baby Food Action Network (IBFAN) revealed that Nestlé is violating the WHO public health standards regarding sugar content in children's nutrition. Specifically, the investigation found that two of the company's top baby food products, Cerelac and Nido, contain high levels of added sugar when marketed in low and middle-income countries, such as India and Panama. In contrast, these products are free of added sugar when sold in Switzerland and other European countries.

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[513] Geneva Infant Feeding Association, 'Situation in Switzerland'
available at
< https://www.gifa.org/en/switzerland/switzerland/> (Access: 10/6/2024).
[514] https://www.nestle.com/stories/tasty-healthy-nutrition-family
[515] Serena Aboutboul, 'Driving progress: Making good childhood nutrition a reality everywhere', available at: https://www.nestle.com/stories/childhood-infant-nutrition-health-sugar (Accessed: 10/7/2024).

The findings highlight not only the company's unjustifiable and unethical double standards in creating sugar addiction, but most importantly, that the company's misleading strategies might lead to numerous violations. These range from the violation of the WHO guidelines on sugar intakes and children's nutrition,[516] to the OECD guidelines for Multinational Enterprises,[517] competition law provisions, as well as human rights, particularly concerning the children's right to health. The investigation has sparked international public outrage and the two NGOs are now urging the State Secretariat for Economic Affairs (SECO) to file a federal complaint to halt this unethical and unfair business practice, thereby protecting both children and Nestlé's home country reputation.[518]

5.1.4. How the investigation's findings and Nestlé's misleading marketing highlight the need for the 1981 Code to be a public health priority

Nestlé employs a double standard regarding added sugar in baby food. Two of its best-selling brands in low- and middle-income countries, Cerelac and Nido, contain high levels of added sugar. Cerelac, the world's leading baby cereal brand generated sales exceeding $ 1 billion in 2022 and is primarily sold in low-and middle-income countries, with India and Brazil being the largest markets. Most Cerelac products contain added sugar, with an average of almost 4 grams, equivalent to one sugar cube, per serving.[519]

On the other hand, Nido, the world's leading toddler milk brand, with sales surpassing$1 billion in 2022, targets toddlers aged 1 to 3 years.[520] The leading market for Nido is Indonesia, followed by Mexico, Brazil, the Philippines, Chile and South Africa.[521] Most Nido products contain added sugar, averagely 2 grams per serving, with the highest amount (5.3 grams per serving) found in Panama and other Central American counties.

[516] WHO, Guidelines: Sugar Intake for Adults and Children (4 March 2015).
[517] OECD Guidelines for Multinational Enterprises (OECD 2011)
[518] Public Eye, 'Sugar in baby food: SECO must bring legal action against Nestlé under Unfair Competition Act' (Press release, 12/6/2024), available at: https://www.publiceye.ch/en/media-corner/press-releases/detail/sugar-in-baby-food-seco-must-bring-legal-action-against-nestle-under-unfair-competition-act (Accessed: 5/7/2024).
[519] Ibid.
[520] Ibid.
[521] Ibid.

Tables 2 and 3 present the results of the joint investigation. Table 2 displays the sugar content in Cerelac products across different markets, while Table 3 shows the sugar levels in Nido products. The countries highlighted represent those with the highest concentration of sugar per serving.

Table 2. Sugar intake in Cerelac across different countries[522]

Country	Product	Range in months	Serve	Added sugar	Added sugar/100g	Added sugar/serve
Brazil	Arroz & Aveia Integral	6	21	yes	18,5	3,9
Brazil	Multicereais	6	21	yes	20,2	4,2
Brazil	Milho	6	21	yes	15,8	3,3
Brazil	Arroz	6	21	yes	20,7	4,3
Brazil	Aveia Integral, Trigo e Leite	6	21	yes	20,0	4,2
Brazil	Aveia Integral e Ameixa	6	21	yes	20,9	4,4
Brazil	Seleção Natureza 5 Cereais	6	21	no	0,0	0,0
Brazil	Seleção Natureza Banana	6	21	no	0,0	0,0
Mexico	Cereal con Leche	12	30	yes	7,4	2,2
India	Wheat	6	25	yes	8,7	2,2
India	Ragi & Apple	8	25	yes	8,9	2,2
India	Multigrain & Fruits	12	50	yes	7,7	3,9
India	Wheat - Rice Mixed Veg	10	33	yes	9,4	3,1
India	Wheat Apple	6	25	yes	7,1	1,8
India	Wheat-Rice Mixed Fruit	10	33	yes	7,0	2,3
India	Wheat Apple Carrot	6	25	yes	9,1	2,3
India	Wheat Apple Cherry	8	25	yes	9,0	2,3
India	Khichdi with Vegetables	8	25	yes	1,3	0,3
India	5 Grains & Fruits	18	50	yes	8,6	4,3
India	Wheat Honey Dates	10	33	yes	10,8	3,6
India	Rice	6	25	yes	11,6	2,9
India	Rice Vegetables	8	25	yes	8,6	2,2
India	Wheat Orange	8	25	yes	8,1	2,0
India	5 Grains & Vegetables	18	50	yes	11,6	5,8
Malaysia	Beras - Rice	6	20	no	0,0	0,0
Malaysia	Rice & Mixed Vegetables	6	50	yes	/	/
Malaysia	Brown Rice & Milk	6	50	yes	/	/
Malaysia	Rice & Milk	6	50	yes	/	/
Malaysia	Rice & Mixed Fruits	6	50	yes	/	/
Malaysia	Rice & Chicken	8	50	yes	/	/
Malaysia	Wheat & Honey	6	50	yes	/	/

[522] Public Eye & IBFAN, 'Aufforderung zur Erhebung einer Bundesklage gegen die unlauteren Geschäftsmoden von Nestlé im Ausland (12/6/2024), available at: https://www.publiceye.ch/fileadmin/doc/Konsum/Nestle_Bundesklage_2024_PublicEye_DE.pdf (Accessed: 10/7/2024).

Malaysia	Wheat, Honey & Dates	8	50	yes	/	/
Indonesia	Susu Beras Merah	6	40	yes	12.5	5.0
Indonesia	Susu Pisang	6	40	yes	10.0	4.0
Indonesia	Kacang Hijau	6	40	yes	12,5	5,0
Indonesia	Apel, Jeruk & Pisang	6	40	yes	15,0	6,0
Indonesia	Bubur Tim Sayur	8	25	yes	4,0	1,0
Indonesia	Bubur Tim Ayam Wortel	8	25	yes	4,0	1,0
Indonesia	Bubur Ayam Bawang	6	40	yes	7,5	3,0
Indonesia	Bubur Tim Daging Sayur	8	25	yes	4,0	1,0
Indonesia	Bubur Tim Ayam Bayam	6	40	yes	10,0	4,0
Indonesia	Bubur Beras Merah Wortel	6	40	yes	12,5	5,0
Indonesia	Bubu Bereas Merah Ayam	6	40	yes	12,5	5,0
Indonesia	Bubur Sereal Susu Wortel	6	40	yes	10,0	4,0
Indonesia	Bubur Sereal Beras Merah	6	40	yes	12,5	5,0
Nigeria	Maize	6	50	yes	13,6	6,8
Senegal	Biscuty with Milk	6	50	yes	11,8	5,9
Ethiopia	Wheat	6	50	yes	10,4	5,2
Philippines	Mixed Fruits & Soya	6	50	yes	14,6	7,3
Philippines	Rice & Soya	6	50	yes	11,7	5,9
Philippines	Mixed Vegetables & Soya	6	50	yes	/	/
Philippines	Wheat & Milk	6	50	yes	/	/
Philippines	Rice & Soya	6	50	yes	/	/
Philippines	Wheat Banana & Milk	6	50	no	0,0	0,0
Philippines	Rice & Chicken	8	40	no	0,0	0,0
Philippines	Rice & Veggies	8	40	no	0,0	0,0
South Africa	Regular Wheat	6-12	50	yes	8,0	4,0
South Africa	Mixed Fruit	9-12	50	yes	8,0	4,0
South Africa	Biscuit Flavour	7-12	50	yes	12,0	6,0
South Africa	Rice	6	50	yes	8,0	4,0
South Africa	Banana	6	50	yes	8,0	4,0

South Africa	Maize	6	50	yes	8,0	4,0
South Africa	Honey	7	50	yes	8,0	4,0
South Africa	Strawberry flavour	7	50	yes	8,0	4,0
South Africa	Tropical fruit	9	50	yes	8,0	4,0
Bangladesh	Wheat with milk	6-24	25	yes	6,2	1,6
Bangladesh	Rice with milk	6-24	25	yes	12,2	3,1
Bangladesh	Wheat & 3 Fruits	6-24	25	yes	12,0	3,0
Bangladesh	Wheat, Apple & Cherry	8-24	25	yes	8,0	2,0
Bangladesh	Wheat & 4 Fruits	10-24	33	yes	8,6	2,8
Bangladesh	Multi Grain, 5 Vegetable	18-36	50	yes	11,0	5,5
Bangladesh	5 Fruits & Multigrain	18-24	50	yes	11,0	5,5
Thailand	Wheat with Banana and Milk	6	50	yes	5,0	2,5
Thailand	Wheat with milk	6	50	yes	12,0	6,0
Thailand	Soy and mixed fruit	6	50	yes	12,0	6,0

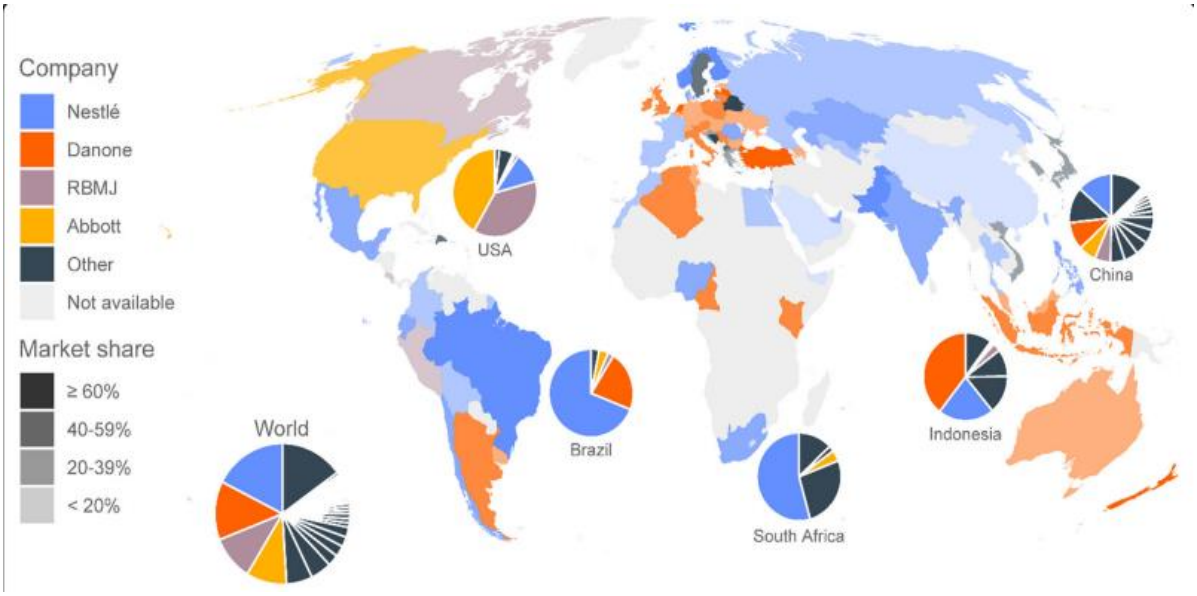
Table 3. Sugar distribution of NIDO products

Country	Product	Range (in years)	Serve	Added sugar	Added sugar/100g	Added sugar/serve
Brazil	Ninho Fases 1+	1		no	0,0	0,0
Mexico	Kinder 1+	1	34	no	0,0	0,0
Mexico	Excella GOLD	1	36	yes	5,1	1,8
Mexico	Kinder 1+ Deslactazado	1	36	no	0,0	0,0
Indonesia	Kinder 1+ Madu	1	35	yes	2,0	0,7
Indonesia	Kinder 1+ Rasa Vanila	1	35	yes	1,8	0,6
Nigeria	Kinder 1+	1	36	yes	1,8	0,6
Senegal	Kinder 1+	1	36	yes	1,8	0,6
Philippines	Nido Jr.	1	36	no	0,0	0,0
South Africa	Powdered Drink for Children	1	36	yes	2,4	0,9
Chile	Nido 1+ Excella Gold	1	29	no	0,0	0,0
Chile	Nido Etapa 1+	1	29	yes	/	/
Chile	Nido Etapa 1+ sin lactosa	1	27	yes	/	/
Argentina	Nido 1+	1	29	no	0,0	0,0
Argentina	Nido Cero lactosa	1	26	no	0,0	0,0
Pakistan	Nido 1+	1	36	no	0,0	0,0
Costa Rica	Nido 1+	1	36	yes	4,3	1,6
Costa Rica	Nido 1+ deslactazado	1	36	yes	/	/
Panama	Nido 1+	1	36	yes	14,6	5,3
Panama	Nido 1+ deslactazado	1	36	yes	/	/
Nicaragua	Nido 1+	1	36	yes	13,0	4,7
Nicaragua	Nido 1+ deslactazado	1	36	yes	/	/
Guatemala	Nido 1+	1	36	yes	/	/
Guatemala	Nido 1+ deslactazado	1	36	yes	/	/
Honduras	Nido 1+	1	36	yes	/	/
Honduras	Nido 1+ deslactazado	1	36	yes	/	/
El Salvador	Nido 1+	1	36	yes	/	/
El Salvador	Nido 1+ deslactazado	1	36	yes	/	/
Bangladesh	Nido 1+	1	31,5	yes	/	/

[Data retrieved from the complaint of Public Eye and IBFAN, as cited above in Table 2][523]

[523] Ibid.

Figure 1. Transnational infants' nutrition and Nestlé's global market shares



[Figure 1 shows the percentage of market shares by Transnational Corporations (TNCs) in the global milk market, analyzing the largest eighty (80) milk formula market. As we see, Nestlé is impressively powerful in India, China and Brazil, especially by taking into consideration the other companies, e.g. Danone or Abbott that operate in the relevant markets. Data retrieved from Baker, Russ, Kang et al.][524]

According to Baker et al, Nestlé provides an illustrative example of 'corporate food regime', which has emerged alongside the rise of transnational food Corporations as significant actors in the rapidly industrializing countries of the Global South.[525] In fact, the establishment of the World Trade Organization (WTO) in 1995, followed by an outburst of free trade agreements, facilitated this process, by enabling TNCs to integrate their 'global value chains' and imposing new rules on government market regulations.[526] Specifically regarding infant nutrition, the company has managed to create 'tailored' advertisements for parents, often portraying milk formula as a symbol of modern and convenient parenting lifestyle, therefore appealing to parental anxieties. For instance, the use of pediatricians in commercials seeks to provide the baby products with 'public legitimacy', as the public opinion perceives such products as safe, scientific, and medically endorsed.

[524] Phillip Baker, Katheryn Russ, Manho Kang et al., 'Globalization, first-foods systems transformations and corporate power: A synthesis of literature and data on the market and political practices of the transnational baby food industry' (2021) 17 Global Health 1, 58.
[525] Ibid.
[526] Ibid.

Second, modern advertisement is conducted through mass and digital media, which 'tailor-made' messages. Social media and smartphones, in particular, have enabled the process of data collection and analytical techniques to provide more personalized and targeted advertisements. Recent research by the WHO on the promotion of breast-milk substitutes via social media[527] influencers shows that such cross-border marketing reaches more users than content published by brand accounts of baby products.[528]

Therefore, the power of digital marketing should not be underestimated, as it likely contributes to the recent surge in global milk formula sales. This poses a significant challenge for national regulators. The Committee on the Rights of the Child has highlighted the dangers of digital advertising and marketing in infringing on children's rights and has called on governments to prohibit such practices. The WHO, IBFAN and UNICEF have equally emphasized the need to regulate the use of digital marketing of breast-milk substitutes and to enhance the provisions of the 1981 Code. They stress that the 1981 Code should be considered as a 'living legal instrument' alongside the Convention on the Rights of Child.[529]

As of March 2024, a total of 146 WHO Member States, representing 91% of all global annual births, have adopted legal measures to implement at least some provisions of the Code.[530] Of these, 33 countries have measures that are substantially aligned with the Code, 40 countries have moderately aligned measures, and 73 countries have included some provisions. However, 48 countries have no legal measures at all. Alignment with

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[527] WHO, 'Scope and impact of digital marketing strategies on promoting breast-milk substitutes' (2022) available at: https://iris.who.int/bitstream/handle/10665/353604/9789240046085-eng.pdf?sequence=2 (Accessed: 10/7/2024).

[528] Ibid; Based on the WHO's research, Influencers' posts can reach millions of users and generate hundreds of thousands of interactions. Half of the influencers (231) identified in the social listening research had more than a million followers. For example, one celebrity influencer reached over a million people and generated 155,000 engagement actions with a single post, apparently sponsored by a breast-milk substitute brand. For instance, a Filippina-Australian influencer living in the United States creates content designed to engage Filipina mothers. She identifies herself as a Nestlé brand ambassador and offers discount codes for retailers in the Philippines who ship products to the United States.

[529] As we read on UNICEF's website, "The Code is an integral tool to help protect babies' rights, enabling families to make infant feeding choices free from commercial influence and with full understanding of what is in their child's best interest. It helps give babies the best possible chance to grow, develop and flourish in their critical foundation years. This guide will help health professionals to use the Code in daily practice and to negotiate some of the challenges and questions faced at work, enabling them to approach tricky situations with confidence and integrity"; https://www.unicef.org.uk/babyfriendly/baby-friendly-resources/international-code-marketing-breastmilk-substitutes-resources/guide-to-working-within-the-code/ (Accessed: 20/6/2024).

[530] Ibid.

the Code is highest in the WHO African, Eastern Mediterranean, and South-East Asia regions.

The latest research of the WHO, UNICEF and IBFAN shows that key provisions of the Code are missing in the legislation of many countries. Indicatively, only 38 countries have measures clearly covering the full range of breast-milk substitutes up to 36 months of age, although an additional 13 countries cover follow-up formula without specifying an age range.[531] While prohibitions of advertising and promotional devices at points of sale are more commonly covered (89 and 115 countries, respectively), only a small number of countries prohibit the distribution of informational or educational materials from the industry (28 countries) and only 68 countries prohibit the use of nutrition and health claims on labels. Protections against conflicts of interest in the health system are weak in most countries, with only 34 countries fully prohibiting gifts and incentives to health workers and 22 countries prohibiting industry sponsorship of health professional meetings.[532]

The WHO emphasizes that the Code should be recognized as a core obligation under the Convention on the Rights of the Child, insisting that strengthening the implementation of the Code must become a public health priority for all countries.[533]

[531] Ibid.
[532] Ibid.
[533] Ibid.

Table 4. Legal status of the 1981 Code in countries where Cerelac and Nido contain high amounts of sugar compared to Switzerland[534]

Country	Recent legal measure	Alignment with the 1981 Code	Independent, transparent, public monitoring compliance	Sanctions for breaches
Mexico	2012	Moderate	no	no
Panama	2012	Substantial	no	yes
Philippines	2012	Substantial	yes	yes
Thailand	2017	Moderate	yes	yes
Indonesia	2013	Moderate	no	yes
India	2003	Substantial	no	yes
Switzerland	2020	Partial inclusion	no	no

From the data above we notice that there are significant controversies between the degree of alignment with the Code and its actual enforcement. For instance, Philippines, Panama and India are among the countries with the highest sugar concentrations in Cerelac and Nido products. These products are aggressively marketed through social media influencers and health professionals.[535] However, according to the WHO, UNICEF and IBFAN reports, these countries are considered to have substantially implemented the Code on marketing breast-milk substitutes.[536] This raises questions about how such implementation could be considered substantial if national legislation does not mandate transparent monitoring of the Code's implementation, independent of commercial influences.

[534] WHO, UNICEF and IBFAN, 'Marketing of breast-milk substitutes: National implementation of the International Code (Status report 2022), available at: https://www.globalbreastfeedingcollective.org/media/1786/file/Marketing%20of%20breast-milk%20substitutes:%20national%20implementation%20of%20the%20international%20code,%20status%20report%202022.pdf (Accessed: 20/6/2024).
[535] Ibid.
[536] Ibid.

5.1.5. Assessing corporate responsibility from a State's perspective: The issue of public legitimacy

The combined analysis of the Tables and Figures clarifies that the Nestlé case study should not be seen merely as a failure from a CSR or BHR perspective. On the contrary, it underscores the failures of public authorities to implement all the necessary controls and monitoring mechanisms to prevent the marketing of these products in their markets.

Nestlé's practice of including sugar in baby food sold in lower-income countries, while omitting it from products in Switzerland and other European markets, represents a troubling double standard from both health and ethical standpoints. The company's statements following the 'Public Eye' investigation reveal that they are limited to affirming that the company *''appl(ies) the same nutrition, health and wellness principles everywhere [...] committed to doing our utmost to constantly upgrade our product formulations and labelling to guide parents to the right choices".*[537] It is unacceptable that consumers in low and middle-income countries receive lower quality food, especially in the absence of any legitimate justification. What is condemned is that in Nestlé's key European markets, all children's milk products and cereals for babies aged six months and over are free of added sugar. This suggests that there is no objective reason for adding sugar to baby food, while it is also entirely feasible for Nestlé to eliminate sugar from these products in Asian and Latin American countries,[538] thus upholding public health.

Furthermore, among the most relevant provisions for our discussion, we stress that the company might be accountable for the violation of the OECD guidelines for Multinational Enterprises on Responsible Business Conduct,[539] the OECD Principles of Corporate Governance,[540] and the UN Guiding Principles on Business and Human Rights.[541] We do not delve into Nestlé's accountability under the Swiss competition law

[537] See Nestlé's reply to the Public Eye investigation at: https://www.nestle.com/ask-nestle/health-nutrition/answers/infant-formula-baby-food-cereals-added-sugar-low-income-developing-countries (Accessed: 10/7/2024).
[538] From both production and economic perspectives.
[539] OECD, OECD Guidelines for Multinational Enterprises (OECD 2011)
[540] OECD, Principles of Corporate Governance (OECD 2015).
[541] UN Guiding Principles on Business and Human Rights (UN 2011).

or under the EU Directive on Unfair Commercial Practices[542] due to the challenges associated with their scope and jurisdiction.

Specifically, the Swiss Federal Act on Cartels and other Restraints of Competition (CartA)[543] focuses on anti-competitive practices impacting the Swiss market, such as abuse of dominant positions or price fixing within Switzerland. Articles 1 and 2 of the Swiss CartA state:

"*Art.1 Purpose: The purpose of this Act is to prevent the harmful economic or social effects of cartels and other restraints of competition and, by doing so, to promote competition in the interests of a liberal market economy.*
Art. 2 Scope: This Act applies to private or public undertakings that are parties to cartels or to other agreements affecting competition, which exercise market power or which participate in concentrations of undertakings.

1bis: Undertakings are all consumers or suppliers of goods or services active in commerce regardless of their legal or organisational form.

2. This Act applies to practices that have an effect in Switzerland, even if they originate in another country.'

In parallel, concerning the EU Directive on Unfair Commercial Practices, we notice that its application is limited to European consumers:

"*Article 3 (1): This Directive shall apply to unfair business-to-consumer commercial practices, as laid down in Article 5, before, during and after a commercial transaction in relation to a product.*

Article 3 (2): This Directive is without prejudice to contract law and, in particular, to the rules on the validity, formation or effect of a contract.

Article 3 (3): This Directive is without prejudice to Community or national rules relating to the health and safety aspects of products.

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[542] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC. 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive), OJ L149, 11.6.2005.
[543] The Federal Assembly of the Swiss Confederation, Federal Act on Cartels and other Restraints of Competition of 6 October 1995 (Status as of July 2023).

Article 3 (4): In the case of conflict between the provisions of this Directive and other Community rules regulating specific aspects of unfair commercial practices, the latter shall prevail and apply to those specific aspects.

Article 3 (5): For a period of six years from 12 June 2007, Member States may continue to apply national provisions within the field approximated by this Directive which are more restrictive or prescriptive than this Directive and which implement Directives containing minimum harmonisation clauses. These measures shall be essential to ensure that consumers are adequately protected against unfair commercial practices and shall be proportionate to the attainment of this objective. The measures may not be applied to establish obstacles to the free movement of goods and services."

Consequently, the company might be held accountable for the violation of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct[544] which stipulate:

That Companies should avoid causing or contributing to adverse human rights impacts and prevent or address such impacts when they occur.[545] This provision reflects the incorporation of insights from the UNGPs and the concept of Due Diligence, introduced in the 2011 update;

That Enterprises should apply fair marketing practices and ensure the quality and reliability of their products. This provision extends to providing accurate, verifiable and clear information that enables consumers to make informed decisions.

Given these guidelines, it is concerning that the implementation of this specific clause in our paradigm seems inadequate. Customers in Asia or Latin America cannot verify that the same baby products are free of added sugars, as these products are, when sold in European countries.

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[544] OECD guidelines for Multinational Enterprises on Responsible Business Conduct, as updated in 2011.
[545] "States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations: 1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. 2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur. 3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts. 4. Have a publicly available policy commitment to respect human rights. 5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts. 6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts."

As previously emphasized, the Nestlé case should not be evaluated in isolation. Both Corporations and public actors have the responsibility and duty to protect human rights, as the UNGPs underscore. When corporate conduct has potential or direct impacts on the human rights and well-being of stakeholders, it is essential to consider the role of States in either permitting or failing to prevent such impacts.

In this case, the responsibility of States to enforce mechanisms that prevent exploitative practices against consumers, i.e. the addition of unnecessary sugars, extends to both the Company's headquarters and the States, where such practices occurred. It is important to recognize that the extent of State responsibility varies and should be adjusted based on the State's power and influence, an argument that is prominent in Political Philosophy and International Relations, notably in the works of Sen and Rawls.[546] Affluent countries have greater resources and influence and therefore have a heightened responsibility to address the global injustices that concern them, compared to poorer, affected countries.[547]

Our analysis reveals that there has been no response from the Swiss Federal Competition Authority regarding Nestlé's behavior. We argue that the Swiss public authorities should investigate the company's impact on the human rights of consumers in Asia and Latin-America and inform the relevant foreign public authorities.

As Rawls articulated in his *Theory of Justice*, legitimate institutions are those that safeguard the rights and welfare of their citizens by promoting fairness and equality.[548] In this context, the governments' inaction or inability to regulate the quality of baby food undermines their legitimacy by not upholding these principles.[549]. Consequently, public legitimacy in the Asian and Latin American countries where Nestlé sold Cerelac and Nido, reflects a failure to protect citizens from unethical corporate practices. The States' public authorities have the duty to ensure first, that the products sold in their territories meet international health and safety quality standards and second, that their

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[546] For the correlation between responsibility and influence see, Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2008). See also, John Rawls, *The Law of the Peoples* (Harvard University Press, 2001); Amartya Sen, *Development as Freedom* (Oxford University Press, 1999).
[547] Ibid.
[548] John Rawls, *A Theory of Justice* (Belknap Press, 1971).
[549] For a further analysis of the concept of public legitimacy, see inter alia David Dyzenhaus, 'Hobbes and the Legitimacy of Law' (2001) 20 Law and Philosophy 5, 461-498; Jürgen Habermas, *Communication and the Evolution of Society* (Boston: Beacon Press, 1979); Christie Hartley and Lori Watson, *Equal Citizenship and Public Reason* (Oxford University Press, 2018); Nicole Hassoun, *Globalization and Global Justice* (Cambridge University Press, 2012); Silje Langvatn, 'Legitimate, But Unjust; Just, But Illegitimate: Rawls on Political Legitimacy' (2016) 42 Philosophy & Social Criticism 2, 132-153.

marketing and promotion are not deceptive to parents. These measures are crucial for protecting the public interest, particularly given the significant implications for children's well-being.

The Nestlé case illustrates that the legitimacy of governments is challenged when TNCs exploit regulatory gaps to introduce inferior-quality products to vulnerable population. When governments fail or are unable to regulate the quality of the products sold within their territories, they undermine their agency to protect their citizens' well-being. Unfortunately, weakly regulated states offer a great environment for TNCs to operate with greater 'flexibility' and less-stringent oversight, compared to high-income countries.

As previously noted, the extent of state responsibility should be proportional to a State's power and influence. Thus, we claim that also middle and low-income States should enact and enforce stricter regulations on food safety and business practices.[550] Switzerland bears a greater responsibility to oversee Nestlé's business conduct. However, Philippines or Panama also share the responsibility to ensure due diligence regarding the quality of products sold to their citizens and marketing practices used.

By addressing these issues, these governments not only restore their public legitimacy, but also demonstrate a commitment to actively protecting the health and well-being of their citizens, alongside ensuring corporate ethical standards and corporate accountability.[551]

[550] Nicole Hassoun, *Globalization and Global Justice* (Cambridge University Press, 2012).
[551] Phillip Baker et al, 'Firstfood systems transformations and the ultra-processing of infant and young child diets: A synthesis of data and literature on the determinants, dynamics and consequences of the global rise in milk formula consumption' (2020) 17 Maternal Child Nutrition 2, 1–18; Phillip Baker, 'Breastfeeding, first food systems and corporate power' (2020) 228 Breastfeeding Review 2, 33-37;Georgins Cairns, Kathryn Angus, Gerard Hastings, 'The extent, nature and effects of food promotion to children: A review of the evidence to December 2008' (World Health Organization, 2008); Jennifer Clapp and Doris Fuchs (Eds.) *Corporate Power in Global Agrifood Governance* (The MIT Press, 2009); Hacer Tanrikulu, Daniela Neri et al, 'Corporate political activity of the baby food industry: The example of Nestlé in the United States of America' (2020) 15 International Breastfeeding Journal 22.

5.1.6. Concluding remarks on the Nestlé case and connection with the theoretical framework of our thesis

The first Part of this Chapter reviewed the findings from the Public Eye and IBFAN investigation into Nestlé's sale of baby products with high sugar concentration in low- and middle-income countries.

In **Section 5.1.1** we described the company's history of aggressive marketing tactics for its baby formula. Nestlé was promoting its breast-milk substitutes as superior to natural milk and its uncontrolled marketing technique resulted in a long-standing boycott from several countries. As a result, the 34th World Health Assembly adopted the International Code of Marketing Breast-Milk Substitutes. The WHO Code is a set of global public health policy aimed at promoting the benefits of breastfeeding for mothers and infants, by imposing restrictions and ethical considerations on the abuse of excessive marketing of baby formulae.[552] Despite its voluntary nature, many countries have incorporated the Code and WHA resolutions into their national laws.[553] The WHA Resolutions stress the necessity for Member States to intervene and promote the benefits of breastfeeding in their public health policies, emphasizing that the Code is a living instrument.

Especially due to the excessive use of social media influencers and health professionals in their advertisements, Corporations and States share the responsibility of ensuring that inappropriate promotion of such products (especially by health professionals)

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[552] Indicatively, WHA Resolution 39.28, 'Infant and Young Child Feeding' (16 May 1986) clarified not only that the distribution of substitute breast milk products should be regulated by Member States, but also that their distribution at hospital and maternity units is available through normal public procurement instead of free and uncontrolled supplies. Article 2 urges Member States to "…implement the Code if they have not yet done so; (2) to ensure that the practices and procedures of their health care systems are consistent with the principles and aim of the International Code; (3) to make the fullest use of all concerned parties- health professional bodies, nongovernmental organizations, consumer organizations, manufacturers and distributors- generally, in protecting and promoting breast feeding and, specifically, in implementing the Code and monitoring its implementation and compliance with its provisions; (4) to seek the cooperation of manufacturers and distributors of products within the scope of Article 2 of the Code, in providing all information considered necessary for monitoring the implementation of the Code; […] (6) to ensure that the small amounts of breast-milk substitutes needed for the minority of infants who require them in maternity wards and hospitals are made available through the normal procurement channels and not through free or subsidized supplies […]'.

[553] Among the most important WHA Resolutions on this regard we cite WHA Resolutions 61.20 (2008) which urges Member States to scale up efforts for the monitoring and enforcement of national measures and the avoidance of conflicting interests; WHA Resolution 63.23 (2010) which urges States to strengthen the implementation of the 1981 Code and the WHA Resolutions by ending all forms of inappropriate promotion of foods for infants and toddlers and that Corporations should also comply with the responsibilities of the Code.

would end.[554] As stressed, the latest WHA Resolutions of 2016 and 2022 reaffirm two issues;[555] First, the need to promote exclusive breastfeeding practices in the first six months of life with the suggested continuation up to two years old. Second, that States, Corporations engaged in the infant food sector and health professionals must end all forms of inappropriate promotion of their relevant products that violently exploit parental trust.

In **Section 5.1.2** we gave an outline of the main national provisions that regulate the Swiss company. We notice that although the company has voluntarily adopted some of the Code's provisions, the national legislation consists of controversies. In particular, the Swiss Special Food Ordinance requires manufacturers or distributors of protein hydrolysates (the main substance of infants' formulae) to notify the Food Safety and Veterinary authorities before selling the products. However, milk or cereal-based preparations for infants and toddlers are not considered 'baby food' and therefore are not susceptible to advertisement restrictions.

This discussion set the basis for criticizing the recent case against Nestlé, following the results of the Public Eye and IBFAN investigation. Particularly, **Section 5.1.3** described how the Swiss company unjustifiably introduces double standards when selling specific baby food in low-income countries.

Section 5.1.4 used as a basis for its analysis the findings of the Public Eye and IBFAN investigation, according to which the company is discriminating against consumers in Asia and Latin America, by selling baby products with excessive sugar quantities, compared to those sold in the European markets. While the results have not led yet to a legal dispute, the case is of significant interest from both a CSR and BHR perspective for several reasons, elaborated in **Section 5.1.5.**

In particular, **Section 5.1.5** evaluates the case study from the perspectives of corporate responsibility and public legitimacy, as broader reflections of BHR and CSR. Our assessment results in the following arguments:

First, the case demonstrates that a TNC is once again involved in a human rights scandal. This raises serious questions about whether the company lives up to its

[554] See respectively WHA Resolutions 49.15 (1996), Resolution 55.25 (2002), Resolution 58.32 (2005), Resolution 61.20 (2008), Resolution 61.20 (2008), Resolution 63.23 (2010), Resolution 65.6 (2012), Resolution 67.9 (2014) and Resolution 69.9 (2016).
[555] WHA Resolution 69.9 (2016) and Resolution 75.21 (2022).

standards, conceptualized in the slogan 'Good Food, Good Life'. Specifically, we stressed that such corporate conduct violates the right of children to a healthy nutrition, since an early exposure to sugar might result in obesity, cardiovascular diseases and diabetes. Additionally, the use of social media influencers and health professionals in advertisements is strictly prohibited by the 1981 Code, because it exploits parental trust in baby products through aggression rather than product credibility.

Second, the case confirms that from an ethical point view, a company's verbal commitments or CSR-friendly initiatives do not automatically render it a genuine CSR "enactor". Nestlé proclaims itself as a pioneer in sustainable, healthy and ethical nutrition asserting that it takes all the necessary steps for achieving the relevant dimensions of Sustainable Development. However, selling baby products with excessive sugar content reveals ethical failures in the corporate and social context. Namely, in the corporate context there is no justification for the introduction of double standards in the same products across different markets. In the social context, we argue that this practice directly affects the human rights of children. Most importantly, it raises crucial ethical concerns, since children and their parents were unaware of this wrongful act. They purchased and used the products in good faith. In this specific case we assert that the company prioritized its market interests over those of its stakeholders, thereby acting against the CSR philosophy. The case confirms that true compliance with the CSR orientation demands more than just random acts of CSR-friendly initiatives, such as those Nestlé proudly claims to undertake. Instead, it means that the interests of the company's stakeholders should be considered as equal to those of the shareholders and be reflected in the company's corporate governance.

Third, we notice the company's inconformity with the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. The OECD Guidelines form a comprehensive framework for responsible business practices, consisting of recommendations from the governments of the OECD States and other participating countries.[556] These guidelines apply to MNEs operating from signatory states, regardless of where they operate their business. By setting standards for responsible business conduct, the guidelines establish a system of government grievance mechanisms to resolve disputes between companies covered by the OECD Guidelines

[556] For instance, Argentina, Brazil, Costa Rica, Croatia, Egypt, Jordan, Kazakhstan, Marocco, Peru, Bulgaria, Romania, Tunisia and Ukraine.

and affected parties. Among the key topics that covered in terms of business responsibility, are taxation, due diligence, human rights, human rights defenders, environment, consumer interests etc. These areas were intentionally incorporated in the latest revision of the OECD Guidelines in 2022, emphasizing the necessity to prioritize social and environmental claims over mere profit-maximizing orientation.

Although the OECD Guidelines are not legally binding on companies, they are binding on signatory governments, which are obliged to ensure and observe the implementation of the Guidelines. Switzerland was among the first countries to ratify them, and Nestlé declares that it recognizes and complies with the OECD Guidelines alongside other relevant legal instruments and policies on Sustainable Development and responsible business behavior. However, we notice that the countries in which the over-sugared baby products were sold are not bound by the OECD Guidelines because they are not OECD Members. Nevertheless, one of the reasons that render the Guidelines impactful is that they cover transnational activities and influence corporate behavior across borders, through the pressure exerted by Member States and international scrutiny.

Lastly, we observe that in this case study, Sen's capabilities could be interpreted through the lens of access to basic health and nutrition. The company's actions in marketing infant formula with excessive sugars in developing countries, may undermine individuals' capability to maintain good health, especially for infants. Therefore, we argue that the concept of entitlements, as explained in Chapter 4, entails that Nestlé should first recognize toddlers' capability to receive proper nutrition, and second, respect consumers' right to accurate and transparent information about its products.

Part II. The 'Forever Chemicals' case

Introduction

This Section analyzes a recent lawsuit by the Attorney General of Connecticut against 3M, Chemours and DuPont which establishes their joint responsibility for the emission of 'Forever Chemicals' in the environment. The case is highly important from a BHR, CSR and Sustainability perspective, as it represents a recent and ambitious judicial approach. Following a series of lawsuits by the Attorneys General of several US Federal Courts, the case marks a trend in holding Corporations accountable not only for the harm they have caused, but also for their future impact, paving the way for restorative justice in such violations.

Even though both the 'Nestlé' and the 'Forever Chemicals' cases provide significant insights for the actual application of the frameworks of BHR and CSR, we observe a qualitative differentiation between them:

1) The 'Forever Chemicals' case concerns one of nearly thirty lawsuits currently pending in the United States. Increasingly, Attorneys General have initiated since 2021 legal actions against powerful Corporations, whose conduct has been posing severe public health and environmental risks. This unified legal approach seeks to hold the same Corporations accountable for the damages caused by PFAS, which are extremely dangerous and almost fatal for humans and animals. The Attorney General of Connecticut, William Tong, initiated the legal procedures independently, without having received any prior claims from the victims.

As mentioned in the First part of the Chapter, the Nestlé paradigm has not yet escalated to a legal claim. As of the writing of this thesis, no official responses from the Swiss authorities have been announced, while Nestlé continues to emphasize its commitment to human rights and CSR.

In the 'Forever Chemicals' case all lawsuits are still pending, which we recognize as a limitation for our research. We have found that the three Defendant companies-**3M, Chemours and DuPont**- have been separately involved in previous legal battles for the same grounds. Almost all of these cases ended in extrajudicial settlements due to

the implications and time demands of legal procedures. We intentionally chose the claim AG Tong v. 3M, Chemours and DuPont over the previous settlement decisions, for the following reasons:

First, because we observe a judicial 'alliance' which ambitiously aims to restore and protect public health. In this alliance we have noticed very dedicated civil engagement from stakeholders affected by PFAS. Their engagement has been proven highly successful, leading to the introduction of more than 300 Bills banning the use of PFAS. The 'Forever Chemicals' lawsuits are recent, ranging from 2021-2024 (AG Tong's lawsuit was filed in April 2024). In contrary, the decisions against the Corporations which led to settlements and fines, were issued between 2007 and 2014. These earlier decisions do not satisfy the 'post-Covid' dimension of our thesis.

Second, as described previously, the Nestlé paradigm concerns strictly the violation of the children's right to health. Conversely, the 'Forever Chemicals' case illustrates a holistic concept of the right to health. It evolves around the individual right to health (for citizens exposed to these severe substances), while highlighting the broader impact that an environmental damage can have on public health and well-being.

Third, the 'Forever Chemicals' indicates a high level of public engagement. Local communities continue their long-standing campaigns against powerful Corporations that have been consciously polluting the environment. Additionally, the companies withheld the hazardous effects of the PFAS chemicals both from the public authorities and the citizens. Undoubtedly, their conduct has resulted in significant ecological damage and adverse public health effects. The engagement of local communities in associations has been highly, leading to policy changes that prohibit the use of PFAS in many domestic products and water systems.

For instance, the organization 'Safer States', consisting of health organizations promotes the collaboration among state, local, and national allies to introduce the necessary policy and market actions *"[…] that will lead the transition to safer chemicals and materials, ensuring a healthier future for everyone."*[557] The adoption of a common agenda and the identification of strategic opportunities from public and private actors

[557] Information available at: https://www.saferstates.org/who-we-are/ (Accessed: 1/7/2024).

facilitate affected communities not only in terms of being heard, but distinctly putting public health at the forward.

The aforementioned illustrate why the 'Forever Chemicals' paradigm offers significant insights for corporate accountability in the context of environmental resilience and public health. Moreover, it allows us to analyze or at least visualize the implications it could bring to the European legal order, especially in light of the Corporate Sustainability Due Diligence Directive.[558]

For the time being, in terms of EU jurisdiction, only one case was brought to the courts against 3M by a Belgian family. In 2021, the family sued the American TNC at its plant in Zwijndrecht for the contamination of the environment and their blood by the high levels of PFAS.[559] The Flemish Court's first instance decision held 3M accountable for the contamination of the district, ordering the defendant to pay (even a minor) compensation to the plaintiffs. [560]In parallel, after this decision, the Flemish government reached an extrajudicial agreement with 3M, with the Company committing to compensate for the damages caused. The agreement, aimed at providing immediate commencement of sanitation efforts in the surrounding areas binds 3M to pay €571 Million as compensation to the government and local residents and farmers.[561]

[558] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 .COM/2022/71 final
[559] The exact citation of the case is not available and could not be retrieved.
[560] The Brussels Time, 'PFAS pollution: 3M ordered to compensate affected family' (16 May 2023), available at: https://www.brusselstimes.com/506509/pfas-pollution-3m-ordered-to-compensate-affected-family ; The Bulletin, 'Belgian family successfully sues 3M for pollution' (20 May 2023), available at: https://www.thebulletin.be/belgian-family-successfully-sues-3m-pollution (Accessed: 1/7/2024).
[561] 3M Press Release, 'Agreement reached between the Flemish Government and 3M Belgium to support the People of Flanders' (6 July 2022), available at: https://news.3m.com/2022-07-06-Agreement-Reached-Between-the-Flemish-Government-and-3M-Belgium-to-Support-the-People-of-Flanders (Accessed 1/7/2024).

5.2.1. Historical background

Environmental contamination by PFAS, widely known as 'Forever Chemicals', has become a critical environmental and public health issue. As of 2023 an ever-increasing number of Attorneys General in the United States have initiated legal actions against companies involved in direct or indirect use and disposal of PFAS. The AG Tong lawsuit against 3M, Chemours and DuPont is based on the widespread pollution of water and land territories in Connecticut.

All companies have been among the primary manufacturers of PFAS and PFOS-containing products since the 1940s.[562] PFAS are man-made chemicals that enter the environment through the routine disposal of consumer and commercial products and from industrial emissions into the air, water, and soil. Being resistant to environmental breakdown, they spread and accumulate in living organisms once released. Their persistence together with their hazardous effects even at very low concentrations, renders their accumulation in humans severe and potentially deadly. Among the most common side effects for human health are various types of cancer, liver and other chronic disease while being extremely dangerous for pregnancy and child development. The companies' liability concerns primarily their awareness of the PFAS' toxic capacities for decades. Instead of taking the necessary actions to prevent, abolish their use or simply inform the public and the public authorities for the risks associated with these substances, the manufacturers concealed this information to maintain their product lines.

The Defendants are involved in the production of cookware, cleaning domestic materials, firefighting foams and cosmetics. The resistance of PFAS in water, oil and heat, was used as the 'perfect marketing' for products like Tefal, Teflon, Scotchgard etc. The companies' awareness, as described in paragraphs 9 and 11 ,[563] is proved by internal documents of the companies describing the conduct of toxicity tests in the 1950s and in the 1970s, which showed dangerous effects on various animals, including mammals, birds, and fish. Moreover, later human studies revealed significantly increased cancer

[562] More specifically, PFAS were first developed and used in various industrial applications due to their resistance to heat, water and oil, making them 'perfect' for cookware and water-repellent fabrics.
[563] Attorney General Tong v 3M, Chemours, and DuPont (2024) 1234 FSupp 5678 (US District Court for the District of Connecticut); paras 9-11.

risks and higher incidences of birth defects and other health issues from PFAS exposure. Especially DuPont and 3M shared their research and safety concerns among themselves but kept this information from the public while continuing to produce PFAS (paras 15-18). In addition, the companies conducted extensive research on their chemicals and found that PFAS were contaminating drinking water supplies, groundwater, surface water bodies, soils, sediments, and wildlife.

Following the decision, *"15. Defendants concealed critical information in order to perpetuate their toxic trade, delaying any regulatory response to the PFAS threat for decades. As scientific awareness of the dangers of PFAS have grown, recent investigations have revealed widespread PFAS contamination across Connecticut, including in waterways and drinking water wells.*

16. The State, as parens patriae and trustee of natural resources, has an obligation to protect its citizens and environment from the ongoing PFAS threat and to restore Connecticut's environment for the benefit of future generations.

17. Connecticut state agencies estimate that the State and its taxpayers will likely need to expend billions of dollars to mitigate PFAS contamination, remediate Connecticut's natural resources and property, and ensure the health and safety of Connecticut's residents.

18. The State is not seeking to recover through this Complaint any relief for contamination or injury related to Aqueous Film Forming Foam, a firefighting material that contains PFAS which the State is addressing through a separate legal action to hold these and other defendants accountable."

5.2.2. The responsibility of 3M, Chemours and DuPont: Early knowledge, repeated concealment and no adoption of preventive or restoring measures for public health

Reading the findings of AG Tong, we highlight that the corporate responsibility of the Defendants is established on three main grounds; Early awareness, or constructed knowledge, concealment of the hazardous risks linked with their activities and failure to adopt the necessary measures for the prevention or mitigation of the adverse impact on public health and the environment.[564]

[564] See also Martin Petrin and Christina A. Writing (Eds.) Research Handbook on Corporate Liability (Edward Elgar, 2023); Alberto Galanti, I delitti contro l'ambiente: Analisi normativa e prassi giursiprudenziale: L'interazione tra la normativa nazionale ed europea e il ruolo del giudice nella

Knowledge is defined as the "*awareness or understanding of facts or circumstances*". In legal context, knowledge refers to the state of being aware of information, which can either be actual (direct awareness) or constructive (awareness that one should have based on available information or circumstances).[565] Extending the concept of knowledge to Corporations we realize that what matters is how a corporation handles a specific knowledge. Therefore, we deduce that corporate knowledge refers to the collective knowledge possessed by a corporation, held and/or regarding its employees, management and other stakeholders. Relevant doctrines in legal texts or policies emphasize the importance of knowledge that the corporation should reasonably know or be aware of based on its activities, operations, control and decision-making powers. For instance, the jurisprudence over the context of the Alien Tort Claims Act (ATCA),[566] interprets awareness as:

i) The defendant's direct awareness of the wrongful act (direct knowledge);

ii) The defendant's awareness, imputed on the circumstances or the nature of the tort (constructive knowledge). Particularly important are the cases of *Sosa v. Alvarez-Machain*[567] and *Kiobel v. Royal Dutch Petroleum*,[568] which clarified the requirements for claims under the Alien Tort Claims Act regarding corporate complicity and knowledge in the alleged human rights abuses.[569,570]

Moreover, concealment describes the intentional act of withholding or omitting information that one is obliged to disclose, particularly if such information would significantly impact the decision-making of the parties involved. In the context of corporate liability, concealment often takes the form of fraudulent concealment, i.e. when a corporation intentionally hides facts to deceive others, or breach of fiduciary

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definiztione dei tipi delittuosi; profili investigativi e processuali; riflessi in terma di reati di pubblica amministrazione, corporate liability e misure di contrasto patrimoniale (Pisa: Pacini Giuridica, 2021).

[565] Bryan A.Garner (E.d), *Black's Law Dictionary* (Thomson Reuters, 2019); Ali Hasan and Richard Fumerton, 'Knowledge by Acquaintance vs. Description' in Edward N. Zalta and Uri Nodelman, *The Stanford Encyclopedia of Philosophy* (Stanford University, 2024).

[566] Alien Tort Statute, 28 U.S.C. § 1350 (1976).

[567] Sosa v Alvarez-Machain 542 US 692 (2004).

[568] Kiobel v Royal Dutch Petroleum Co 569 US 108 (2013).

[569] Peter Muchlinski, Advanced Introduction to Business and Human Rights (Edward Elgar, 2022); BarnalI Choudhury, The UN Guiding Principles on Business and Human Rights: A Commentary (Edward Elgar, 2023).

[570] SEC v Texas Gulf Sulpur Co, 401 F 2d 833 (2d Cir 1968); SEC v Citigroup Global Markets Inc, No 11-CV-7387 (SDNY 2011).

duties, i.e. when directors conceal substantial information that affects the interests of shareholders or stakeholders.[571]

The lack of adoption of preventive or restorative measures for the mitigation of the risks on public health and the environment falls within the general context of Due Diligence, according to which 'businesses (should) take comprehensive measures to prevent, mitigate, and remediate adverse human rights impacts.' [572] The UNGPs describe the framework of Due Diligence as a series of steps including the establishment of a human rights policy, conducting impact assessments, integrating findings into business processes, and providing remedies for affected parties.[573]

Briefly, the acts and omissions of the companies are summarized as follows:

1) **3M**, the largest PFAS manufacturer in the United States from the 1940s until the early 2000s, was aware for decades of the health and environmental hazards posed by PFAS chemicals. The company began researching PFAS toxicity in the 1950s and quickly realized the harmful effects of chemicals like PFOA and PFOS. By 1950, 3M discovered that PFAS accumulated in animal blood, while by 1956, it was known that these chemicals could bind to human blood proteins, causing bioaccumulation. Internal memos from 1960 indicated that PFAS waste could pollute groundwater, and by 1963, 3M recognized PFAS as highly stable and resistant to degradation.

Regarding its internal knowledge and concealment, AG Tong stresses that in the 1960s and 1970s, 3M documented PFAS's environmental persistence and toxicity. Nevertheless, despite growing evidence of PFAS contamination in wildlife and concerns about public health, 3M continued to withhold this information from customers and the public. In parallel, regarding the health risks and regulatory evasion, AG Tong highlights that by the 1970s, 3M was aware of PFAS's severe environmental and health risks, based on the high PFAS levels in the blood of its employees. A decade later, 3M moved its female workers off production lines, due to concerns about birth defects in rats' experiments.

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[571] William J. Carney, *Corporate Law and Practice* (West Academic Publishing, 2016); Richard A.Brealey, Stewart C. Myers and Franklin Allen (Eds) *Principles of Corporate Finance* (McGraw-Hill Education, 2023); Eilis Ferran, *Principles of Corporate Finance Law* (Oxford University Press, 2014); Robert B. Thompson, 'Fraudulent Concealment in Corporate Law' (2002) 55 Stanford Law Review 1635; Deborah A. DeMott, 'The Duty to Disclose and Corporate Transparency' (2013) 90 North Carolina Law Review 1455.

[572] UN Human Rights Council, Guiding Principles on Business and Human Rights (2011).

[573] Ibid; David Collins, Due Diligence in International Law (Routledge, 2018); John E. Ruggie, Just Business: Multinational Corporations and Human Rights (W.W. Norton & Company, 2013); Daniel Behn, Business and Human Rights: The Essential Guide (Routledge, 2020).

The collected evidence revealed that although 3M's internal studies continued to affirm PFAS's toxicity, the company concealed partially its findings. Only in 1998 it began sharing with the Environmental Protection Agency (EPA) its concerns and under the latter's pressure, 3M announced its phase-out from PFOS and PFOA, while continuing hiding the risks.

2) **Chemours** was also found responsible for the same wrongful acts. Likewise, the company was already aware of the severe environmental and health risks associated with PFAS since the 1970s. In the period 1970s-2000s Chemours conducted internal studies and communications regarding the toxic, persistent and bioaccumulative nature of PFAS in the human body and environment. Regardless, the company continued their production and use, resulting in contamination of Connecticut's groundwater, surface water and soil.

3) **DuPont** began researching the use of PFAS in the 1950s. Similarly, internal studies from this period showed that the company actively knew that PFAS compounds were harmful, highly stable, persistent in the environment and extremely toxic to humans and wildlife. However, the company did not disclose its findings. The failure to disclose the PFAS risks continued from the 1970s until the 1990s, in which DuPont continued marketing and selling its products and contaminating the environment, withholding the hazardous impact from state authorities and consumers.

Since 2005, upon the pressure of Environmental Protection Agency, DuPont agreed to pay a $10.25 million regulatory fine, in addition with undertaking restorative actions, such as clean up and phase out operations.

Moreover, AG Tong describes that DuPont's corporate restructure in 2013 until 2019 was a strategic method aiming to shield the company's assets from its significant environmental liabilities, especially those related to PFAS contamination. Other facts that prove the company's knowledge include the legal actions by the Tennant family in 1999, who sued the company in the Federal Court of West Virginia for the contamination of their property with PFOA wastes. The creation of the fraudulent scheme "Chemours Spin-off" refers to the corporate reconstruction scheme, initiated by DuPont, in order to manage its environmental liabilities. More specifically, DuPont transferred its performance chemicals business and products, e.g. Teflon, into Chemours, its wholly owned subsidiary. In 2015, Chemours started as a separate, publicly traded entity, burdened with DuPont's environmental liabilities.

The strategic reconstruction is provided in greater detail accordingly:

"224. On information and belief, Old DuPont knew that Chemours was undercapitalized and could not satisfy the massive liabilities that it had forced upon Chemours. Old DuPont also knew that the Chemours Spin-off alone would not fully insulate its assets from PFAS liability because Old DuPont still faced direct liability for its own conduct.

225. The second step (the "DowDuPont Merger") involved Old DuPont and Old Dow entering into an "Agreement and Plan of Merger" in December 2015, pursuant to which Old DuPont and Old Dow merged with subsidiaries of a newly formed holding company, DowDuPont, Inc. ("DowDuPont"), which was created for the sole purpose of effectuating the merger. Old DuPont and Old Dow became subsidiaries of DowDuPont.

226. In the third step (the "DowDuPont Separation"), DowDuPont engaged in numerous business segment and product line "realignments" and "divestitures," which transferred, either directly or indirectly, a substantial portion of Old DuPont's assets to DowDuPont and culminated in DowDuPont spinning off two new publicly traded companies: Corteva, which currently holds Old DuPont as a subsidiary, and New Dow, which currently holds Old Dow as a subsidiary. DowDuPont was then renamed DuPont de Nemours, Inc. (i.e., New DuPont).

227. As a result of this restructuring, between December 2014 (before the Chemours Spinoff) and December 2019 (after the DowDuPont Separation), the value of Old DuPont's tangible assets decreased by $20.85 billion, or by approximately one-half.

228. New DuPont, New Dow, and Corteva now hold a significant portion of the tangible assets that Old DuPont formerly owned.

229. Many of the details about these transactions are hidden from the public in confidential schedules and exhibits to the various restructuring agreements. On information and belief, Old DuPont, New DuPont, New Dow, and Corteva are concealing from creditors, such as the State, the details of where Old DuPont's valuable assets were transferred and of the inadequate consideration that Old DuPont received in return".[574]

[574] Ibid.

Consequently, the tripartite comparison of the wrongful conduct of the Defendants shows a common pattern. All companies did not only actively pollute the environment and expose their stakeholders to severe and potentially fatal diseases, but mostly consciously and willingly withhold the relevant information from the public. In addition, despite the fines and intervention from public authorities, like the EPA, they did not adopt a proactive approach in mediating their wrongful impact. Therefore, we understand that this is another distinctive example where profit-maximization overtakes the stakeholders' rights and prosperity.[575]

5.2.3. Federal investigations and regulations on the use of PFAS

The Companies' manufacturing processes and waste disposal practices resulted in the release of PFAS chemicals in Connecticut's natural resources, including drinking water, soil and surface waters.

As AG Tong emphasizes: *"[…] 81. PFAS attributable to Defendants' PFAS Products have been found in groundwater, surface water, sediments, soils, and biota in the State where PFAS Products were used, stored, disposed of, or otherwise discharged. Furthermore, the State anticipates that additional contamination of natural resources from PFAS attributable to Defendants' PFAS Products will be uncovered as its investigation continues.*

82. Contamination from PFAS Products persists in the State's natural resources, damages their intrinsic value, and impairs the public benefits derived from access to, use, and enjoyment of the State's natural resources.

83. The current and future residents of the State have a substantial interest in natural resources free of PFAS contamination, as do the tourism, recreation, fishing, and other industries that rely on maintaining a clean and safe environment for their businesses, patrons, and tourists to visit and enjoy.

84. Defendants' PFAS Products are major sources of PFAS contamination in Connecticut. Numerous locations in Connecticut are known to be contaminated and injured by Defendants' PFAS Products, including locations in the vicinity of landfills, POTWs, and operating or closed manufacturing facilities".[576]

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[575] "299. Defendants were untruthful about their products, hid relevant information, and failed to disclose or were otherwise unforthcoming with relevant information about the characteristics and dangers of their PFAS Products."

[576] Paras, 81-99. "99. Defendants' PFAS Products have contaminated Connecticut surface waterbodies in the vicinity of POTWs and other release sites, including, but not limited to, the following waterbodies,

The State of Connecticut has started addressing PFAS contamination since the late 1990s through federal investigations and regulations on PFAS. However, as we notice in the body of the decision, the national authorities did not bring the companies before Courts. The Environmental Protection Agency (EPA) which played a key role in the identification of the Defendants' illegal corporate impact, obliged the companies to gradually phase out their productions, while imposing fines for the breach of the Toxic Substances Control Act (TSCA).

Specifically, in the late 1990s, federal and state regulators began recognizing the significant risks associated with PFAS exposure. This awareness grew when the EPA received disclosures about PFOS and PFOA, leading to enforcement actions under the Toxic Substances Control Act (TSCA), a regulation drafted by EPA that was signed into law by President Ford in 1976.[577] The TSCA purpose was to provide the EPA with the authority to regulate the manufacture, import, processing, use and distribution of chemical substances in the United States. Under Section 8(e) of TSCA, chemical manufacturers and distributors are required to promptly inform the EPA if they have information indicating that a substance or mixture poses a substantial risk to health or the environment. This reporting requirement has been in place since TSCA's enactment in 1976.

Based on this Act, in December 2005, the EPA settled with DuPont over TSCA violations for concealing the environmental and health impacts of PFOA, another substance that belongs to the category of 'Forever Chemicals'. This settlement included the largest civil administrative penalty ever imposed by the EPA under any environmental statute at the time, amounting to $10.25 million, and required DuPont to undertake Supplemental Environmental Projects valued at $6.25 million (paras 52-55).[578] In parallel, in April 2006, 3M agreed to pay the EPA a penalty exceeding $1.5 million after being cited for

each of which has tested and detected PFAS compounds: a. Connecticut River, Hartford 21 b. Farmington River, Farmington and Windsor c. Hockanum River, Vernon d. Naugatuck River, Beacon Falls e. Pequabuck River, Bristol f. Quinnipiac River, Wallingford g. Scantic River, Somers"

[577] Toxic Substances Control Act (TSCA) 15 U.S.C. § 2607(e) (1976). The TSCA was drafted primarily by the U.S. Environmental Protection Agency (EPA) with significant input and support from Congress, underwent various revisions and negotiations before becoming law. Introduced to Congress in 1976, the EPA played a key role in shaping the Act, providing technical expertise and policy recommendations. The Act was discussed and revised by various congressional committees, including the House Committee on Interstate and Foreign Commerce and the Senate Committee on Environment and Public Works. More information at 'EPA History: Toxic Substances Control Act', available at: https://www.epa.gov/history/epa-history-toxic-substances-control-act (Accessed: 1/7/2024).

[578] AG Tong, supra.

244 TSCA violations, which included failing to disclose studies on PFOS, PFOA, and other fluorinated compounds, dating back decades (paras 55-60).[579]

During these enforcement actions, the EPA sought to phase out PFOS and PFOA production. 3M, the sole known manufacturer of PFOS in the U.S., ceased domestic PFOS manufacturing as part of this phase-out. In 2006, the EPA launched the PFOA Stewardship Program[580] to coordinate the phase-out of domestic PFOA production by 2015, a goal reported as achieved by participating companies, including Arkema, Asahi, BASF, Clariant, Daikin, 3M/Dyneon, and DuPont. The EPA acknowledged the serious health and environmental threats posed by PFAS, leading to significant regulatory implications for state regulators and drinking water providers.

In an attempt to address the severe risks for public health, the EPA set in 2016 a health advisory level (HAL) for combined PFOS and PFOA in drinking water at 70 parts per trillion (ppt). In June 2022, the levels for these chemicals were lowered to .004 ppt and .02 ppt, respectively, based on new data indicating that adverse health effects could occur at much lower levels than previously understood.

Despite the emergence of such an 'Attorneys General' alignment in the USA, we also witness the consequences of such actions on public trust. The Environmental Protection Agency (EPA) has been aware of the health risks posed by PFAS for many years but has not effectively restricted PFAS emissions into the air and water, nor established cleanup standards. In 2019, the agency introduced a PFAS action plan that was widely considered insufficient, lacking specific deadlines for action, and since then, the EPA has made minimal progress. The Department of Defence has conducted PFAS testing at military bases but has achieved little to no progress in cleaning up contaminated sites.[581] President Joe Biden has pledged to address PFAS pollution by regulating these chemicals in drinking water, classifying PFAS as hazardous substances under the federal

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[579] Ibid.

[580] As we find in EPA's website, "[…] EPA invited eight major leading companies in the per- and polyfluoroalkyl substances (PFASs) industry to join in a global stewardship program with two goals:
To commit to achieve, no later than 2010, a 95 percent reduction, measured from a year 2000 baseline, in both facility emissions to all media of perfluorooctanoic acid (PFOA), precursor chemicals that can break down to PFOA, and related higher homologue chemicals, and product content levels of these chemicals.
To commit to working toward the elimination of these chemicals from emissions and products by 2015 […]". Environmental Protection Agency, PFOA Stewardship Program, EPA-HQ-OPPT-2006-0621 (Accessed: 1/7/2024).

[581] 'Defense Department to increase PFAS cleanup efforts following new EPA Guidelines' (15 April 2024), available at: < https://www.ehn.org/defense-department-to-increase-pfas-cleanup-efforts-following-new-epa-guidelines-2667771043.html> (Accessed: 20/6/2024)

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),[582] halting government purchases of certain PFAS-containing products, and funding further research.[583]

In March 2021, the EPA declared it would regulate two specific PFAS, PFOA and PFOS, in drinking water, although final regulations may take years to implement. In response to a congressional directive, the EPA has added 189 PFAS to the Toxics Release Inventory (TRI), requiring facilities to report environmental releases of these substances. However, many manufacturers seem to be exploiting existing loopholes in the TRI and avoid reporting.[584]

In September 2022, the EPA proposed a rule to designate PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),[585] based on evidence suggesting substantial danger to public health or the environment when released. Based on the Act, which aims at holding Corporations accountable for chemical contamination, states and publicly owned treatment works are required to monitor and treat PFAS in wastewater and manage PFAS-contaminated biosolids.[586]

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[582] Comprehensive Environmental Response, Compensation, and Liability Act (1980) 42 USC §9601 et seq.

[583] EPA, 'Biden-Harris Administration finalizes critical rule to clean up PFAS contamination to protect public health' (19 April 2024), available at: < https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-critical-rule-clean-pfas-contamination-protect> (Accessed: 20/6/2024); EPA, 'PFAS Strategic Roadmap: EPA's commitments to Action 2021-2024'; available at: < https://www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-2024> (Accessed: 20/6/2024); Environmental Working Gorup, 'Bold new water, hazardous substance rules boost Biden PFAS action plan' (April 2024), available at: < https://www.ewg.org/news-insights/news-release/2024/04/bold-new-water-hazardous-substance-rules-boost-biden-pfas-action> (Accessed: 20/6/2024); The White House, 'What they are saying: Biden-Harris administration takes critical action to protect 100 Million people from PFAS pollution in drinking water' (16 April 2024), available at: < https://www.whitehouse.gov/ceq/news-updates/2024/04/16/what-they-are-saying-biden-harris-administration-takes-critical-action-to-protect-100-million-people-from-pfas-pollution-in-drinking-water/> (Accessed: 20/6/2024).

[584] The EPA has proposed, but not yet finalized, a rule to close this and other reporting loopholes. In October 2021, the EPA unveiled a PFAS Strategic Roadmap, aiming to expedite the establishment of a national drinking water standard for PFOA and PFOS by 2023.

[585] Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. §§ 9601-9675 (1980). The Act, also known as 'Superfund' was introduced by President Carter as a cleanup effort of hazardous waste sites, aiming at holding responsible parties accountable for contamination, and fund cleanup efforts through a trust fund (the Superfund).

[586] EPA defines biosolids as "[…] a product of the wastewater treatment process. During wastewater treatment the liquids are separated from the solids. Those solids are then treated physically and chemically to produce a semisolid, nutrient-rich product known as biosolids. The terms 'biosolids' and 'sewage sludge' are often used interchangeably."
https://19january2021snapshot.epa.gov/biosolids/basic-information-about-biosolids_.html (Accessed: 1/7/2024).

Recently, the EPA proposed a new National Primary Drinking Water Regulation[587] for six PFAS, which establishes the enforceable Maximum Contaminant Levels (MCLs) and health-based, non-enforceable Maximum Contaminant Level Goals (MCLGs) for these PFAS. Based on the Drinking Water Regulation, water providers and state regulators are required to monitor, notify the public, and reduce PFAS levels in drinking water if they exceed proposed MCL standards.[588]

The Congress has proposed numerous bills aimed at monitoring the extent of PFAS contamination, banning non-essential uses of PFAS, addressing ongoing contamination, and cleaning up legacy pollution. Several states are also acting against PFAS pollution by prohibiting certain uses of the substances and establishing cleanup standards. Indicatively Bill A2327 (2024) in New Jersey requires the Department of Environmental Protection to conduct assessments every five years on the regulation of PFAS in drinking water, while Bill A 2775 (2024) prohibits the sale, import and distribution of products that use the 'chasing arrows' recycling symbol, unless the products have been determined to be recyclable by the Department of Environmental Protection. Interestingly, the Bill stresses that products containing hazardous chemicals or PFAS are explicitly excluded from being considered recyclable by the relevant Department.

5.2.4. Previous jurisprudence

There are no current decisions on any of the lawsuits filed by Attorneys General in other Federal Courts against the same Defendants. The jurisprudence surrounding these lawsuits is an overly demanding and time-consuming process. Therefore, we acknowledge that the current absence of a decision on AG Tong's lawsuit is a weakness for our research. However, as previously explained, we consider the 'Forever Chemicals' case extremely important for the development of BHR, CSR and Public Health policy strategies in the post-Covid era. This specific example shows that the instigation of legal procedures against Corporations which have been infringing the right to health per se

[587] U.S. Environmental Protection Agency, National Primary Drinking Water Regulation for PFAS (2023).
[588]The proposed regulation sets the MCLs for PFOA and PFOS at 4.0 ppt, the lowest reliably quantifiable concentration during routine laboratory operations. The MCLGs for PFOA and PFOS are set at zero, as the EPA has determined these chemicals likely cause cancer (e.g., kidney and liver cancer) and that no safe exposure level exists.

and the right to a healthy, clean and sustainable environment, is an ambitious step towards robust public policy reformations and more responsible business conduct.

Therefore, even in the absence of a recent decision, we cite previous examples of BHR misconduct involving 3M, Chemours and DuPont. For example, in the *State of Minnesota v 3M*[589] (2010) lawsuit, the Attorney General sued 3M for severe water pollution with PFAS. After extensive litigation the case was settled in 2018 with 3M agreeing to pay $850 million to the state of Minnesota. This settlement was intended to fund natural resource damage and remediation projects, addressing the contamination and its impacts on the environment and public health. In addition, in the 2020 PFAS Settlement, 3M agreed a $55 million settlement with the city of Decatur, Alabama for the contamination of the Tennessee River, providing the resources for remediation and local community support.[590]

Considering DuPont and Chemours, we note the settlement reached in 2021 among Chemours, DuPont and Corteva.[591] The settlement's provisions describe the collective responsibility of DuPont, Chemours and Corteva for collectively paying $4 billion to resolve environmental cleanup and remediation for the pollution. Similarly, the same companies reached a settlement in 2023 with the State of South Carolina,[592] reaching a fine of $1.185 billion to address the extensive contamination of public water supplies, without covering personal injury claims or claims by the State's Attorney General for the damage in S. Carolina's natural resources.[593]

5.2.5. Connection with the theoretical framework and conclusions

AG Tong's lawsuit presented strong allegations against 3M, Chemours and DuPont, repeatedly emphasizing their long-standing awareness of the harmful effects of their corporate conduct in the State of Connecticut and their failure to disclose such risks. He asserts that they intentionally misled their stakeholders and other regulatory bodies

[589] *State of Minnesota v 3M Company* (Minnesota District Court, 20 February 2018) Case No. 27-CV-10-28862.
[590] *In re 3M Company PFAS Settlement* (District Court, 2020) Case No. 27-CV-10-28862.
[591] State of Delaware et al v. E.I. du Pont de Nemours and Company et al (D.Del. 2021) No. 1:21-cv-00168.
[592] State of South Carolina v DuPont de Nemours, Inc., Chemours Company, and Corteva, Inc., Settlement Agreement (2023).
[593] Sharon Udasin, 'Federal court finalizes $1.2B 'Forever Chemicals' settlement involving major firms' (8/2/2024), available at: https://thehill.com/policy/equilibrium-sustainability/4456932-federal-court-finalizes-1-2b-forever-chemicals-settlement-involving-major-firms/#:~:text=A%20federal%20district%20court%20judge,spinoff%20firms%20Chemours%20and%20Corteva. (Accessed: 2/7/2024).

about the risks of 'Forever Chemicals', thereby exacerbating the environmental pollution and public health crises (paras 113-151, 152-295).

"298. By their acts and omissions, Defendants have created a public nuisance which unreasonably and substantially interferes with public health, safety, and welfare and the environment and which obstructs the public's free use and comfortable enjoyment of Connecticut's natural resources for commerce, navigation, fishing, recreation, and aesthetic enjoyment […]

300. Defendants knew or should have known that their PFAS Products, as ordinarily used, were likely to end up contaminating drinking water, groundwater, surface water, fish, soil, sediment, and other natural resources.

301. Defendants' conduct and the release of their PFAS Products onto State natural resources and property has a natural tendency to create danger and inflict injury upon persons and property.

302. Defendants' conduct created and maintained, and continues to create and maintain, a public nuisance which interferes with public rights and with public health and safety.

303. By their acts and omissions, Defendants' creation of the public nuisance was unreasonable and/or unlawful."[594]

Based on the allegations, the State of Connecticut has requested a series of compensatory and preventive measures, e.g. injunctive relief by ordering Defendants to cease PFAS pollution and provide public information on the PFAS risks and remediation and disclosing all relevant research; medical monitoring and support for affected communities; compensatory damages for the costs related to PFAS pollution; compensation for all other damages incurred by the State due to their actions and adoption of preventive measures for the limitation of future damages.

Following the 'alignment' of Attorney Generals against PFAS manufacturers, the lawsuits filed by the State of Connecticut represent a noteworthy legal effort to address the environmental and public health crisis, by underscoring the necessity for comprehensive BHR and CSR application. Holding these Corporations accountable and urging them to addressing existing and future harms, are crucial steps to enhance public trust, environmental and public health resilience and access to justice for the victims

[594] AG Tong, ibid.

and other stakeholders.[595] Even if the claims against PFAS manufacturers are still pending in various US Federal Courts, we claim that such claims offer crucial insights for the development and interpretation of the theoretical framework that the current Dissertation is built upon.

First, in terms of BHR, the lawsuit of AG Tong affirms the principle of Human Rights Due Diligence, by stressing the corporate duty of identifying risks and mitigating relevant impacts. Human Rights Due Diligence is a substantial principle and managerial process, requiring Corporations to manage their human rights impact in a proactive way. The lawsuit illustrates the failures and consequences of inadequate, or even non-existent, Human Rights Due Diligence.

In our example, all the Defendant companies appear to have breached the UNGPs 13, 15 and 17. Namely:

According to UNGP 13, "The responsibility to respect human rights requires that business Enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts".[596]

UNGP 15 stresses that "In order to meet their responsibility to respect human rights, business Enterprises should have in place policies and processes appropriate to their size and circumstances, including: (a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute".

In parallel, UNGP 17 epitomizes Human Rights Due Diligence stressing "In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business Enterprises should carry out human rights due diligence. The process

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[595] For the intersection between BHR and the environment see also Angelica Bonfanti, Business and Human Rights in Europe: International Law Challenges (Routledge, 2019); Angelica Bonfanti, Imprese Multinazionali, Diritti Umani e Ambiente: Profili di Diritto Internazionale Pubblico e Privato (Giuffrè, 2012); Pia Acconci, Tutela della salute e diritto internazionale ("Health Protection and International Law") Collana Diritto Internazionale e Ordine Mondiale (CEDAM, Padova 2011).

[596] United Nations Human Rights Council, '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.

should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence: (a) Should cover adverse human rights impacts that the business enterprise 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; (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations; (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve".

Consequently, the defendants should have avoided practices that resulted in PFAS contamination, such as improper disposal of chemicals in the water land and fields of Connecticut. In parallel, they should have had conducted regular environmental and health assessments, by offering transparent reports on the effect of the measures taken, therefore keeping stakeholders updated also about remediation possibilities. They should have adopted their findings into corporate policies, by providing clear guidelines and protocols for handling hazardous substances, opting for other waste management practices and investing in safer alternatives. In so doing, they would have managed to build public trust and act as an example of corporate transparency.

In addition, by demanding compensatory and injunctive relief, the lawsuit reflects the enactment of the Third Pillar of the UNGPs. More specifically, UNGPs 25-31 outline the access to remedies and the responsibilities of states and businesses in providing access to effective state-based and non-judicial grievance mechanisms for human rights abuses.[597] The General Attorney exercising his public authority, advocates for the rights

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[597] United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011) UN Doc HR/PUB/11/04;
"25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy";
26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy;
27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse;
28. States should consider ways to facilitate access to effective non-State based grievance mechanisms dealing with business-related human rights harms;
29. To make it possible for grievances to be addressed early and remediated directly, business Enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted;

of the affected communities, ensuring they will receive the necessary compensation for remediation.

Moreover, concerning CSR, we note that the lawsuit illustrates how decisions made almost sixty years ago can still have lasting repercussions on a company's stakeholders. The awareness of the risks for public health and welfare already from the 1950s and its concealment resulted in the deterioration of pollution. Consequently, the contamination was an outcome of corporate negligence, reflecting the need to enhance robust CSR policies that prioritize sustainability and environmental health. 3M declares that by "[…] *Leveraging science, innovation, and collaboration, 3M helps solve global challenges like climate change, public health and safety, environmental justice, and inequities in communities around the world."*[598] Likewise, DuPont highlights: "[…] *Innovate for good is our commitment to use our talent, resources, and innovation expertise to work on meaningful and valuable solutions to societal challenges. Protect people and the planet is our commitment to take action to ensure the safety of our employees, contractors, customers, and communities while improving our impact on the environment. Empower people to thrive addresses how we enable our employees and communities to experience well-being, purpose, opportunity, equity, and connection."*[599] Lastly, Chemours *"[…] represents the best solution and performance, delivering quality, reliability, safety and sustainability […] manufactured in a responsible manner that minimizes environmental impact"*. The lawsuit shows that

30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available;
31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be: (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes; (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access; (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation; (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms; (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake; (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights; (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms; Operational-level mechanisms should also be: (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances".

[598] https://www.3m.com/3M/en_US/sustainability-us/social/ (Accessed: 1/7/2024).

[599] https://www.dupont.com/about/sustainability.html#:~:text=Our%20sustainability%20strategy%20harnesses%20our,create%20impactful%20and%20enduring%20outcomes; DuPont, 'Sustainability Report 2024', available at: <https://www.dupont.com/content/dam/dupont/amer/us/en/corporate/about-us/Sustainability/2024Sustainability/DuPont_2024SustainabilityReport.pdf> (Accessed: 1/7/2024).

commitment to societal well-being must become a part of a company's corporate governance, exceeding mere legal compliance.[600]

Regarding Sen's capabilities, access to clean water and safe environment are essential for maintaining health. The contamination compromises individuals' capability to live in a healthy environment, threatening long-term health outcomes. Under the concept of entitlements, as discussed in Chapter 4, Corporations responsible for PFAS contamination should recognize communities' entitlement to a safe and healthy environment and prioritize transparent reporting and remediation efforts to safeguard public health.

In addition, in terms of public health and environmental protection, the case demonstrates the need for stringent environmental protection measures. During the parallel lawsuits filed by other Attorney Generals, public authorities have adopted legislative measures on PFAS and public health. For instance, the 2021 PFAS Action Act mandates the EPA to enforce cleanup efforts and impose restrictions on the use of PFAS, encouraging companies to adopt safer chemical practices. In the same year, the California Assembly Bill 1200, also known as the PFAS-Free Food Packaging Act, bans the use of PFAS in food packaging by January 1, 2023 and requires manufacturers to label cookware containing hazardous chemicals.

The case is also significant from a post-COVID era perspective. The pandemic has heightened awareness of the vulnerabilities of public health and the importance of corporate accountability and transparency. It also shows that the delivery of the SDG 3, i.e. ensuring healthy lives and promoting well-being for all at all ages, is not an aim to be exclusively enacted by public authorities. Corporations as economic actors impact society and the environment.

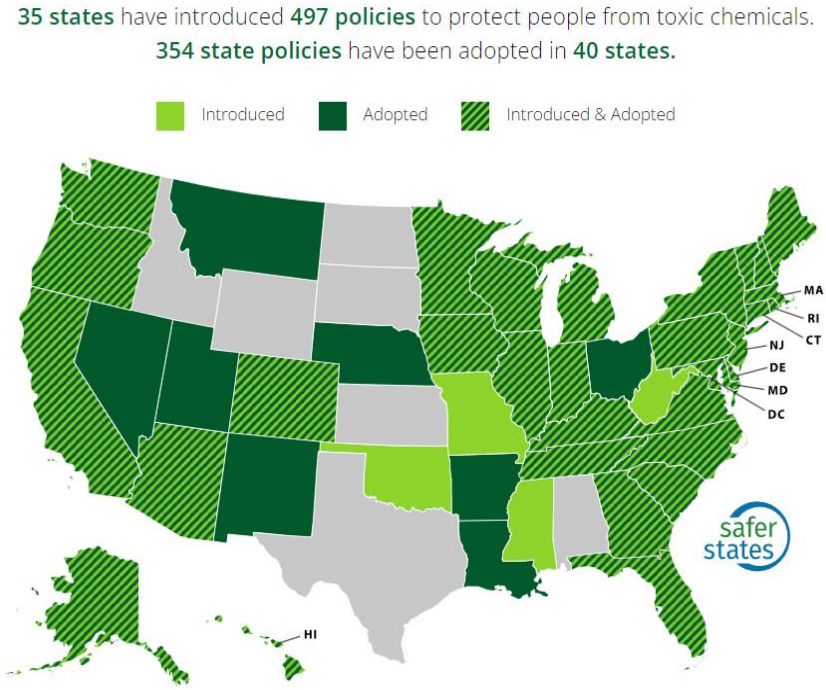
The protection of health and well-being is responsibility diversely enacted, but dually shared by public and private actors. The 'Forever Chemicals' paradigm shows that partnerships are at the heart of implementing the 2030 Agenda, like SDG 17 points out. In our case we recognize the lack of a recent ruling as a weakness for our research, however we highlight the simultaneous changes in the public health domain. From a public policy perspective, the EPA and other U.S. regulatory bodies are incorporating

[600] Andrew Crane, Dirk Matten, and Laura J. Spence (eds), Corporate Social Responsibility: Readings and Cases in a Global Context (Routledge, 2019); Archie B. Carrol and Ann K. Buchholtz, Business and Society: Ethics, Sustainability, and Stakeholder Management (Cengage Learning, 2014); Edward R. Freeman, Strategic Management: A Stakeholder Approach (Pitman, 1984).

Bills for the phaseout and ban of PFAS from cookware, drinking water facilities etc. From a judicial perspective, the ever-increasing number of lawsuits filed from General Attorneys is a huge, yet timely demanding, step towards corporate accountability. We emphasize the beneficial role of stakeholders' engagement in all of these efforts, because the affected communities managed to leverage political changes through their associations.

For instance, Safer States, a U.S. coalition of environmental health organizations and alliances dedicated to protecting people and the environment from toxic chemicals, has advocated for government and corporate actions that promote the use of safer chemicals and materials. Their mission includes safeguarding public health and communities by moving away from harmful substances and holding chemical polluters accountable. For instance, until 2024 35 States have introduced 497 policies to protect public health, covering a wide range of PFAS in cosmetics, water sanitation, firefighting foams etc.[601]

[601] Regarding Connecticut, we found the following Bills adopted in the last four years:
The House Bill 5518 (2020) providing $2 million for PFAS cleanup and remediation, while in 2021 the HB 6666 requires water bottler companies to test the water source they are bottling for PFAS; The House Bill 6690 (2021) which provides up to $1,150,000 in grants-in-aid to municipalities for potable water provision and PFAS pollution assessment and remediation; The Senate Bill 837 (2021), which bans the use of firefighting foam containing PFAS and intentionally added PFAS in food packaging, by establishing a take-back program for such products; In 2023, Senate Bill 100 (2023) which establishes an account for the general fund to provide funds to local communities needing PFAS testing and remediation; The House Bill 5351(2024), which requires a study for an extended producer responsibility program labeling and PFAS exclusion; Senate Bill 128 (2024), requiring the Commissioner of Consumer Protection to enter into an interstate agreement with New York and New England for the prohibition of sales and distribution of children's products including specific flame-retardant chemicals. Out of the most important measures we find the recent Senate Bill 292 (2024), which prohibits the sale or distribution of products containing intentionally added PFAS (e.g. in carpets, cleaning products, cosmetics, children's products, fabric treatments etc.) requiring manufacturers to report relevant information. Lastly, Senate Bill 338(2024) enables independent fire companies and state entities to receive grants for reimbursement for the removal of PFAS from their fire apparatus.



[Figure 2. Map with the latest PFAS policies. Source: Safer States][602]

The ongoing legal claims against 3M, Chemours, and DuPont, despite being unresolved, offer significant insights into the evolving landscape of corporate responsibility and liability. They highlight the critical importance of transparency, accountability, and proactive management of environmental and health risks. Serving as a vital reference for understanding the intersection of business practices with human rights, CSR, and public health in a post-COVID world, the case is a crucial subject for academic and public policy discussions in these fields. As Böhm and Others stressed, "[…] The no-harm rule (is) preoccupied with demonstrable damage done to directly affected interested parties, which requires very careful attention to the causal link between action (or omission) and the damage. Business ethics is specifically attuned to such questions, using insights from widely diverging normative approaches, realizing that managerial decision making often benefits from being confronted with a multitude of complementary normative tools".[603]

A legal action by AG reflects the State's duty to protect the right to health, fulfilling the State's duty to ensure that individuals who have been or will be affected, receive

[602] https://www.saferstates.org/ (Accessed: 1/7/2024).
[603] Steffen Böhm, Michal Carrington et al, 'Ethics at the Centre of Global Governance and Local Challenges: Thoughts on the Future of Business Ethics' (2022) 180 Journal of Business Ethics 3, 835-861.

adequate protection and compensation.[604] As another reflection of the Right to Health, we consider the series of these lawsuits and policies adopted crucial steps for ensuring non-discrimination (affected communities by present and future harms), civil engagement in health-related decision-making issues (e.g. Safer States) and the benefits of multistakeholder participation in protecting health and well-being.[605]

It will be extremely important to observe whether the strategic litigation against PFAS in the US will inspire similar legal developments within the EU. From our research we found limited recognition of PFAS in European regulations. For instance, the current European legal framework addressing PFAS is mainly shaped by seven instruments. Among which, we notice the REACH Regulation,[606] which requires companies to register chemicals and assess their associated risks. Some PFAS are subject to specific authorization or restriction under this Regulation, aimed at limiting their use and distribution. In addition, the Persistent Organic Pollutants (POP) Regulation,[607] targets certain PFAS compounds as persistent pollutants, imposing strict control measures, including prohibitions and gradual phase-outs to curb their environmental impact.

Furthermore, the Drinking Water Directive[608] ensures that PFAS levels in drinking water do not exceed specific limits, safeguarding public health from potential contamination. In the same line, the Food Contact Materials Regulation[609] also plays a key role in prohibiting the inclusion of PFAS in materials and articles that come into contact with food, thereby limiting consumer exposure to harmful substances.

The European Chemicals Agency (ECHA) is actively involved in assessing and managing PFAS-related risks and has proposed restrictions under the REACH Regulation to limit the manufacture, use and market placement of certain PFAS with the aim of minimizing

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[604] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 12; UN Committee on Economic, Social and Cultural Rights, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12 of the Covenant)' (11 August 2000) UN Doc E/C.12/2000/4.

[605] Jonathan Wolff, *The Human Right to Health* (Norton 2012); Brigit Toebes, *The Right to Health as a Human Right in International Law* (Intersentia 1999); Andrew Clapham, *Human Rights: A Very Short Introduction* (Oxford University Press, 2007); Paul Hunt and Gunilla Backman, *Health and Human Rights: A Reader* (Routledge 2012);Alicia Ely Yamin, *Power, Suffering, and the Struggle for Dignity: Human Rights Frameworks for Health and Why They Matter (*University of Pennsylvania Press 2016).

[606] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency [2006] OJ L396/1.

[607] Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants [2019] OJ L169/45.

[608] Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption [2020] OJ L435/1.

[609] Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food [2004] OJ L338/4.

human and environmental exposure. The agency also collaborates with a broad range of stakeholders, e.g. industry representatives, NGOs, scientific communities, to raise public awareness of the serious health issues posed by PFAS. ECHA's efforts include public consultations and initiatives designed to enhance the understanding of PFAS dangers and promote more stringent regulatory actions across the Europe. Despite these measures, PFAS are still not regulated across all areas of European law, leaving room for further developments. The strategic litigation emerging in the US could inspire similar legal initiatives within the EU, particularly as awareness of PFAS-related risks grows and public pressure increases for stronger legal frameworks to protect public health and the environment.

The Part II of Chapter 5 described the 'Forever Chemicals' case, which offers an illustrative example of strategic litigation regarding the environmental and public health damage by the use of PFAS by three US Corporations. Drawing insights from one of the lawsuits filed against these companies, particularly the lawsuit filed by AG Tong, we described their corporate responsibility in terms of BHR and CSR.

Sections 5.2.1 and **5.2.2** provided the historical background of PFAS, describing that 3M, Chemours and DuPont are equally responsible for contaminating the environment with PFAS and endangering the health of their employees as well as public health. **Section 5.2.3** described the federal investigations and regulations on the use of PFAS, criticizing the efficiency of the measures adopted by the EPA. Moreover, **Section 5.2.4** described that previous decisions against the same Corporations were criticized for their effectiveness, as many lawsuits filed by US citizens were either dismissed or ended with extrajudicial negotiations. However, as we notice in **5.2.5** this federal coalition, i.e. the lawsuits filed by US Attorneys General since 2021, motivate wider stakeholder engagement, since organizations like the 'Safer States' have managed to introduce political reforms in the public and private sectors, prioritizing health and sustainability. We recognize the fact that the 'Forever Chemicals' lawsuit has not been judged yet as a weakness for our research, but we believe that this strategic litigation will bring further changes in the treatment of health from BHR and CSR perspectives.

Part III. The 'Royal Dutch Shell' case

5.3.1. Historical background

Royal Dutch Shell, one of the world's largest oil companies, has a checkered history when it comes to BHR and environmental violations. Over the years, the company has been implicated in numerous scandals that have highlighted its complex relationship with human rights, the environment, and its CSR obligations. These controversies have typically revolved around Shell's operations in resource-rich but politically unstable regions, where the quest for profit has often clashed with local communities' rights and environmental protection.

Shell's long history of BHR scandals illustrates the power asymmetries in a triangular relation: Between corporate interests, States' interests and the rights of marginalized local communities. For instance, one of Shell's most recognized BHR scandals can be traced to its operations in the Niger Delta in Nigeria. Shell began drilling oil in Nigeria in the late 1950s and has become embroiled in a series of disputes with local communities, NGOs, and governments over its environmental and human rights practices. In the 1990s, Shell faced global scrutiny for its role in what has been described as 'the Ogoni crisis', which according to BHR scholars was among the reasons that ignited the emergence of BHR.[610]

The Ogoni people, indigenous to the Niger Delta, began protesting against Shell's environmental practices, accusing the company of polluting their land and water through massive oil spills, gas flaring, and unchecked deforestation.[611] The situation escalated in the establishment of the *Movement for the Survival of the Ogoni People (MOSOP),* demanding that Shell clean up the pollution and provide adequate compensation for the environmental damage that had devastated local agriculture and fishing industries. MOSOP also accused Shell of exploiting the region without offering fair economic benefits to the Ogoni people. As protests intensified, the Nigerian government, then under a military dictatorship, responded with brutal repression. Shell was accused of being complicit in this violence, as it reportedly provided financial and

[610] Florian Wettstein, *Business and Human Rights: Ethical, Legal and Managerial Perspectives* (Cambridge University Press, 2022); Ilias Bantekas and Michael Ashley Stein (Eds.), *The Cambridge Companion to Business and Human Rights Law* (Cambridge University Press, 2021).
[611] Ibid.

logistical support to Nigerian security forces who were involved in suppressing the Ogoni movement.[612]

Being a major player in the global energy industry, Shell's operations involve vast amounts of oil and gas extraction, refining, and distribution. However, this dominance has come at a significant environmental cost. The company has been one of the largest corporate emitters of greenhouse gases (GHGs), contributing substantially to global warming. Despite numerous public pledges over the years to reduce its carbon footprint, critics argue that Shell's actions have not aligned with its promises, particularly when viewed against the urgent backdrop of the Paris Climate Agreement.[613] The Paris Climate Agreement, adopted in 2015, aims to limit global warming to well below 2°C, with efforts to restrict the rise to 1.5°C above pre-industrial levels. Achieving these targets requires a rapid and drastic reduction in global carbon emissions, particularly from major fossil fuel companies like Shell.

However, prior to the 'Royal Dutch Shell' case, a similar legal precedent paved the way for climate litigation in the Netherlands, stressing the States' responsibility to upheld human rights and environmental law, especially in light of the global climate crisis and the realization of the SDGs Agenda. In particular, in 2015, the District Court of the Hague ruled in the *Urgenda Foundation v. The State of the Netherlands*,[614] that the Dutch government must take stronger action to reduce its greenhouse gas emissions, ordering a 25% reduction by 2020 compared to 1990 levels. The Court based its decision on the government's duty of care to protect its citizens from the dangers of climate change. The *Urgenda* ruling was upheld by the Dutch Supreme Court in 2019, setting a precedent for future climate litigation.[615] The Supreme Court upheld the initial ruling concluding that the ECHR imposes a positive obligation to take appropriate measures

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[612] Ibid; Surya Deva, *Beyond the Corporate Responsibility to Respect?* (Cambridge University Press, 2013); Surya Deva, *Regulating Corporate Human Rights Violations: Humanizing Business* (Routledge, 2012); Surya Deva, 'The UN Guiding Principles on Business and Human Rights and its Predecessors: Progress at a Snail's Pace?' in Ilias Bantekas and Michael Ashley Stein (Eds.) *The Cambridge Companion to Business and Human Rights Law* (Cambridge University Press, 2021).

[613] *The Paris Agreement*, adopted 12 December 2015, entered into force 4 November 2016, FCCC/CP/2015/10/Add.1; See also Angelica Bonfanti, 'Catene Globali del Valore, Diritti Umani e Ambiente, Nella Prospettiva del Diritto Internazionale Privato: Verso una Direttiva Europea sull' Obbligo di Digilenza Delle Imprese in Materia di Sostenibilità' (2022) 3 Jus, 295-329.

[614] *Urgenda Foundation v. State of the Netherlands* (The Dutch State) [2015] HAZA C/09/456689/HA ZA 13-1396 (District Court of The Hague).

[615] André Nollkaemper and Laura Burgers, 'A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case' (2020) available at: https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/ (Access: 10/9/2024).

to prevent to climate change and that even though the Netherlands was only a minor contributor to climate change, it had an independent obligation to reduce emissions.

The success of the *Urgenda case* motivated environmental groups to target corporate actors, particularly those in the fossil fuel industry, arguing that, if States were to some extent responsible for the climate crisis, then they too had a responsibility to reduce emissions in line with the goals of the Paris Agreement. Based on this precedent, NGOs like the Milieudefensie, accused Shell of failing to take adequate steps toward achieving these goals,[616] resulting in the first climate change litigation with national and extraterritorial effects.

5.3.2. Analysis of the *Milieudefensie et al v. Royal Dutch Shell*

The NGO Milieudefensie, with a long-standing history in environmental advocacy in the Netherlands argued that Shell's existing climate policies were insufficient and that the company's ongoing investment in oil and gas exploration and production was incompatible with the international commitments needed to combat climate change.[617] Recognizing the limited impact of voluntary corporate pledges and the slow pace of governmental action, Milieudefensie and other environmental organizations began to explore legal avenues to compel Corporations to take more significant action on climate change.[618]

This led to the filing of the *Milieudefensie et al. v. Royal Dutch Shell*[619] lawsuit in April 2019, which was supported by over 17,000 co-plaintiffs, including Dutch citizens who argued that Shell's climate policies were incompatible with the urgent need to mitigate global warming. The plaintiffs accused Shell of failing to align its business practices with the goals of the Paris Agreement, claiming that Shell's continued investment in fossil fuels and its insufficient climate action endangered human rights, particularly the rights of future generations to life, health and sustainable environment. The legal claim was based on the argument that Shell had a duty of care under Dutch law to prevent

[616] https://en.milieudefensie.nl/our-impact (Access: 10/9/2024).
[617] Ibid.
[618] Ibid.
[619] *Milieudefensie v Royal Dutch Shell plc* [2021] ECLI:NL:RBDHA:2021:3289 (Hague District Court).

harm to citizens by reducing its carbon emissions in line with international climate targets.

Shell's defense in the first-instance case rested on several key arguments. The company contended that it had already made significant investments in renewable energy and was committed to reducing its carbon emissions. Moreover, Shell also argued that it could not be held solely responsible for the emissions generated by consumers using its products, which accounted for most of its carbon footprint. The company maintained that it was the responsibility of governments, not private Corporations, to enforce international climate targets.[620] Shell also pointed out that it operates within a highly competitive global energy market, where fossil fuels remain in high demand. According to the company, imposing unilateral restrictions on its business operations would be unfair and would put it at a competitive disadvantage, particularly when many other oil companies around the world were not facing similar legal pressures.[621]

Initially, the Court affirmed the standing of NGOs representing Dutch public interests, while declaring the standing of NGOs with no distinct environmental orientation, e.g. ActionAid, and individual claimants inadmissible. More specifically, the Court determined that ActionAid did not meet the requirement of similar interests as it sought to serve the interests of the global population, while it found that individual citizens' interests were adequately represented by the collective action brought by Milieudefensie. Despite arguments by Shell, the Court upheld the applicability of Dutch law, emphasizing that the collective action served the interests of Dutch citizens, specifically those in the Netherlands and the Wadden region, within the jurisdiction of the Dutch state:[622]

"4.2.3. *The court is of the opinion that the interests of current and future generations of the world's population, as served principally with the class actions, is not suitable for bundling. Although the entire world population is served by curbing dangerous climate change, there are huge differences in the time and manner in which the global population at various locations will be affected by global warming caused by* CO_2

[620] Benoit Mayer, 'Milieudefensie v Shell: Do Oil Corporations Hold a Duty to Mitigate Climate Change?' (2021), available at: https://www.ejiltalk.org/milieudefensie-v-shell-do-oil-Corporations-hold-a-duty-to-mitigate-climate-change/ (Access: 10/9/2024).
[621] Ibid; *Milieudefensie v Royal Dutch Shell plc* [2021] ECLI:NL:RBDHA:2021:3289 (Hague District Court).
[622] Ibid,

emissions. Therefore, this principal interest does not meet the requirement of 'similar interest' under Book 3 Section 305a Dutch Civil Code.

4.2.4. However, the interests of current and future generations of Dutch residents and (with respect to the Waddenvereniging) of the inhabitants of the Wadden Sea area, a part of which is located in the Netherlands, as served in the alternative with the class actions, are suitable for bundling, even though in the Netherlands and in the Wadden region there are differences in time, extent and intensity to which the inhabitants will be affected by climate change caused by CO_2 emissions […]".[623]

Concerning Shell's corporate accountability, the Dutch Court stated that Shell has a duty to achieve a net reduction of 45% in CO_2 emissions by 2030 compared to 2019 levels. This obligation was derived from the *'unwritten standard of care'* outlined in Article 6.162 of the Dutch Civil Code, which requires the exercise of the duty of care in formulating policies for the entire Shell Group, therefore extending to its transnational operations. The Court asserted that this duty encompasses a comprehensive assessment of all relevant facts, the best available climate science, and a broad international consensus on the protective effects of human rights against the threats posed by climate change.[624]

The Court, relying on the Paris Agreement, the UNGPs and the ECHR ruled that the destructive impact of climate change on the right to life and family life underscores Shell's obligation to reduce emissions, given the fundamental importance of human rights and societal values. In parallel, the UNGPs confirmed that a diligent corporate conduct should include the prevention, mitigation, and remedy of adverse effects on human rights stemming from corporate activities:

"*4.4.12. The UNGP distinguishes between the responsibility of states and that of businesses. The responsibility of states, as formulated in the UNGP, is more far-reaching than that of businesses: states must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business Enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.* […] *There is no inevitable tension between States' human rights obligations and the laws and policies they put in place that shape business practices.*

[623] Ibid; Para 4.2
[624] Ibid; Para 4.4.2.

However, at times, States have to make difficult balancing decisions to reconcile different societal needs. To achieve the appropriate balance, States need to take a broad approach to managing the business and human rights agenda, aimed at ensuring both vertical and horizontal domestic policy coherence. […]

4.4.13. The differences between states and businesses RDS emphasizes are expressed in the UNGP in the different responsibilities for states and businesses, between which no inevitable tension needs to exist […] The responsibility of business Enterprises to respect human rights, as formulated in the UNGP, is a global standard of expected conduct for all business Enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights. […] Therefore, it is not enough for companies to monitor developments and follow the measures states take; they have an individual responsibility."[625]

The Court acknowledged in its 2021 decision that Shell has policies in place and is in the process of adapting them, but criticized their vagueness and non-binding nature, as well as the absence of specific emissions reduction targets for 2030. Thus, the Court concluded that the current corporate policies do not absolve the company of its emission reduction obligations and deemed the injunctive relief appropriate given the imminent risk of violating these obligations.

However, in 2024 the Hague Court of Appeal shifted from the 2021 ruling and adopted a more cautious approach. Although the appellate Court retained the 2021 rationale regarding Shell's responsibility to mitigate climate change, it refrained from mandating a specific reduction target. The 2024 decision clearly reflects the Court's hesitance to impose rigid obligations on individual Corporations for what is an inherently global problem. The Court of Appeal argued that determining precise emission reductions requires the consideration of the regulatory responsibilities of States rather than private entities alone:

"*7.55 […] protection from dangerous climate change is a human right and that it is globally recognised that a state has an obligation to do its part to protect its citizens from the adverse effects of dangerous climate change. In private law relationships, human rights – including protection from dangerous climate change – can have an*

[625] Ibid; Paras 4.4.12-4.4.13.

effect through open standards, such as the social standard of care. […] It follows from the instruments discussed that the social duty of care implies that companies also have an obligation to contribute to the mitigation of dangerous climate change. More can be expected of Shell than of most other companies, as Shell has been a major player in the fossil fuel market for over 100 years and as it continues to occupy a prominent position in that market today.

7.56 It has also been established that European companies are subject to Union law measures. The EU legislator aims to reduce CO2 emissions within Europe by 55% by 2030 through a set of measures. These measures are aimed not only at Member States, but also at companies. […] However, these measures do not impose absolute reduction obligations on individual companies or particular industries. Shell therefore does not have an absolute reduction obligation of 45% (or any other percentage) under EU law and will not have such an obligation for the foreseeable future. The European Union incentivises large companies such as Shell to reduce emissions through price incentives. Beyond that, the companies are free to choose their own approach to reducing their emissions in the – mandatory – climate transition plan as long as it is consistent with the Paris Agreement's climate targets.

7.57 On the other hand, these regulations and instruments are also not exhaustive, in the sense that, in order to comply with the social standard of care, it is enough for companies to comply with the obligations contained in these regulations and instruments. In addition to complying with these measures, companies have a social duty of care to reduce their emissions. However, it does not automatically follow from such a 'general' obligation that the claim of Milieudefensie et al. to reduce emissions by 45% is admissible […]."

A central critique of the second-instance decision lies in its potential to weaken the legal enforcement of corporate climate obligations, although the Court paradoxically found its stance on the CSRD and the CSDDD. The Court's rejection of specific reduction targets could be perceived as a 'privilege' towards greater corporate discretion in defining their climate strategies, which could result in slower or less ambitious efforts to reduce emissions. Therefore we notice a clear hesitance, since the ruling might undermine the momentum of climate litigation, by suggesting that Courts might be unwilling or unsuitable to hold Corporations to enforceable climate commitments. Moreover, critics argue that the Court's emphasis on the global complexity of emissions

could be seen as a shift of responsibility away from TNCs, despite it recognizes Shell's responsibility in the climate crisis.

In comparing the two decisions, the 2021 ruling was celebrated as a powerful precedent in climate litigation, by imposing a clear, measurable obligation on Shell. It treated corporate responsibility for climate change as a (global) legal duty enforceable through the judiciary. On the other hand, the 2024 decision reflects a judicial reluctance to directly interfere with corporate strategies and market-based solutions. This divergence raises questions about the ability of legal systems to enforce meaningful corporate accountability for environmental harms. Though the appellate Court's decision reflects a pragmatic acknowledgment of the existing legal and economic complexities and asymmetries, it risks weakening the legal tools available to address climate emergencies.

Consequently, we notice that the Court's initial ruling confirmed the factual necessity for corporate proactivity in addressing climate change, which complements state action, making Shell responsible for more than mere compliance with regulations.[626] While the Court of Appeal softened these obligations by overturning specific emission targets, it still acknowledged the broader corporate responsibility to mitigate climate impacts. This stance aligns with our arguments expressed in Chapters 3-4 that BHR should particularly depart from the 'no harm' principle and focus on actual solutions. Simultaneously, CSR should not be seen as a set of sporadically voluntary acts of goodwill, but as something deeply rooted in a company's governance.[627]

[626] John Ruggie, Caroline Rees and Rachel Davis, 'Ten Years After: From UN Principles to Multi-Fiduciary Obligations' (2021) 6 Business and Human Rights Journal 62, 179-197; 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 European Journal of International Law 3, 921-928; John Gerard Ruggie and Tamary Nelson, 'Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges' (2015) 22 Brown Journal of World Affairs.

[627] See also Alejandro Alvarado-Herrera, Enrique Bigne et al, 'A Scale for Measuring Consumer Perceptions of Corporate Social Responsibility Following the Sustainable Development Paradigm' (2017) 140 Journal of Business Ethics 2, 243-262; Rajiv Nair et al, 'Reprioritising Sustainable Development Goals in the Post-COVID-19 Global Context: Will a Mandatory Corporate Social Responsibility Regime Help?'(2021) 11 Administrative Sciences-MDPI Leibniz-Informationszentrum Wirtschaft 4, 1-16; Laura Galuppo, Maria Gorli et at. 'Building Social Sustainability: Multi-stakeholder Processes and Conflict Management' (2014) 10 Social Responsibility Journal, 685-701.

5.3.3. Connection with the theoretical framework

In this case, we notice that both decisions treated health in a "peripheral", subordinate way, comparing to climate change as a central focus. While the Courts acknowledged that climate change can have significant health repercussions—such as increased heat-related illnesses, respiratory issues from air pollution, and the spread of vector-borne diseases for the Dutch citizens—they primarily frame these concerns in a localized manner (how climate change threatens Dutch citizens, despite the global dimension of the problem) in context of environmental harm rather than as a fundamental human right in its own.

Therefore, we observe that the first and second-instance Courts put limited emphasis on the broader implications of health and well-being that arise from Shell's corporate conducts. While both Courts acknowledged the link between climate change and public health, citing increased risks to health due to rising temperatures and extreme weather events, they equally did not explicitly elevate the right to health as a standalone, global concern. The Court of Appeal placed greater emphasis on the legal limits of corporate accountability, thereby narrowing the scope of Shell's responsibility compared to the initial ruling.

This limited emphasis on health and well-being in both decisions arguably demonstrates a gap in fully integrating health as an intrinsic aspect of Sustainable Development. Both Courts placed health considerations as secondary to environmental concerns, however this does not undermine the interconnectedness of health with the SDGs, since the imperative to ensure healthy lives and promote well-being (SDG 3) is interlinked with environmental sustainability (SDG 13).

Furthermore, the 2021 decision emphasized the prioritization of non-pecuniary interests over financial ones, acknowledging the broader societal and environmental implications of corporate actions, indicating a shift towards a more comprehensive understanding of corporate responsibility. The 2021 ruling confirms that ethical considerations and public good should be increasingly integrated not only in the realm of corporate conduct, but also in legal obligations. Such recognition exists, but to a smaller extent in the 2024 decision. While the moral imperative for Corporations to respect human rights is strong, recalling Ruggie's *"social expectations towards Corporations"* as seen in **Chapter 3,** we underscore that legal certainty may be undermined if obligations are derived from soft law instruments. This creates a tension

between the evolving nature of corporate responsibility especially in the absence of robust mechanisms.

Although the 2021 ruling was issued before the adoption of Resolution 48/13, which establishes the individual right to a healthy, clean, and sustainable environment, it nonetheless underscored the urgent need for a transformation in both public policies and corporate practices toward more sustainable and ethical approaches. The Court of Appeal's more cautious interpretation of corporate duties risks diluting the transformative potential of climate litigation in addressing the broader externalities on public health and well-being.

Returning to the link with our theoretical framework, we argue that Sen's capabilities can be interpreted through the lens of the right to a stable climate and environmental health, a crucial condition for individual and collective well-being. Shell's failure to reduce its emissions threatens the capability of current and future generations to live in a safe and sustainable environment. Therefore, Shell should recognize its responsibility to protect the public's entitlement to environmental sustainability by aligning its business practices with climate goals and reducing its negative impact on global health.

By affirming the importance of emission reductions and holding Shell accountable for its contributions to climate change, these rulings-despite their differences- reflect a growing recognition of the interconnections between environmental sustainability and human rights. Together, the 2021 and 2024 rulings set a crucial precedent, reinforcing the imperative for both governments and businesses to align their strategies with BHR and CSR principles. This dual recognition, i.e. the corporate responsibility to mitigate climate impacts and the State duty to protect fundamental rights, underscores the need for collaborative actions to achieve a more just and sustainable future.

5.3.4. Comparisons with the aforementioned cases

The three case studies included in Chapter 5 share commonalities and differences. In particular:

Starting with their differences, all cases affect different aspects of health, which reflects our argument that health is a 'multilayered' concept. For example, 'Nestlé' violates the children's right to health, especially in terms of healthy nutrition and development. Nestlé's corporate liability is found in acts: adding more sugars on baby products of low-

and middle-income markets, utilization of WHO banned marketing techniques for reinforcing parental trust, i.e. social media influencers or health professionals in its advertisements.

On the other hand, in 'Forever Chemicals', 3M, Chemours and DuPont affect both their employees' right to health (construction of PFAS-products) and public health (environmental contamination responsible for various types of cancer and other reproduction problems). The companies' corporate liability is mostly found on the omission; Even if they were aware of the PFAS' fatal risks for their employees, consumers and other stakeholders, they did not notify the public authorities nor the local communities about their direct or indirect exposure to such substances.

Moving on to the 'Royal Dutch Shell' case, Shell indirectly affected the health of Dutch citizens by contributing to the climate change. As stressed previously, the Courts' emphasis on the need to mitigate climate change seems crucial for safeguarding the quality of life of individuals. The exacerbation of climate change results in air pollution, extreme weather and resource scarcity overall affect health and environmental sustainability.

The last difference that we spot concerns their extraterritorial implications. Nestlé is a European based TNC affecting childern's healthy nutrition in Asian and Latin American countries. 'Forever Chemicals' is limited to the US jurisdiction, as the Defendants are US based and their damage occurred in the US, affecting US citizens. On the other hand, the 'Royal Dutch Shell' concerns an EU-based TNC whose impact was visible in the Netherlands, but with the possibility of extending globally due to the climate circumstances and Shell's transnational operations.

Concerning their commonalities, we observe that all companies involved in the three case studies, present themselves as strong proponents and 'enactors' of CSR. For instance, Nestlé's motto is "Good Food, Good Life" and Nestlé's participation in many CSR-friendly oriented activities, shows that Sustainable Development is among its "principal targets". Similarly, 3M, Chemours and DuPont jointly use innovation as a leading means for sustainable, just and green transition. Shell's attitude towards CSR is questionable, because despite acknowledging CSR as an important aspect of its operations through investments in renewable energy, it continues to rely on fossil fuel extraction and production. Consequently, we notice that their corporate conduct in

these specific circumstances does not seem to align with the ethical standards they publicly commit to.

Moreover, the three case studies show distinct yet interconnected ways in which integrating Sen's capabilities and entitlements could benefit the CSR domain. The Nestlé case highlights the importance of ensuring access to safe, nutritious food, as corporate practices directly influence community health outcomes. Similarly, PFAS contamination underscores the need for Corporations to recognize their responsibility in safeguarding environmental health, emphasizing the role of clean water and safe products as fundamental capabilities. Royal Dutch Shell's activities reflect the consequences of corporate decisions on public health, particularly in terms of pollution and climate change, which threaten the well-being of communities.

In parallel, by incorporating Sen's capabilities framework, CSR initiatives can focus on enhancing individuals' freedoms and opportunities, ensuring that Corporations not only avoid harm but also actively contribute to the health and well-being of the populations they affect. Integrating entitlements into this framework would establish a set of rights that limit managerial power, ensuring that employees and local communities are protected from exploitation and that their health is prioritized. This approach would empower stakeholders by recognizing health as a vital capability and entitlement, thus promoting ethical corporate behavior that prioritizes the collective good over profit maximization.

Furthermore, the last commonality we have spotted concerns the need to robustly reshape corporate conduct and the emergence of strategic litigation and stakeholder engagement. The first case gained public attention from Public Eye and IBFAN, which investigated Nestlé's baby products. The second case illustrates an alliance on behalf of Attorneys General, accompanied with campaigns from NGOs, like the 'Safer States'. As stressed in **5.2,** the 'Forever Chemicals' case is particularly important, because it shows how judicial authorities independently filed lawsuits against PFAS manufacturers, while 'Safer States' has brought significant legislative reforms on the use of PFAS and the general protection of public health. Last, the 'Royal Dutch Shell', despite the 2024 ruling, shows how an initiative by Milieudefensie managed not only to hold Shell accountable for its current environmental harm by not complying with the Paris Agreement, but mostly on how to safeguard the rights of future generations.

Furthermore, we argued that health can serve as a common language among diverse stakeholders, bridging the gap between public and private actors. This commonality has the potential to mitigate existing power asymmetries, fostering more equitable partnerships and collaborative efforts aimed at advancing health-related goals. By establishing health as a shared priority, stakeholders can work together more effectively, creating a synergistic approach that benefits all parties involved.

Moreover, we underscore that health emerges as a unifying principle for BHR and CSR frameworks. In the light of the 2030 Agenda, which emphasizes sustainable development and social equity, this principle becomes even more relevant. By aligning corporate practices with the right to health, companies can contribute not only to their own sustainability but also to the collective well-being of communities and the environment. Ultimately, prioritizing health within these frameworks enhances the potential for meaningful, transformative change that resonates with global aspirations for a healthier, more equitable future.

Concluding Remarks

The Covid-19 pandemic has reshaped global priorities and exposed significant shortcomings in global governance, highlighting the urgent need to elevate health as a multidimensional and cross-sectoral issue. Health, in this context, extends far beyond individual well-being to encompass broader societal, environmental, and economic systems. This dissertation has argued that health must be recognized by both public actors and enterprises not only as a fundamental human right but also as a global common good—essential for the sustainability of societies and the planet itself.

As explored throughout this work, health as a human right is deeply intertwined with social justice, and its recognition as a global common good demands the involvement of all actors—both public and private—in its protection and promotion. The intersection of health and governance has become increasingly prominent, especially within the framework of the 2030 Agenda for Sustainable Development. The Sustainable Development Goals (SDGs) underscore the need for collaboration among governments, corporations, civil society, and international organizations to achieve collective goals. SDG 3, which aims to "ensure healthy lives and promote well-being for all at all ages", highlights the indispensable role of health in achieving social stability, economic prosperity, and environmental resilience.

International legal frameworks, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights, enshrine the recognition of health as a human right. Furthermore, as a global common good, health transcends national boundaries and is crucial for social, economic, and environmental sustainability. Despite this centrality, significant disparities in health outcomes persist across regions and populations, prompting renewed scrutiny of the roles and responsibilities of public actors and corporations. Transnational corporations (TNCs), as key players in the global economy, have a growing influence on public health—whether through the development of life-saving medicines or operations that contribute to pollution and unsafe working conditions. Therefore, corporate responsibility in this context is not merely an ethical obligation but also a legal and practical necessity for safeguarding "health for all" as a critical issue of social justice.

This dissertation critically examined the evolving role of corporate governance and argued that health should become a guiding principle in reshaping corporate accountability. Health, as discussed in Chapter 2, holds intrinsic moral value, which should place it at the center of conduct across various sectors, from public law policies to corporate strategies. While the interests of public and corporate governance may at times conflict, health serves as a common language that can facilitate dialogue and cooperation.

The intersection of health with business operations brings critical considerations to the domains of BHR and CSR. Though distinct in their objectives, BHR and CSR converge around the concept of health. BHR, with its focus on preventing corporate harm to human rights, and CSR, which encourages ethical corporate behavior, both align in the prioritization of health. Health, as an issue of social justice and environmental resilience, impacts a wide range of stakeholders. Thus, prioritizing health within corporate strategies is not only a moral imperative but also a practical one that aligns with both BHR and CSR objectives.

The UNGPs establish a framework for corporate responsibility to protect human rights. These principles emphasize the responsibility of businesses to avoid infringing on human rights and to address any negative impacts. In this context, health is a critical human right directly affected by business operations. On the other hand, CSR encourages corporations to go beyond compliance and actively engage in practices that enhance public health, thereby contributing to the well-being of society. By placing health within both BHR and CSR frameworks, this dissertation contends that enterprises can play a pivotal role in advancing global health outcomes, aligning their operations with the broader goals of sustainable development.

At the heart of this work lies the argument that health is a unifying principle for both public and private actors, facilitating collaboration across sectors. It serves as a connector between BHR and CSR, offering a systemic approach to corporate governance. Additionally, health is recognized not only as an individual human right but as a crucial element of human development and environmental sustainability.

Lastly, the role of strategic litigation in advancing public health and holding corporations accountable has been explored through case studies. These cases—such as those involving Nestlé, Forever Chemicals, and Royal Dutch Shell—illustrate the

profound impact of corporate actions on public health and the environment from both international and EU perspectives.

In conclusion, this dissertation underscores the transformative potential of prioritizing health within corporate governance. By integrating health as a guiding principle, both public and private actors can contribute to a more just and resilient global community, in alignment with the SDGs. This research provides actionable insights for how enterprises can operationalize their responsibility toward health, bridging BHR and CSR in a way that promotes health as a shared value and common good.

Chapter 1 gave an overview of our research and methodology, starting with the description of the research problem, our research questions and methodology. Throughout this dissertation, the Research Questions that underpin the guiding framework of our analysis have been described as follows:

- **Why should health be a guiding principle of corporate accountability reform?**

  In answering this first research question, we have clarified the distinction between the *right to health* and the *right to being healthy*, a confusion often found in scholarly discussions. We argued that the right to health encompasses access to the necessary conditions for well-being, rather than the guarantee of perfect health itself. This conceptual clarity allowed us to assert that health, as a fundamental human right, must be central to corporate accountability reforms. By prioritizing health, corporations can align their actions with broader societal obligations, contributing to more equitable and sustainable outcomes.

- **What is the nexus between health and sustainability, considering the social determinants of health?**

  Our examination of the social determinants of health—non-medical factors such as socioeconomic status, education, and environmental conditions—led to the conclusion that health is intrinsically tied to distributive social justice. The link between these determinants and access to primary goods reinforces the argument that equitable access to these goods is essential for achieving economic, social, and environmental well-being. This further strengthens the case for positioning health as a unifying element across the three interconnected pillars of sustainable development.

- **How can health bridge the gap between Business & Human Rights (BHR) and Corporate Social Responsibility (CSR)?**

  In addressing this research question, we analyzed the interplay between public and private actors through the lenses of BHR and CSR, both of which have distinct yet overlapping approaches to responsible business conduct. We argued that health serves as a 'mediator' between these two frameworks, refining their approaches to corporate accountability and helping reconcile their conceptual differences. Health offers a common ground through which both BHR's focus on preventing corporate harm and CSR's emphasis on ethical business practices can converge, fostering a more integrated approach to governance.

- **What initiatives are currently underway to enhance health and sustainability, particularly in the context of strategic litigation?** Through a comparative analysis of case studies such as the 'Nestlé Baby Formula', 'Forever Chemicals', and 'Royal Dutch Shell' cases, we examined different corporate impacts on health. These cases illustrate the varied ways in which corporate actions influence public health—ranging from nutrition and children's development to environmental harm and its public health consequences. Strategic litigation and the active involvement of stakeholders have emerged as key mechanisms for catalyzing meaningful changes in corporate and public governance policies. This is particularly significant as we approach the 2030 deadline for achieving the SDGs.

Chapter 2 delved into the multifaceted nature of health from both philosophical and legal perspectives, characterizing it as a "multilayer concept" that includes its roles as an inherent condition, a fundamental human right, and a global common good. To justify the complexity and multifunctionality of health, Chapter 2 first sought to define what health truly entails. It questioned whether health should be understood merely as the absence of disease or approached more holistically, emphasizing its protection and enhancement.

The analysis incorporated philosophical perspectives, beginning with Aristotle's thoughts on well-being and extending to the ideas of Rawls, Daniels, Sen, and Nussbaum. While health has been explicitly addressed only by Aristotle, many philosophers approach it indirectly, often confusing health with the mere status of being healthy. The discussion highlighted Sen's Capability Approach, recognizing the essential

role of health in human flourishing while critiquing its ambiguity regarding whether health is a means or an end in human development. This critique referenced Liao's Theory on Fundamental Goods, Conditions, and Options, which similarly views health as pivotal in human development and social potential.

Following the philosophical discourse, Chapter 2 examined legal frameworks, focusing on the human right to health and the debate surrounding its status as a standalone right. It presented the main arguments against health as a human right, primarily centered on the 'unbearability' of obligations it would impose on others. In response, we asserted that health is indeed a standalone human right, suggesting that the difficulty in measuring it should be seen as an additional reason to strengthen its implementation. The legal analysis outlined the framework that consolidates the right to health, as seen in international treaties and case law within both international and European legal systems.

In incorporating philosophy into law, we concluded Chapter 2 by addressing the concept of Intrinsic Values, a theory advanced by Thomas Donaldson, which promotes ethical corporate behavior. According to Donaldson, intrinsic values serve as fundamental explanations for why certain aspects, like health, should be protected from corporate impacts. However, we identified weaknesses in Donaldson's theory, particularly the tendency to link intrinsic values to specific corporate activities without addressing how conflicts among intrinsic values could be resolved.

In summary, Chapter 2 argued for health to be integral to business conduct, asserting that Corporations should seriously consider the impact of their actions on health and sustainability. We emphasized that the multilayered concept of health justifies why the right to health should be championed by both public and private actors. Despite the conceptual differences between BHR and CSR, health can act as a unifying principle that counterbalances power asymmetries among public and private actors. Given the critical importance of health and sustainability, the chapter advocates for prioritizing health, suggesting that it can serve as a foundational pillar among the Environmental, Social, and Economic dimensions of the 2030 Agenda for Sustainable Development. The Agenda underscores that since all targets are interconnected, establishing health as a starting point can facilitate the promotion of other SDGs.

Chapter 3 aimed to conceptualize the legal framework governing the interaction between public and private actors, especially in the context of BHR. The relationship

between states and Corporations has often revealed significant power imbalances that can result in human rights abuses. These power asymmetries are particularly evident when TNCs operate in states with weak regulatory frameworks, undermining state sovereignty and contributing to environmental and human rights violations. However, when corporate conduct is properly regulated within a transparent and solid legal framework, this public-private interplay can promote the broader common good.

In Chapter 3, we traced the evolution of BHR, from its early roots in the Nuremberg Trials to the establishment of the UNGPs. The UNGPs extended the principle of *bona fides* across three pillars: the State's duty to protect human rights, the corporate responsibility to respect human rights, and the provision of access to remedies for victims of corporate abuses. We highlighted the voluntary nature of the UNGPs and their limitations, which led to the proposal of the 2014 Draft Treaty on BHR. The Draft Treaty aims to address the shortcomings of the UNGPs by making corporate compliance with human rights obligations legally binding, rather than voluntary. However, we clarified that BHR cannot succeed in isolation and require a multistakeholder approach to policy development, adaptation, and remediation.

Chapter 3 concluded by revisiting the importance of public-private partnerships (PPPs) and multistakeholder partnerships (MSPs) in achieving the Sustainable Development Goals (SDGs), particularly the 2030 Agenda for Sustainable Development. While critics often argue that such collaborations either lead to human rights abuses or erode state authority, we contended that it is overly simplistic to view them in such binary terms. MSPs, when effectively regulated, are essential for the realization of the SDGs. Particularly, we emphasized that MSPs can be successful when all parties involved adopt a "common language" to facilitate their cooperation. In this regard, BHR and CSR can serve as this common language, provided their contextual weaknesses are addressed. By adopting this collaborative approach, public and private actors can work together to uphold human rights and sustainability goals, enhancing both corporate accountability and state efforts toward sustainable development.

In **Chapter 4** we shifted our focus from BHR to CSR, offering an interdisciplinary view beyond legal frameworks. We argued that CSR provides a more practical approach for Corporations to address social and environmental challenges compared to Stakeholder Theory. By strategically integrating CSR, Corporations can align their operations with the SDGs, improve resilience, and address economic inequalities. However, for CSR to

be truly effective, its structural shortcomings, such as its perceived voluntariness, need to be addressed.

Chapter 4 emphasized that CSR, when understood as an extended model of corporate governance, requires treating stakeholder interests with the same importance as shareholder interests, as outlined by Sacconi. This challenges the notion that occasional CSR activities equate to genuine corporate responsibility. A key point for Chapter 4 is the role of health as both a human right and a global common, which can serve as a unifying principle between CSR and BHR.

We began our analysis by discussing corporate moral agency, questioning whether Corporations can be held morally accountable for their actions. Drawing on Kantian ethics, we suggested that Corporations should foster employee autonomy and dignity but acknowledged the challenge of applying purely moral principles to profit-driven businesses.

We then proceeded with the emergence of CSR, describing that CSR has historically evolved from a focus on profit maximization to incorporating social responsibilities, as seen in Bowen's early CSR theories. The rise of Stakeholder Theory further shifted attention from shareholders to a broader group of affected individuals. We critiqued the misunderstandings surrounding CSR, especially regarding the misconception about its voluntariness, drawing insights from Sacconi's theory, which views CSR as a social norm; as an extended model of corporate governance, in which the interests of stakeholders are equal to the ones of shareholders.

Chapter 4 compared CSR with BHR, noting that while both aim for corporate responsibility, they differ in enforceability. BHR focuses on "no harm" principles, while CSR's vague definition and its 'voluntary' misconception, create challenges for synergy between the two frameworks. Therefore, we advocated that as soon as their structural shortcomings are overcome, integrating BHR and CSR to sustainability challenges can facilitate the realization of the 2030 Agenda. We proposed that health's capacity can even act as a common guideline for their synergy.

The Chapter also viewed the EU Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD), highlighting their potential to promote responsible corporate behavior if implemented effectively. As discussed, during the drafting and the final defense of this dissertation, the Directives

have undergone multiple revisions, reflecting that, despite their adoption, their practical application remains an issue of political negotiation. Just in February 2025, the European Commission proposed their unification through the Omnibus framework, altering their technical provisions. Though there are still no findings concerning the success of such a solidified, harmonized initiative, we argue that their effectiveness depends on balancing regulatory requirements with practical corporate support and on the departure from mere, tick-box legal compliance, to profound and active ways towards transparent and CSR-oriented corporate conduct.

In conclusion, Chapter 4 drew on Sacconi and Fia's development of CSR as an expanded model of corporate governance, integrating Sen's Capability Approach and Rawls's primary goods. By incorporating these frameworks, Corporations can enhance stakeholders' freedoms and promote health and well-being. This approach aligns with the right to health and environmental sustainability, reinforcing the idea that both CSR and BHR are crucial for addressing systemic inequalities and promoting sustainable development. Based on the concept of 'entitlements' which links Sen's Capabilities with CSR, we also criticized the practical implications in classifying capabilities, especially in regions with weak systems of justice.

Lastly, the three case studies explored in **Chapter 5**—*Nestlé*, *Forever Chemicals*, and *Royal Dutch Shell*—illustrated both commonalities and differences in the corporate impacts on health, emphasizing the multifaceted nature of health as a *'multilayered'* concept. The Chapter was divided in three Parts, each of them analyzing a specific case study.

The comparative analysis of these cases resulted in the following conclusions:

All cases impact different aspects of health, reinforcing our argument that health spans various dimensions. In the 'Nestlé' case, corporate liability is found in actions that violate children's right to health by undermining healthy nutrition and development. By selling baby products with significantly higher sugar content in low- and middle-income countries than in European markets, and utilizing marketing techniques banned by the WHO, Nestlé amplifies parental trust through unethical corporate behavior.

In contrast, the 'Forever Chemicals' case reveals how 3M, Chemours, and DuPont affected the health of both their employees and the wider public. Their omission to inform authorities or local communities about the fatal risks of PFAS contamination,

despite internal knowledge since the 1950s, highlights corporate liability grounded in inaction.

Lastly, the 'Royal Dutch Shell' case demonstrates an indirect impact on public health, where Shell's contribution to climate change exacerbated air pollution, extreme weather, and resource scarcity, affecting the well-being of Dutch citizens and potentially extending globally due to its transnational operations. In this case, we examined the differences between the 2021 and 2024 decisions of the Dutch Court, which set corporate accountability for environmental harm at the core of global climate litigation., despite the partial overturning of the reduction rates order.

The three cases also differ in their extraterritorial reach. While 'Nestlé' affects children's right to nutrition in low- and middle-income countries outside Europe, 'Forever Chemicals' is largely restricted to U.S. jurisdiction. Meanwhile, 'Royal Dutch Shell', though based in the EU, has global repercussions due to the far-reaching impacts of climate change.

Despite these differences, all three companies position themselves as champions of CSR. Nestlé's motto, "Good Food, Good Life," and its participation in CSR activities reflect its public commitment to sustainable development. Similarly, 3M, Chemours, and DuPont emphasize innovation as central to a sustainable transition. While Shell publicly commits to CSR, particularly through investments in renewable energy, its continued reliance on fossil fuels contradicts its proclaimed dedication to responsible corporate practices. Moreover, all three case studies demonstrated the growing role of strategic litigation and stakeholder engagement in holding corporations accountable. The 'Nestlé' case gained public attention through investigations by Public Eye and IBFAN, while the 'Forever Chemicals' case resulted in lawsuits led by Attorneys General and campaigns from NGOs like 'Safer States'. In the 2021 and 2024 decisions on the 'Royal Dutch Shell' case, Milieudefensie's initiative is remarkable in highlighting the power of legal actions in seeking -and shaping- corporate accountability.

In conclusion, the case studies offered compelling evidence of how corporate behavior can significantly impact the right to health across various dimensions, from child nutrition to environmental sustainability. Our comparative analysis emphasized that health is not merely an individual concern but a broader societal value that bridges legal and ethical considerations, making it a central element of corporate responsibility. By prioritizing health, Corporations can contribute to both public welfare and SDGs,

addressing social justice concerns and promoting equitable outcomes. Furthermore, we argued that health can serve as a common language among diverse stakeholders, bridging the gap between public and private actors. This shared value can help mitigate existing power asymmetries, fostering more equitable partnerships aimed at advancing health-related goals. Health, as a unifying principle for BHR and CSR frameworks, holds particular relevance in light of the 2030 Agenda. By aligning corporate practices with the right to health, companies can not only ensure their own sustainability but also contribute to the collective well-being of communities and the environment. Prioritizing health within these frameworks enhances the potential for meaningful, transformative change, aligning corporate conduct with global aspirations for a healthier and more equitable future.

Ultimately, our research followed the 'Guiding Framework' introduced in Chapter 1: Our research answered the Research Questions by following the 'arrows' which guided our analysis on why health should be at the forefront of both public policy and corporate agendas. It acts as a unifying principle that transcends the public-private divide, balancing power asymmetries and fostering sustainability across economic, social, and environmental dimensions. The centrality of health in the 2030 Agenda for Sustainable Development further underscores its importance, as it serves as a foundational pillar for achieving the interconnected goals of global well-being.

Table of References

Books and contributions to books

1. Acconci, P., *Tutela della salute e diritto internazionale* ("Health Protection and International Law"), *Collana Diritto internazionale e ordine mondiale* (CEDAM Padova, 2011)
2. Addo, M.K., *Human Rights Standards and the Responsibility of Transnational Corporations* (Kluwer Law International, 1999)
3. Audi, R., *The Good in the Right: A Theory of Intuition and Intrinsic Value* (Princeton University Press, 2005)
4. Augenstein, D., 'Guiding Principle 1: Scope of Obligations' in Choudhury, B., (Ed.) *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023)
5. Balganesh, S., Sichelman, T.M., and Smith, H.E., Wesley Hohfeld: A Century Later. Edited Work, Select Personal Papers and Original Commentaries (Cambridge University Press, 2022)
6. Beauchamp, T., 'The Principle of Beneficence in Applied Ethics' in Edward N. Zalta (Ed.) *The Stanford Encyclopedia of Philosophy* (Spring 2019 Edition)
7. Becchi, P., and Mathis, K., *Handbook of Human Dignity in Europe* (Springer, 2019)
8. Behn, D., *Business and Human Rights: The Essential Guide* (Routledge, 2020)
9. Bonfanti, A., *Business and Human Rights in Europe: International Law* Challenges (Routledge, 2019)
10. Bonfanti, A., *Imprese Multinazionali, Diritti Umani e Ambiente*: *Profili di Diritto Internazionale Pubblico e Privato* (Giuffrè, 2012)
11. Bowen, H.R., *Social Responsibilities of the Businessman* (University of Iowa Press, 1953)
12. Bowie, N.E., 'A Kantian Approach to Business Ethics' in Th. Donaldson, Patricia H. Werhane, *Ethical Issues in Business: A Philosophical Approach* (Prentice Hall, 2002)
13. Bowie, N.E., Business Ethics: A Kantian Perspective (Cambridge University Press, 2017)
14. Brealey, R.A., Myers, S.C., and Allen, F., (Eds) *Principles of Corporate Finance* (McGraw-Hill Education, 2023)

15. Brownlie, I., *Principles of International Law* (Oxford University Press, 2008)
16. Brownlie., I., and Goodwill-Gill, G.S., (Eds.) *Basic Documents on Human Rights* (Oxford University Press, 2006)
17. Buchanan, A., *The Heart of Human Rights* (Oxford University Press, 2013)
18. Buchmann, K., *Human Rights: A Key Idea for Business and Society* (Routledge, 2021)
19. Burci, G.L., and Toebes, B., (Eds) *Research Handbook on Global Health Law* (Edward Elgar Publishing, 2018)
20. Cairns, G., Angus, K., Hastings, G., *The extent, nature and effects of food promotion to children: A review of the evidence to December 2008* (World Health Organization, 2008)
21. Carney, W.J., *Corporate Law and Practice* (West Academic Publishing, 2016)
22. Carrol, A.B., and Buchholtz, A.K., *Business and Society: Ethics, Sustainability, and Stakeholder Management* (Cengage Learning, 2014)
23. Chiappero-Martinetti, E., Osmani, S., and Qizilbash, M., *The Cambridge Handbook of the Capability Approach* (Cambridge University Press, 2020)
24. Chiussi-Curzi, L., *General Principles for Business and Human Rights in International Law* (Brill Nijhoff, 2020)
25. Choudhury, B., 'The UN Guiding Principles on Business and Human Rights and Principles for Responsible Contracts: An Introduction' in Choudhury, B., *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023)
26. Clapham, A., *Human Rights Obligations of Non-State Actors* (Oxford University Press,2006)
27. Clapham, A., *Human Rights: A Very Short Introduction* (Oxford University Press, 2007)
28. Clapp, J., and Fuchs, D., (Eds.) *Corporate Power in Global Agrifood Governance* (The MIT Press, 2009)
29. Collins, D., *Due Diligence in International Law* (Routledge, 2018)
30. Crane, A., Matten, D., and Spence, L.J. (eds), *Corporate Social Responsibility: Readings and Cases in a Global Context* (Routledge, 2019)
31. Crawford, E., Pert, A., and Saul, B., *Public International Law* (Cambridge University Press, 2023)

32. Crawford, J., *Brownlie's Principles of Public International Law* (9th Edition) (Oxford University Press, 2019)
33. Crawford, J., *State Responsibility: The General Part* (Cambridge University Press, 2013)
34. Cyril Walton, C., *Corporate Social Responsibilities* (Wadsworth Publishing Company, 1967)
35. Daniels, N., *Just Health: Meeting Health Needs Fairly* (Cambridge University Press, 2012)
36. de Schutter, O., *International Human Rights Law: Cases, Materials, Commentary* (Cambridge University Press, 2019)
37. Deneulin, S., *The Human Development and Capabilities Approach* (Earthscan, 2009)
38. Denis, L., *Kant: The Metaphysics of Morals* (Cambridge University Press, 2017)
39. Deva, S., 'The UN Guiding Principles on Business and Human Rights and its Predecessors: Progress at a Snail's Pace?' in Bantekas, I., and Stein, M.A., (Eds.) *The Cambridge Companion to Business and Human Rights* (Cambridge University Press, 2021)
40. Deva, S., *Beyond the Corporate Responsibility to Respect?* (Cambridge University Press, 2013)
41. Deva, S., *Regulating Corporate Human Rights Violations: Humanizing Business* (Routledge, 2012)
42. Donaldson, T., *Corporations and Morality* (Prentice Hall, 1982)
43. Donaldson, T., *The Ethics of International Business (*Oxford University Press, 1989)
44. Donnelly, J., *The Role of Human Rights in the Global Order* (Princeton University Press 2007)
45. Donnelly, J., *Universal Human Rights in Theory and Practice* (Cornell University Press, 2013)
46. Donnelly, S., *The Lie of Global Prosperity: How Neoliberals Distort Data to Mask Poverty and Exploitation* (NYU Press, 2019)
47. Driver, J., 'The History of Utilitarianism' in In Edward N. Zalta and Uri Nodelman (Eds.) *The Stanford Encyclopedia of Philosophy* (Winter 2022 Edition)

48. Duncan, P., *Values, Ethics and Health Care* (Sage Publications, 2010)
49. Fasciglione, M., *Impresa e diritti umani nel diritto internazionale: Teoria e prassi* (Giappichelli, 2024)
50. Ferran, E., *Principles of Corporate Finance Law* (Oxford University Press, 2014)
51. Freeman, E.R., *Strategic Management: A Stakeholder Approach* (Pitman, 1984)
52. Freeman, R.E., and McVea, J., 'A Stakeholder Approach to Strategic Management' in Michael A. Hitt, Edward R. Freeman and Jeffrey S. Harrison (Eds.) *The Blackwell Handbook of Strategic Management* (Blackwell Publishers, 2005)
53. Galanti, A., *I delitti contro l'ambiente: Analisi normativa e prassi giursiprudenziale: L'interazione tra la normativa nazionale ed europea e il ruolo del giudice nella definiztione dei tipi delittuosi; profili investigativi e processuali; riflessi in terma di reati di pubblica amministrazione, corporate liability e misure di contrasto patrimoniale* (Pisa: Pacini Giuridica, 2021)
54. Garner, B.A., *Black's Law Dictionary* (Thomson Reuters, 2019)
55. Goodman, R., and Pegram, T., (Eds.) *Human Rights, State Compliance and Social Change* (Cambridge University Press, 2012)
56. Gregor, M.J., *Kant: The Metaphysics of Morals* (Cambridge University Press, 1996)
57. Griffin, J., *On Human Rights* (Oxford University Press 2008)
58. Griffin, J., *On Human Rights* (Oxford University Press, 2008)
59. Habermas, J., *Communication and the Evolution of Society* (Boston: Beacon Press, 1979)
60. Hamdani, K., and Ruffing, L., *United Nations Centre on Transnational Corporations: Corporate Conduct and the Public Interest* (Routledge, 2017)
61. Hartley, C., and Watson, L., *Equal Citizenship and Public Reason* (Oxford University Press, 2018)
62. Hasan, A., and Fumerton, R., 'Knowledge by Acquaintance vs. Description' in Edward N. Zalta and Uri Nodelman, *The Stanford Encyclopedia of Philosophy (*Stanford University, 2024)
63. Hassoun, N., *Globalization and Global Justice* (Cambridge University Press, 2012)

64. Heald, M., *The Social Responsibilities of Business: Company and Community, 1900-1960* (Press of Case Western Reserve University, 1970)
65. Hohfeld, W.N., *Fundamental Legal Conceptions as Applied in Judicial Reasoning (*Yale University Press, 1919).
66. Høyer Toft, K., *Corporate Responsibility and Political Philosophy: Exploring the Social Liberal Corporation* (Routledge, 2020)
67. Hunt, P., and Backman, G., *Health and Human Rights: A Reader* (Routledge 2012)
68. Joseph, S., 'Guiding Principle 12: Minimum Human Rights Standards for Pillar II' in Choudhury, B., (Ed.) *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023)
69. Kaltenborn, M., Krajewski, M., and Kuhn, H., *Sustainable Development Goals and Human Rights-Interdisciplinary Studies in Human Rights* (Springer, 2020)
70. Kant, I., *The Metaphysics of Morals* (Cambridge University Press, 1996)
71. Kelsen, H., *Principles of International Law* (Rinehart & Winston 1952)
72. Kolb, R., *Good Faith in International Law* (Hart Publishing, 2017)
73. Lauterpacht, E., *International Law: Being the Collected Papers of Hersch Lauterpacht. Systematically Arranged and Edited by E. Lauterpacht* (Cambridge University Press, 1970)
74. Lauterpacht, H., *International Law and Human Rights* (Praeger 1950)
75. Liao, S.M., 'Human Rights and Public Health Ethics' in Anna C. Mastroianni et Al. (Eds.) *The Oxford Handbook of Public Health Ethics* (Oxford University Press, 2019)
76. Liao, S.M., 'Human Rights as Fundamental Conditions for a Good Life' in Rowan Cruft, S. Matthew Liao and Massimo Renzo (Eds.) *Philosophical Foundations of Human Rights* (Oxford University Press, 2015)
77. Liao, S.M., *Theory of Fundamental Goods, Conditions, and Options: A Systematic Approach to Ethics* (Oxford University Press 2020)
78. List, C., and Pettit, P., *Group Agency: The Possibility, Design and Status of Corporate Agents* (Oxford University Press, 2011)
79. López, C., 'The Ruggie Process': From Legal Obligations to Corporate Social Responsibility?' in Deva, S., and Bilchitz, D., (Eds.) *Human Rights*

Obligations of Business: Beyond the Corporate Responsibility to Respect? (Cambridge University Press, 2013)

80. Lowry, C., 'Sen's Capability Critique' in John Mandle and Sarah Roberts-Cady (Eds.) *John Rawls: Debating the Major Questions* (Oxford University Press, 2020)
81. Mares, R., *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation* (Brill, 2011)
82. Mares, R., *The UN Guiding Principles on Business and Human Rights: A Commentary* (Oxford University Press, 2019)
83. Martens, J., 'The Role of Public and Private Actors and Means in Implementing the SDGs: Reclaiming the Public Policy Space for Sustainable Development and Human Rights' in Kaltenborn, M., Krajewski, M., and Kuhn, H., (Eds.*) Sustainable Development Goals and Human Rights* (Springer, 2020)
84. Mastroianni, A.C., et Al. (Eds.) *The Oxford Handbook of Public Health Ethics* (Oxford University Press, 2010)
85. Mayer, A., *Why Did the Heavens Not Darken? The "Final Solution" in History* (Pantheon Books, 1988)
86. McCorquodale R., and Blanco-Vizarreta, C., 'Guiding Principle 17: Human Rights Due Diligence' in Choudhury B., (Ed.) *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023)
87. Mehra, A., 'Always in All Ways: Ensuring Business Respect for Human Rights' in Rodriguez-Garavito ,C., (Ed.) *Business and Human Rights: Beyond the End of the Beginning* (Cambridge University Press, 2017)
88. Mertens, T., *A Philosophical Introduction to Human Rights* (Cambridge University Press, 2020)
89. Methven O'Brien, C., 'Guiding Principle 2: Expecting Business to Protect Human Rights' in Choudhury, B., (Ed.) *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023)
90. Michel, H., *Krupp: A History of the Firm* (Macmillan, 1972)
91. Miller, D., *National Responsibility and Global Justice* (Oxford University Press, 2007)

92. Muchlinski, P., *Advanced Introduction to Business and Human Rights* (Edward Elgar, 2022)
93. Muchlinski, P., *Multinational Enterprises and the Law* (Oxford University Press, 2007)
94. Murray, P., 'Primary Goods' in Deen K. Chatterjee (Ed.) *Encyclopedia of Global Justic*e (Springer, 2011)
95. Nussbaum, M., *Women and Human Development: The Capabilities Approach* (Cambridge University Press, 2000)
96. Nussbaum, M., *Creating Capabilities: The Human Development Approach* (Harvard University Press 2011)
97. Nussbaum, M., *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard University Press, 2006)
98. O'Neill, O., *Acting on Principle: An Essay on Kantian Ethics* (Cambridge University Press, 2013)
99. Palombo, D., 'Guiding Principle 25: Access to Remedy-Foundational Principle' in Barnali Choudhury (Ed.) *The UN Guiding Principles on Business and Human Rights: A Commentary* (Edward Elgar Publishing, 2023)
100. Persad, G., 'Justice and Public Health' in Anna C. Mastroianni et Al. (Eds.) *The Oxford Handbook of Public Health Ethics* (Oxford University Press, 2019)
101. Petrin, M., and Writing, C.A., (Eds.) *Research Handbook on Corporate Liability* (Edward Elgar, 2023)
102. Pettit, P., 'The Conversable, Responsible Corporation' in Eric Orts and N. Craig Smith (Eds.) *The Moral Responsibility of Firms* (Oxford University Press, 2017)
103. Pogge, T., *World Poverty and Human Rights* (Cambridge: Polity Press, 2008)
104. Qizilbash, M., *The Capability Approach: Its Interpretation and 'Limitations'* (Routledge, 2012)
105. Rauscher, S., 'Kant's Social and Political Philosophy' in Edward N. Zalta and Uri Nodelman (Eds.) *The Stanford Encyclopedia of Philosophy* (Fall 2022 Edition)
106. Rawls, J., *A Theory of Justice* (Harvard University Press, 1971)
107. Rawls, J., *Political Liberalism* (Columbia University Press, 1993)
108. Rawls, J., *The Law of the Peoples* (Harvard University Press, 2001)

109. Riley, S., *Human Dignity and Law: Legal and Philosophical Investigations* (Routledge, 2018)
110. Robeyns, I., and Byskov, M. F.,'The Capability Approach' in Edward N. Zalta and Uri Nodelman, *The Stanford Encyclopedia of Philosophy* (Summer 2023 Edition)
111. Robeyns, I., *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (Cambridge: Open Book Publishers, 2017)
112. Ruggie, J., *Just Business: Multinational Corporations and Human Rights* (W.W. Norton & Company, 2013)
113. Ruggie, J.G., *The UN Guiding Principles on Business and Human Rights: A Commentary* (Oxford University Press, 2019)
114. Ruggie, J.G.,'Hierarchy or Ecosystem? Regulating Human Rights Risks of Multinational Enterprises' in Rodriguez-Garavito, C., (Ed.) *Business and Human Rights: Beyond the End of the Beginning* (Cambridge University Press, 2017)
115. Sahlgren, K.A.,'Scenes from my UN Journey' in Ahtissari. M., (Ed.) *Finns in the United Nation*s (Finnish UN Association, 1996)
116. Schlegel, P.C., *Sustainability Standards and Certification in Palm Oil: The Case of the RSPO* (Routledge, 2016)
117. Sen, A., *Commodities and Capabilities* (Oxford University Press, 1987)
118. Sen, A., *Development as Freedom* (Oxford University Press 1999)
119. Shue, H., *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton University Press, 1980)
120. Simons, P., 'Guiding Principle 26: Domestic Judicial Mechanisms' in Choudhury, B., (Ed.) The UN Guiding Principles on Business and Human Rights: A Commentary (Edward Elgar Publishing, 2023)
121. Sluga, G., and Clavin, P., *Internationalism: A Twentieth-Century History* (Cambridge University Press, 2016)
122. Smith, R.K.M., *International Human Rights Law* (Oxford University Press, 2022)
123. Snidal, D., 'Rational Choice and International Relations' in Carlsnaes, W., Risse, T., and Simmons, B. A., (Eds.), *Handbook of International Relations* (Sage Publications, 2002)

124. Sreenivasan, G., *The Right to Health: A Critical Review* (Oxford University Press 2008)
125. Svensson-McCarthy, A.L., *The International Law of Human Rights and States of Exception* (Brill Nijhoff, 2021)
126. Talbert, M., 'Moral responsibility' on Edward N. Zalta and Uri Nodelman (Eds.) Stanford Encyclopedia of Philosophy (Fall 2023), available at: https://plato.stanford.edu/entries/moral-responsibility/ (Accessed: 1/11/2023)
127. Tobin, J., 'Still Getting to Know You: Global Health Law and the Right to Health' in Gian Luca Burci and Brigit Toebes (Eds.) *Research Handbook on Global Health Law* (Edward Elgar, 2018)
128. Toebes, B., *The Right to Health as a Human Right in International Law* (Intersentia 1999)
129. Toebes, B., *The Right to Health: A Multi-Disciplinary Approach* (Kluwer Law International 2011)
130. Weinberg, G., *A World at Arms: A Global History of World War II* (Cambridge University Press, 1994)
131. Wettstein, F., 'From Side Show to Main Act: Can Business and Human Rights Save Corporate Responsibility?' in Dorothee Baumann-Pauly and Justine Nolan (Eds.) *Business and Human Rights: From Principles to Practice* (Routledge, 2016)
132. Wettstein, F., *Business and Human Rights: Ethical, Legal and Managerial Perspectives* (Cambridge University Press, 2022)
133. Wheatley, N., 'New Subjects in International Law and Order' in Sluga, N., and Clavin, P., (Eds.) *Internationalism: A Twentieth-Century History* (Cambridge University Press, 2016)
134. White, S., 'Social Minimum' in Edward N. Zalta and Uri Nodelman (Eds.) *The Stanford Encyclopedia of Philosophy* (Winter 2021 Edition)
135. Wolff, J., *The Human Right to Health* (Norton 2012)
136. Yamin, A.E., *Power, Suffering, and the Struggle for Dignity: Human Rights Frameworks for Health and Why They Matter* (University of Pennsylvania Press 2016)

137. Zimmerman, M.J., and Bradley, B., 'Intrinsic vs. Extrinsic Value' in Edward N. Zalta and Uri Nodelman (Eds.) *The Stanford Encyclopedia of Philosophy* (Spring 2019 Edition)
138. Αριστοτέλους, *Ηθικά Νικομάχεια* II.6
139. Αριστοτέλους, *Πολιτικά* VII.13

Articles/ Journals

1. Aaronson, S.A., and Higham, I., '"Re-righting Business": John Ruggie and the Struggle to Develop International Human Rights Standards for Transnational Firms' (2013) 36 Human Rights Quarterly, 333-364
2. Alvarado-Herrera, A., Bigne, E., et al, 'A Scale for Measuring Consumer Perceptions of Corporate Social Responsibility Following the Sustainable Development Paradigm' (2017) 140 Journal of Business Ethics 2, 243-262
3. Andrés Latapì Agudelo, M., Jóhannsdóttir, L., and Dávidsdóttir, B., 'A Literature Review of the Historical Evolution of Corporate Social Responsibility' (2019) 4 International Journal of Corporate Social Responsibility 1
4. Baker, P., Russ, K., Kang , M., et al., 'Globalization, first-foods systems transformations and corporate power: A synthesis of literature and data on the market and political practices of the transnational baby food industry' (2021) 17 Global Health 1, 58
5. Baker, P., 'Breastfeeding, first food systems and corporate power' (2020) 228 Breastfeeding Review 2, 33-37
6. Baker, P., et al, 'Firstfood systems transformations and the ultra-processing of infant and young child diets: A synthesis of data and literature on the determinants, dynamics and consequences of the global rise in milk formula consumption' (2020) 17 Maternal Child Nutrition 2, 1–18
7. Bantekas, I., 'The Linkages Between Business and Human Rights and their Underlying Root Causes' (2021) 43 Human Rights Quarterly, 117-137

8. Basu, K., and Palazzo, G.,'Corporate Social Responsibility: A Process Model of Sensemaking' (2008) 33 Academy of Management Review 1, 122-136
9. Böhm, S., Carrington, M., et al, 'Ethics at the Centre of Global Governance and Local Challenges: Thoughts on the Future of Business Ethics' (2022) 180 Journal of Business Ethics 3, 835-861
10. Bonfanti, A., 'Catene Globali del Valore, Diritti Umanin e Ambiente, Nella Prospettiva del Diritto Internazionale Privato: Verso una Direttiva Europea sull' Obbligo di Digilenza Delle Imprese in Materia di Sostenibilità' (2022) 3 Jus, 295-329.
11. Bonnitcha, J., and McCorquodale, R.,'The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights' (2017) 28 Business and Human Rights Journal 899-919
12. Boschiero, N., 'COVID-19 Vaccines as Global Common Goods: An Integrated Approach of Ethical, Economic Policy and Intellectual Property Management' (2021) Global Jurist, 1-54
13. Boschiero, N., 'Intellectual Property Rights and Public Health: An Impediment to Access to Medicines and Health Technology Innovation?' (2017) 22 Rivista Stato, Chiese e Pluralismo Confessionale, 1-35
14. Boyd, C., 'The Nestle Infant Formula Controversy and a Strange Web of Subsequent Business Scandals' (2012) 106 Journal of Business Ethics, 283-293
15. Brady, J.P., 'Marketing breast milk substitutes: Problems and perils throughout the world' (2012) 99 BMJ Journal 6, 529-532
16. Brassart Olsen, C., 'Towards Corporate Health Responsibility? An Analysis of Workplace Health Promotion through the Prism of CSR and Transnational New Governance' (2020) 36 International Journal of Comparative Labour Law and Industrial Relations, 19-54
17. Brassart Olsen, C., 'Towards Corporate Health Responsibility? An Analysis of Workplace Health Promotion through the Prism of CSR and Transnational New Governance' (2020) 36 International Journal of Comparative Labour Law and Industrial Relations, 19-54

18. Brender, J.D., Maantay, J.A., and Chakraborty, J., 'Residential Proximity to Environmental Hazards and Adverse Health Outcomes' (2011) S1 American Journal of Public Health 101, S37-S52
19. Carroll, A.B., 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) 38 Business& Society 3, 268-295
20. Carroll, A.B., 'Corporate Social Responsibility: The Centerpiece of Competing and Complementary Frameworks' (2015) 44 Organizational Dynamics, 87-96
21. Carroll, A.B., 'The Four Faces of Corporate Citizenship' (2003) 100 Business and Society Review 1, 1-7
22. Chan, J., Pun, N., and Selden, M., 'The Politics of Global Production: Apple, Foxconn and China's New Working Class ' (2013) 28 New Technology, Work and Employment 2, 100-115
23. Choudhury, B., 'Balancing Soft and Hard Law for Business and Human Rights' (2018) 67 International and Comparative Law Quarterly, 961-986
24. Cook, K.S., and Hegtvedt, K.A., 'Distributive Justice, Equity and Equality' (1983) 9 Annual Review of Sociology, 217-241
25. Craig Smith, N., 'The Moral Responsibility of the Firms: For or Against?' available at: <https://knowledge.insead.edu/responsibility/moral-responsibility-firms-or-against>
26. Cummings, S., Seferiadis A-A., and de Haan, L., 'Getting down to Business? Critical Discourse Analysis of Perspectives on the Private Sector in Sustainable Development' (2020) Sustainable Development 28, 759-771
27. Danenberger, E.P., 'Oil Spills: 1971-1975, Gulf of Mexico, Outer Continental Shelf: Statistics and discussion of oil spills resulting from offshore operations on the Federal oil and gas leases in the Gulf of Mexico' (1976) Geological Survey Circular 741, available at:
28. Daniels, N., 'Justice, Health and Healthcare' (2001) 1 American Journal of Bioethics, 2-16
29. de Bakker, F.G.A., Rasche, A., and Ponte, S., 'Multi-Stakeholder Initiatives on Sustainability: A Cross-Disciplinary Review and Research Agenda for Business Ethics' (2019) 29 Business Ethics Quarterly 3, 343-383
30. de la Baume, M., 'France: National Railway apologizes for its role in deporting Jews in war', available at:

31. DeMott, D.A, 'The Duty to Disclose and Corporate Transparency' (2013) 90 North Carolina Law Review 1455
32. Dewey, J., 'The Historic Background of Corporate Legal Personality' (1926) 35 Yale Law Journal, 655
33. Dmytriyev, S.D., Freeman, R.E., and Hörisch, J., 'The Relationship between Stakeholder Theory and Corporate Social Responsibility: Differences, Similarities and Implications for Social Issues in Management' (2021) 58 Journal of Management Studies 6, 1441-1470
34. Donaldson, T., 'How Values Ground Value Creation: The Practical Inference Framework' (2021) 2 Organization Theory 4
35. Donaldson, T., 'Intrinsic Values and Human Rights Duties: Corporate Duties Depend on Industry Values' (2022) 7 Business and Human Rights Journal, 189-200
36. Douglas Bishop, J., 'The Limits of Corporate Human Rights Obligations and the Rights of For-Profit Corporations' (2012) 22 Business Ethics Quarterly, 119-144
37. Duncan, P., 'Health, Health Care and the Problem of Intrinsic Value' (2010) 16 Journal of Evaluation in Clinical Practice, 318-322
38. Dyzenhaus, D., 'Hobbes and the Legitimacy of Law' (2001) 20 Law and Philosophy 5, 461-498
39. Ekmekci, P. E., and Arda, B., 'Enhancing John Rawls's Theory of Justice to Cover Health and Social Determinants of Health' (2015) 21 Acta Bioeth. 2, 227-236
40. Ekmekci, P. E., and Arda, B., 'Enhancing John Rawls's Theory of Justice to Cover Health and Social Determinants of Health' (2015) 21 Acta Bioeth. 2, 227-236
41. el Ghoul, S., and Others, 'Corporate Environmental Responsibility and the Cost of Capital: International Evidence' (2018) 149 Journal of Business Ethics 335-361
42. Fia, M., and Sacconi, L., 'Justice and Corporate Governance: New Insights from Rawlsian Social Contract and Sen's Capabilities Approach' (2019) 160 Journal of Business Ethics 4, 937-960
43. French, P.A., 'The Corporation as a Moral Person' (1979) 16 American Philosophy Quarterly 3, 207-215

44. Friedman, M., 'The Social Responsibility of Business is to Increase its Profits' (1970) The New York Times Magazine
45. Galuppo, L., Gorli, M., et al. 'Building Social Sustainability: Multi-stakeholder Processes and Conflict Management' (2014) 10 Social Responsibility Journal, 685-701
46. Ghosh, A., and Chakraborti, C., 'Corporate Social Responsibility: A Developmental Tool for India' (2010) 9 IUP Journal of Corporate Governance 4, 40-56
47. Giovannone, M., 'The European Directive on 'Corporate Sustainability Due Diligence': The Potential for Social Diaogue, Workers' Information and Participation Rights' (2024) 17 Italian Labour Law E-Journal 1, 228-244
48. González-Cantón, C., Boulos, S., and Sánchez-Garrido, P., 'Exploring the Link Between Human Rights, the Capability Approach and Corporate Responsibility' (2019) 160 Journal of Business Ethics 160, 865-879
49. Griffin, J., 'Well-Being and Justice: A Moral Evaluation of the Right to Health' (2009) 11 Journal of Human Rights 67
50. Hardin, G., 'The Tragedy of the Commons: The Population Problem has no Technical Solution; It Requires a Fundamental Extension in Morality' (1968) 162 Science: New Series 3859, 1243-1248
51. Harland Giammatteo, J., 'The New Comity Abstention' (2023) 111 California Law Review 1705
52. Herrnstadt, O.E.,'Voluntary Corporate Codes of Conduct: What's Missing?' (2001) 16 The Labor Lawyer 3, 349-370
53. Hindirks, F., 'How Autonomous are Collective Agents? Corporate Rights and Normative Individualism' (2014) Erkenntnis 79, 1565-1585
54. Hiswåls, A.S., Wulff Hamrin C., et al., 'Corporate Social Responsibility and External Stakeholders' Health and Wellbeing: A Viewpoint' (2020) 9 Journal of Public Health Research 1742
55. Hope, S.,'Perfect and Imperfect Duty: Unpacking Kant's Complex Distinction' (2022) 28 Kantian Review 1, 63-80
56. Husted, B.W., and Allen, D.B., 'Strategic Corporate Social Responsibility and Value Creation among Large Firms: Lessons from the Spanish Experience' (2007) 40 Long RNAGE Planning 6, 594-610

57. Jones, T.M., 'Corporate Social Responsibility Revisited, Redefined' (1980) 22 California Management Review 3, 59-67
58. Kamugumya, D., and Olivier, J., 'Health System's Barriers Hindering Implementation of Public-Private Partnership at the District Level: A Case Study of Partnership for Improved Reproductive and Child Health Services Provision in Tanzania' (2016) 16 BMC Health Services Research, 596
59. Karimi, M.., Brazier, J., and Basarir, H., 'The Capability Approach: A Critical Review of its Application in Health Economics' (2016) 19 Value in Health, 795-799
60. Langan, M., 'ACP-EU Normative Concessions from Stabex to Private Sector Development: Why the European Union's Moralised Pursuit of a 'Deep' Trade Agenda is Nothing 'New' in ACP-EU Relations' (2009) 10 Perspectives on European Politics and Society 3, 416-440
61. Langvatn, S., 'Legitimate, But Unjust; Just, But Illegitimate: Rawls on Political Legitimacy' (2016) 42 Philosophy & Social Criticism 2, 132-153
62. Lantos, G.P., 'The Boundaries of Strategic Corporate Social Responsibility' (2001) 18 Journal of Consumer Marketing 7, 595-632
63. Lawson, M., et Al., 'Public good or private wealth? Universal health, education and other public services reduce the gap between rich and poor, and between women and men. Fairer taxation of the wealthiest can help pay for them' (2019) Oxfam International Policy Papers
64. Leary, V.A., 'The Right to Health in International Human Rights Law' (1994) 1 Health and Human Rights, 24-56
65. Liao, S.M., 'Health (Care) and Human Rights: A Fundamental Conditions Approach' (2016) 37 Theoretical Medicine and Bioethics, 259-274
66. Liao, S.M., 'The Basic of Human Moral Status' (2010) 7 Journal of Philosophy, 159-179
67. Maitland, I., 'The Morality of the Corporation: An Empirical or Normative Disagreement?' (1994) 4 Business Ethics Quarterly 4, 445-458
68. Martin-Ortega, O., 'Human Rights Due Diligence for Corporations: From Voluntary Standards to Hard Law at Last?' (2014) 32 Netherlands Quarterly of Human Rights 44-74

69. McGuire, J.B., Sundgren, A., and Schneeweis, T., 'Corporate Social Responsibility and Firm Financial Performance' (1988) 31 Academy of Management Journal 4, 854-872
70. Moran, T.H., 'The United Nations and Transnational Corporations: A Review and a Perspective' (2009) 18 Transnational Corporations, 91-112
71. Mulgan, T., 'Corporate Agency and Possible Futures' (2019) 154 Journal of Business Ethics, 901-916
72. Murray, J., 'A New Phase in the Regulation of Multinational Enterprises: The Role of the OECD' (2001) 30 Industrial Law Journal 3, 255-270
73. Nair, R., et al, 'Reprioritising Sustainable Development Goals in the Post-COVID-19 Global Context: Will a Mandatory Corporate Social Responsibility Regime Help?'(2021) 11 Administrative Sciences-MDPI Leibniz-Informationszentrum Wirtschaft 4, 1-16
74. Nolan, J.,'The United Nations' Compact with Business: Hindering or Helping the Protection of Human Rights?' (2005) 24 University of Queensland Law Journal 2, 445-469
75. Nussbaum, M., 'Capabilities as Fundamental Entitlements: Sen and Social Justice' (2003) 9 Feminist Economics 33
76. Nussbaum, M.C., 'Capabilities and Human Rights' (1997) 66 Fordham Law Review 273
77. Post, J.E, 'Assessing the Nestle Boycott: Corporate Accountability and Human Rights' (1985) 27 California Management Review 2, 113-131
78. Public Eye, 'Sugar in baby food: SECO must bring legal action against Nestlé under Unfair Competition Act' (Press release, 12/6/2024), available at: https://www.publiceye.ch/en/media-corner/press-releases/detail/sugar-in-baby-food-seco-must-bring-legal-action-against-nestle-under-unfair-competition-act (Accessed: 5/7/2024)
79. Ramasastry, A., 'Corporate Complicity: From Nuremberg to Rangoon: An Examination of Forced Labor Cases and their Impact on the Liability of Multinational Corporations' (2002) 20 Berkeley Journal of International Law 91, 91-159
80. Ramasastry, A., 'Corporate Social Responsibility versus Business and Human Rights: Bridging the Gap between Responsibility and Accountability' (2015) 14 Journal of Human Rights 2, 237-259

81. Rioux, M., ‘Multinational Corporations in Transnational Networks: Theoretical and Regulatory Challenges in Historical Perspective’ (2014) 4 Open Journal of Political Science 3, 109-117
82. Robeyns, I., ‘Capabilitarianism’ (2016) 17 Journal of Human Development and Capabilities: A Multi-Disciplinary Journal for People-Centered Development’, 397-414
83. Ruggie, J.G., ‘Global Governance and ‘New Governance Theory’: Lessons from Business and Human Rights’ (2014) 20 Global Governance 1, 5-17
84. Ruggie, J.G., ‘The Construction of the UN “Protect, Respect and Remedy” Framework for Business and Rights: The True Confessions of a Principled Pragmatist’ (2011) 2 European Human Rights Law Review 127-133
85. Ruggie, J.G., and Nelson, T., ‘Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges’ (2015) Harvard University 66 Working Paper of the Corporate Social Responsibility Initiative
86. Ruggie, J.G., and Sherman, J.F., ‘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 European Journal of International Law 3, 921-928
87. Ruggie, J.G., and Snidal, D.,'World Politics and Multinational Corporations: The Return of the State' (1986) 39(2) International Organization 343
88. Ruggie, J.G., Rees, C., and Davis, R., ‘Making ‘Stakeholder Capitalism’ Work: Contributions From Business& Human Rights’ (2020) (Harvard Kennedy School, Corporate) Working Paper No.76
89. Ruggie, J.G., Rees, C., and Davis, R., ‘Ten Years After: From UN Principles to Multi-Fiduciary Obligations’ (2021) 6 Business and Human Rights Journal 62, 179-197
90. Sacconi, L., ‘A social contract account for CSR as an extended model of corporate governance (I): Rational bargaining and justification’ (2006) Journal of Business Ethics, 68(3): 259-281
91. Sacconi, L., ‘Corporate Social Responsibility and Corporate Governance’ (2012) 38 EconomEtica

92. Sauvant, K.P., 'The Negotiations of the United Nations Code of Conduct on Transnational Corporations: Experience and Lessons Learned' (2015) 16 Journal of World Investment and Trade, 11-87
93. Savourey, E., and Brabant, S.,'The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption' (2021) 6 Business and Human Rights Journal 1, 141-152
94. Schokkaert, E., 'Capabilities and Satisfaction with Life' (2007) 8 Journal of Human Development 3, 415–30
95. Schönherr, N., Findler, F., and Martinuzzi, A., 'Exploring the Interface of CSR and the Sustainable Development Goals' (2017) 24 Transnational Corporations 3, 33-47
96. Schwartz, M.S., 'Universal Moral Values for Corporate Codes of Ethics' (2005) 59 Journal of Business Ethics 1, 27-44
97. Sen, A., 'Equality of What?' in 'The Tanner Lecture on Human Values' (1980)
98. Sen, A., 'Human Rights and Capabilities' (2005) 6 Journal of Human Development 2, 151–166
99. Sen, A., 'Well-being Agency and Freedom: The Dewey Lectures 1984' (1985) 82 Journal of Philosophy, 169-221
100. Sen, A., 'Why Health Equity?' (2002) 11 Health Economics, 659-666
101. Sherman, J. III, 'Beyond CSR: The Story of the UN Guiding principles on Business and Human Rights; (2020) 71 Working Paper (Harvard Kennedy School, Corporate Responsibility Initiative)
102. Shoemaker, D., 'Attributability, Answerability and Accountability: Toward a Wider Theory of Moral Responsibility' (2011) Ethics 121 (3), 602-632
103. Simons , G., and Baldwin, D.S., 'A Critical Review of the Definition of 'Wellbeing' for Doctors and Patients in a post Covid-19 Era' (2021) 67 International Journal of Social Psychiatry 8, 984-991.
104. Sjåfjell, B., 'How Company Law has Failed Human Rights and What to Do About It' (2020), University of Oslo Faculty of Law Legal Studies, Research Paper Series No. 2020-07, 3

105. Smit, L., et al, ‘Human Rights Due Diligence in Global Supply Chains: Evidence of Corporate Practices to Inform a Legal Standard’ (2020)25 International Journal of Human Rights 945
106. Snidal, D.,'The Limits of Hegemonic Stability Theory' (1985) 39(4) International Organization 579
107. Spangenberg, J.H.,‘Hot Air or Comprehensive Progress? A Critical Assessment of the SDGs’ (2017) 25 Sustainable Development 25, 311-321
108. Sreenivasan, G., ‘A Human Right to Health? Some Inconclusive Scepticism’ (2012) 86 Aristotelian Society Supplementary Volume, 239-265
109. Sreenivasan, G., ‘Health Care and Human Rights: Against the Split Duty Gambit’ (2016) 37 Theoretical Medicine and Bioethics, 343-364
110. Tamvada, M., ‘Synthesising Synergies Between CSR and BHR for Corporate Accountability: An Integrated Approach’ (2023) 8 International Journal of Corporate Social Responsibility 9, 1-15
111. Tanrikulu, H., Neri, D., et al, ‘Corporate political activity of the baby food industry: The example of Nestlé in the United States of America’ (2020) 15 International Breastfeeding Journal 22
112. Tasioulas, J., ‘Taking Rights out of Human Rights’ (2010) 120 Ethics, 647-678
113. Tasioulas, J., and Vayena, E., ‘Getting Human Right Right in Global Health Policy’ (2015) 385 Lancet, 42-44
114. Taylor, M.B, ‘Human Rights Due Diligence and the UN Guiding Principles on Business and Human Rights: An Analysis’ (2014) 14 Human Rights Law Review 1, 47-74
115. Taylor, M.B., Zandvliet, L., and Forouhar, M., ‘Due Diligence for Human Rights: A Riske-Based Approach’ (2009) 53 Corporate Social Responsibility Initiative Working Paper (Harvard University Press)
116. Thompson, R.B., ‘Fraudulent Concealment in Corporate Law’ (2002) 55 Stanford Law Review 1635
117. Toebes, B., ‘The Right to Health and the Role of the State: Recent Developments in International Law’ (2006) 18 Health and Human Rights Journal 32

118. Tosun, J., Koos, S., and Shore, J., 'Co-governing Common Goods: Interaction Patterns of Private and Public Actors' (2016) 35 Policy and Society, 1-12
119. van Heerdenn, A., and Bosson, S., 'Private Actors and Public Goods-A New Role for the Multinational Enterprises in the Global Supply Chain' (2009) 23 Dans Management& Avenir, 36-46
120. Velasquez, M., 'Debunking Corporate Moral Responsibility' (2003) 13 Business Ethics Quarterly 4, 531-562
121. Wagner-Tsukamoto, S., 'Moral Agency, Profits and the Firm: Economic Revisions to the Friedman Theorem' (2007) 70 Journal of Business Ethics, 209-220
122. Wettstein, F., 'CSR and the Debate on Business and Human Rights: Bridging the Great Divide' (2012) 22 Business Ethics Quarterly 4, 739-770
123. Wettstein, F., 'Silence as Complicity: Elements of a Corporate Duty to Speak Out against the Violation of Human Rights' (2012) 22 Business Ethics Quarterly, 37-61
124. Yamin, A.E., 'The Right to Health Under International Law and its Relevance to the United States' (2005) 95 American Journal of Public Health, 1156-1161

International Treaties

1. *Convention Hague IV regarding the Respect to the Laws and Customs of War on Land* (Hague Convention IV, 18 October 1907, UKTS 9)
2. *Convention on the Elimination of All Forms of Discrimination against Women* (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13
3. *Convention on the Elimination of All Forms of Racial Discrimination* (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195
4. *Convention on the Rights of the Child (*adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3
5. *ILO Convention No.155 on Occupational Safety and Health* (1981) (adopted 22 June 1981, entered into force 11 August 1983) 1331 UNTS 279
6. *ILO Convention No.187 on the Promotional Framework for Occupational Safety and Health* (2006) (adopted 15 June 2006, entered into force 20 February 2009) ILO C187
7. *International Covenant on Economic, Social and Cultural Rights (ICESCR)* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3
8. International Labor Organization *Convention No.29 on Forced Labor* (Forced Labour Convention, 28 June 1930, C29, 39 UNTS 55
9. International Labour Organization *C187-Promotional Framework for Occupational Safety and Health Convention* (2006)
10. International Labour Organization, *Declaration on Fundamental Principles and Rights at Work* (adopted 18 June 1998) 37 ILM 1233
11. International Labour Organization*, Freedom of Association and Protection of the Right to Organize Convention* (No 87) (adopted 9 July 1948, entered into force 4 July 1950) 68 UNTS 17
12. International Labour Organization, *Right to Organize and Collective Bargaining Convention (No 98*) (adopted 1 July 1949, entered into force 18 July 1951) 96 UNTS 257
13. International Labour Organization, *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (16 November 1977)

14. International Law Commission, '*Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries'* (2001) Yearbook of the International Law Commission, vol II, Part Two
15. *Montreal Protocol on Substances that Deplete the Ozone Layer* (United Nations, adopted 16 September 1987, entered into force 1 January 1989) 1522 UNTS 3
16. *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (2011)
17. *OECD, Declaration on International Investment and Multinational Enterprises* (1976)
18. *Paris Agreement* (adopted 12 December 2015, entered into force 4 November 2016) UNTS Registration No. I-54113
19. *Rio Declaration on Environment and Development* (adopted 14 June 1992) UN Doc A/CONF.151/26
20. *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (28 September 1984) UN Doc E/CN.4/1985/4
21. *The OECD Guidelines for Multinational Enterprises*, 2000 Revision
22. UN Economic and Social Council, *'Draft Code of Conduct on Transnational Corporations*' (12 June 1990) UN Doc E/1990/94
23. UN General Assembly, *'Charter of Economic Rights and Duties of States'* (12 December 1974) UN Doc A/RES/3281(XXIX)
24. UN Human Rights Council, *'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
25. United Nations *Convention Against Corruption* (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41
26. United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011) UN Doc HR/PUB/11/04
27. *Universal Declaration of Human Rights* (adopted 10 December 1948 UNGA Res 217 A(III)
28. World Health Organization *Framework Convention on Tobacco Control* (adopted 21 May 2003, entered into force 27 February 2005) 2302 UNTS 166

29. World Health Organization, *Constitution of the World Health Organization* (adopted 22 July 1946, entered into force 7 April 1948) 14 UNTS 18

UN Resolutions, Comments & Reports

1. A/HRC/RES/26/9, Elements for the draft legally binding instrument on transnational Corporations and other business Enterprises with respect to human rights (29/9/2017)
2. General Assembly Resolution 217 A, Universal Declaration of Human Rights (10 December 1948) UN Doc A/810 71
3. Human Rights Committee, General Comment No 29: States of Emergency (Article 4) UN Doc CCPR/C/21/Rev.1/Add,11 (2001)
4. Human Rights Council, Decision adopted by the Human Rights Council on 11 July 2024: 56/116. Enhancing the support capabilities off the open-ended intergovernmental working group on transnational Corporations and other business Enterprises with respect to human rights, established by Human Rights Council Resolution 26/9 [12 July 2024] A/HRC/DEC/56/116
5. Human Rights Council, Forty-ninth session Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Text of the third revised draft of legally binding instrument with the textual proposals submitted by States during the seventh session of the open-ended intergovernmental working group on transnational Corporations and other business Enterprises with respect to human rights, A/HRC/49/65/Add.1 (28 February 2022)
6. Res. A/HRC/26/L.22/Rev.1 Elaboration of an international legally binding instrument on transnational Corporations and other business Enterprises with respect to human rights (26th Session) (25 June 2014)
7. Responsibility of States for Internationally Wrongful Acts, UNGA Res 56/83 (28 January 2002) UN Doc A/RES/56/83
8. 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

9. UNDP, 'Corporate Social Responsibility as an enabler of Green Growth and Climate Action' (12 February 2016) available at: <https://www.undp.org/publications/corporate-social-responsibility-enabler-green-growth-and-climate-action (Access: 10/9/2024)
10. UNEP, UNDP and OHCHR, 'Joint statement of United Nations entities on the right to healthy environment' (8 March, 2021), available at https://www.unep.org/news-and-stories/statements/joint-statement-united-nations-entities-right-healthy-environment
11. UNGA Res 70/1 'Transforming our World: The 2030 Agenda for Sustainable Development' (21 October 2015) UN Doc A/RES/70/1
12. UNGA, HRC, A/HRC/RES/48/13 "Let's get to work! Landmark environmental ruling celebrated worldwide", available at https://stories.undp.org/lets-get-to-work 9 UNGA, A/RES/41/120
13. UNGA, The human right to a clean, healthy and sustainable environment, A/RES/76/300 (28 July 2022)
14. UNGA, The Universal Declaration of Human Rights (United Nations General Assembly,1948)
15. UN Committee on Economic, Social and Cultural Rights, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12 of the Covenant)' (11 August 2000) UN Doc E/C.12/2000/4
16. Commission on Human Rights, 'Report on the Sixty-First Session (14 March–22 April 2005): Draft Resolution and Draft Decisions Recommended for Adoption by the Economic and Social Council, and the Resolutions and Decisions Adopted by the Commission at its Sixty-First Session' (14 March–22 April 2005) UN Doc E/CN.4/2005/L.10/Add.17
17. Committee on Economic, Social and Cultural Rights, General Comment No.14: The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant) (11 August 2000) UN Doc E/C.12/2000/4
18. Committee on Economic, Social and Cultural Rights, General Comment No.3: The Nature of States Parties' Obligations (Article 2 para 1 of the Covenant) (14 December 1990) UN Doc E/1991/23

19. UN Committee on Economic, Social and Cultural Rights E/C.12/2000/4 Agenda item 3: Substantive Issues arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No.14 (2000) The Right to the Highest Attainable Standard of Health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 11 August 2020
20. UN Committee on Economic, Social, and Cultural Rights, General Comment No. 24 (2017) UN Doc E/C.12/GC/24
21. OHCHR, 'The Corporate Responsibility to Respect Human Rights: An Interpretive Guide' (2012) UN Doc HR/PUB/12/02
22. UN HRC, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie, Business and Human Rights: Towards Operationalizing the 'Protect, Respect and Remedy' Framework (2009) UN Doc A/HRC/11/13
23. UN HRC, Report of the United Nations High Commissioner for Human Rights Improving Accountability and Access to Remedy for Victims of Business-related Human Rights Abuse: The Relevance of Human Rights Due Diligence to Determinations of Corporate Liability (2008) UN Doc A/HRC/38/20/Add.2
24. UN HRC, Report of the Working Group on the Issue of Human Rights and Transnational Corporation and Other Business Enterprises, Corporate Human Rights Due Diligence (2018) UN Doc A/73/163

WHO Resolutions and Recommendations

1. WHO, Executive Board 'Recommendation to the 7rth World Health Assembly for the Adoption of Resolution EB148.R2' (21 January 2021)
2. World Health Assembly Resolution 75.21 (20 May 2022)
3. World Health Assembly, Resolution 39.28 (16 May 1986)
4. World Health Assembly, Resolution 49.15 (25 May 1996)
5. World Health Assembly, Resolution 55.25 (18 May 2002)
6. World Health Assembly, Resolution 58.32 (25 May 2005)
7. World Health Assembly, Resolution 61.20 (24 May 2008)
8. World Health Assembly, Resolution 63.23 (21 May 2010)
9. World Health Assembly, Resolution 65.6 (26 May 2012)
10. World Health Assembly, Resolution 67.9 (24 May 2014)
11. World Health Assembly, Resolution 69.9 (28 May 2016)

EU Treaties & Legislation

1. *Charter of Fundamental Rights of the European Union* [2000] OJ C364/1
2. *Consolidated Version of the Treaty on the Functioning of the European Union* [2012] OJ 326/47
3. *Council Regulation (EC) No 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC [2006] OJ L396/1.*
4. *Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (recast) [2020] OJ L435/1.*
5. *Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on the Corporate Sustainability Reporting Directive (CSRD) and amending Directive (EU) 2013/34 [2022] OJ L322/1*

6. *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*
7. *Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC. 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive), OJ L149, 11.6.2005.*
8. *Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups [2014] OJ L330/1*
9. European Commission, 'A Renewed EU Strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681 Final
10. European Commission, Environment Directorate General, *Directive 1980/778/EEC on the Quality of Water Intended for Human Consumption* [1980] OJ L229/11
11. European Commission, Executive Agency for Small and Medium-sized Enterprises, 'Uptake of Corporate Social Responsibility (CSR) by European SMEs and Start-Ups: Good Practice Document', Publications Office (2021) available at: <https://op.europa.eu/en/publication-detail/-/publication/069c66f2-570c-11ec-91ac-01aa75ed71a1> (Accessed: 1/1/2024)
12. European Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Directive (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' COM (2025) 80 final, 26 February 2025, SWD (2025) 80.
13. *European Convention for the Protection of Human Rights and Fundamental Freedoms* (adopted 4 November 1950, entered into force 3 September 1953) ETS 5
14. *European Social Charter* (revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163

15. *Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC [2004] OJ L338/4*
16. *Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (recast) [2019] OJ L169/45.*

National Legislation

1. *Alien Tort Statute*, 28 U.S.C. § 1350 (1976).
2. *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)* 42 U.S.C. §§ 9601-9675 (1980)
3. *Connecticut Unfair Trade Practices Act*, Conn Gen Stat §§ 42-110a to 42-110q
4. *Foreign Sovereign Immunities Act of 1976*, 28 USC §§ 1602–1611 (2018)
5. *House Bill No 5351*, 2024 (CT)
6. *House Bill No 5518*, 2020 (CT)
7. *House Bill No 6690*, 2021 (CT)
8. *Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* [2017] JO 0074
9. *Senate Bill No 100*, 2023 (CT)
10. *Senate Bill No 128*, 2024 (CT)
11. *Senate Bill No 292*, 2024 (CT)
12. *Senate Bill No 338,* 2024 (CT)
13. *Senate Bill No 837*, 2021 (CT)
14. The Federal Assembly of the Swiss Confederation, *Federal Act on Cartels and other Restraints of Competition of 6 October 1995* (Status as of July 2023)
15. *Toxic Substances Control Act (TSCA)* 15 U.S.C. § 2607(e) (1976)
16. U.S. Environmental Protection Agency, *National Primary Drinking Water Regulation for PFAS* (2023)
17. United States Congress, Senate, *Comprehensive Anti-Apartheid Act of 1986,* S 2701, 99th Congress (1986)

International case-law

1. Case C-157/99 *Gerats-Smits & Peerbooms v. Stichting Ziekenfonds VGZ* (2001).
2. European Court of Human Rights, *Fadeyeva v Russia,* App no 55723/00 (ECHR, 9 June 2005)
3. Inter-American Court of Human Rights, *Advisory Opinion OC-23/17* (15 November 2017)
4. International Court of Justice, *Case concerning the Temple of Preah Vihear (Cambodia v Thailand)* (Merits) [1962] ICJ Rep 6
5. International Court of Justice, *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua) and Construction of Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica)* [2015] ICJ Rep 665
6. International Court of Justice, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (Judgment) [1997] ICJ Rep 7
7. International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996]
8. International Court of Justice, *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14
9. International Court of Justice, *Reparation for Injuries Suffered in the Service of the Nations* (Advisory Opinion) [1949] ICJ Rep 174
10. International Court of Justice, *United States Diplomatic and Consular Staff in Tehran (US v Iran)* [1980] ICJ Rep 3
11. *International Federation of Human Rights Leagues (FIDH) v. France,* Complaint No. 14/2003, Merits (ECSR, 8 September 2004)
12. International Military Tribunal (IMT), *United States v Friedrich Flick* (Judgment, 1947) (Nuremberg Military Tribunals, 22 December 1947)
13. International Military Tribunal (IMT), *United States v Friedrich Krupp AG* (Judgment, 1948) (Nuremberg Military Tribunals, 31 August 1948)
14. International Military Tribunal (IMT), *United States v I.G. Farbenindustrie AG* (Judgment, 1948)
15. Permanent Court of Arbitration (Hague), *Chevron Corp v Ecuador* (2018) PCA Case No. 2009-23

16. Permanent Court of International Justice, *Jurisdiction of the Courts of Danzig* (Advisory Opinion) [1928] PCIJ Rep Series B No 15, 17
17. *Purohit and Moore v. The Gambia* (2003) AHRLR 96 (ACHPR 2003)
18. *Saramaka People v. Suriname* (Judgment of November 28, 2007) IACHR Series C No.172
19. *Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria* (2001) AHRLR 60 (ACHPR 2001)

Domestic case-law

1. Amsterdam District Court, *Public Prosecutor v Trafigura Beheer BV* (2010)
2. Attorney General Tong v 3M, *Chemours, and DuPont (2024) 1234 FSupp 5678* (US District Court for the District of Connecticut
3. Bangladesh High Court Division, *State v Sohel Rana* (2017)
4. California Supreme Court, *Kasky v Nike,* Inc 45 P.3d 243 (Cal. 2002)
5. District Court of The Hague, *Milieudefensie et al v Royal Dutch Shell Plc (2021)* C/09/571932 / HA ZA 19-379
6. District Court of The Hague, *Urgenda Foundation v. State of the Netherlands* (The Dutch State) [2015] HAZA C/09/456689/HA ZA 13-1396
7. England and Wales Court of Appeal, *Lungowe and Others v Vedanta Resources Plc and Konkola Copper Mines Plc* [2017] Civ 1528 (13 October 2017)
8. England and Wales High Court (QB), *Trafigura Beheer BV v Stichting Union des Victimes des Déchets de Côte d'Ivoire* [2009] EWHC 682 (QB)
9. *In re 3M Company PFAS Settlement* (District Court, 2020) Case No. 27-CV-10-28862
10. *Kenia Doe et al. v. Unocal Corporation*, 963 F Supp 880 (CD Cal 2002)
11. *Kiobel v Royal Dutch Petroleum Co* 569 US 108 (2013)
12. Ontario Superior Court of Justice (Canada), *Rahima Begum v Loblaw Companies Ltd* (2015) ONSC 1672
13. *Sosa v Alvarez-Machain* 542 US 692 (2004)
14. *SEC v Citigroup Global Markets Inc*, No 11-CV-7387 (SDNY 2011)
15. *SEC v Texas Gulf Sulpur Co*, 401 F 2d 833 (2d Cir 1968)

16. *State of Delaware et al v. E.I. du Pont de Nemours and Company et al* (D.Del. 2021) No. 1:21-cv-00168
17. *State of Minnesota v 3M Company* (Minnesota District Court, 20 February 2018) Case No. 27-CV-10-28862
18. *State of South Carolina v DuPont de Nemours, Inc., Chemours Company, and Corteva, Inc.,* Settlement Agreement (2023)
19. Supreme Court of India, *Union Carbide Corp v Union of India* (1989), (1991) 4 SCC 584
20. Supreme Court of the United States, *Daimler AG v Bauman 571* US 117 (2014)
21. Supreme Court of the United States, *Environmental Tectonics Corp International v Kirkpatrick & Co Inc* 493 US 400 (1990)
22. Supreme Court of the United States, *Hartford Fire Insurance Co v California* 509 US 764 (1993)
23. Supreme Court of the United States, *Kiobel v Royal Dutch Petroleum Co* 569 US 108 (2013)
24. Supreme Court of the United States, *Republic of Hungary et Ano v Rosalie Simon* 592 US (2021)
25. United Kingdom Supreme Court, *Vedanta Resources Plc and another (Appellants) v Lungowe and Others (Respondents)* [2019] UKSC 2017/0185 (10 April 2019)
26. United States Court of Appeals for the 7th Circuit, *Abelesz v Magyar Nemzeti Bank* 692 F 3d 661 (7th Cir 2012)
27. United States Court of Appeals for the 7th Circuit, *Fischer v Magyar Államvasutak Zrt 777* F 3d 847 (7th Cir 2015)
28. United States Court of Appeals for the 7th Circuit, *Karen Scalin, Roland Cherrier and Josiane Piquard v Société Nationale SNCF* SA, No. 18-1887 Appeal from the US District Court for the Northern District of Illinois (6 August 2021)
29. United States Court of Appeals for the 9th Circuit, *Doe v Unocal Corp* 395 F.3d 932 (9th Cir. 2002)
30. United States Court of Appeals for the DC Circuit, *Doe v ExxonMobil Corp* 654 F.3d 11 (D.C. Cir. 2011)
31. United States District Court for the Eastern District of Louisiana, *In re: Oil Spill by the Oil Rig Deepwater Horizon (2010)* MDL No. 2179

32. United States District Court for the Northern District of California, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* (MDL 2672)
33. United States District Court for the Southern District of New York, *Aguinda v Texaco,* Inc 142 F Supp 2d 534 (SDNY 2001)
34. United States District Court for the Southern District of New York*, Chevron Corp v Donziger* 974 F Supp 2d 362 (SDNY 2014

Other documents

1. Danish Institute for Human Rights, 'The EU Corporate Sustainability Due Diligence Directive: Maximizing Impact through Transposition and Implementation' (2024)
2. Danish Institute for Human Rights, 'The EU Corporate Sustainability Due Diligence Directive: Maximizing Impact through Transposition and Implementation' (2024)
3. Feinberg, N., 'Some Problems of the Palestine Mandate' (Tel Aviv: Shoshani's, 1936)
4. Human Rights Watch, 'Access to Effective Remedy: The UN Guiding Principles and Emerging Challenges' (2015)
5. *Lopez Ostra v Spain* (1995) 20 EHRR 277
6. OECD, 'Due Diligence Guidance for Responsible Business Conduct' (2018)
7. Office of the High Commissioner for Human Rights, 'The Right to Health: Fact Sheet No. 31' (2008)
8. *Öneryildiz v Turkey (2005)* 41 EHRR 20 [71
9. Ordinance on Foodstuffs and Common Objects (ODAIOUs) 817.02 (16 December 2016, revised 1 February 2024).
10. Ordonnance du DFI sur les denrées alimentaires destinées aux personees ayant des besoins nutritionnels particuliers (OBNP) 817.022.104 (16 December 2016, revised 1 February 2024)
11. *Osman v. United Kingdom* (1998) 29 EHRR 245

12. Politis, N., 'The New Aspects of International Law: A Series of Lectures Delivered at Columbia University' (Carnegie Endowment for International Peace, University of Michigan, 1928)
13. Shah, A., 'How Companies can Avoid Greenwashing and Make a Real Difference in Their Environmental Impact' (8/8/2022)
14. *Taskin v Turkey* (2006) 42 EHRR 50 [118]
15. *Tysiąc v. Poland* (2007) 45 EHRR 42
16. United States Congress, Senate Committee on Foreign Relations (Subcommittee on Multinational Corporations), 'The International Telephone and Telegraph Company and Chile, 1970-1971', 43
17. WHO, 'Effect of breastfeeding on infant and child mortality due to infectious diseases in less developed countries: a pooled analysis. WHO Collaborative Study Team on the Role of Breastfeeding on the Prevention of Infant Mortality'(2000) 355 The Lancet, 451–455
18. WHO, 'Evidence on the long-term effects of breastfeeding: Systematic reviews and meta-analyses' (Geneva: World Health Organization, 2007)
19. World Commission on Environment and Development, *Our Common Future* (Oxford University Press 1987)
20. Intergovernmental Panel on Climate Change, *First Assessment Report* (IPCC 1990) (Original establishment 1988)

Web sources

1. 'EPA History: Toxic Substances Control Act', available at: https://www.epa.gov/history/epa-history-toxic-substances-control-act (Accessed: 1/7/2024).

2. 'France: National Railway apologizes for its role in deporting Jews in war' (12 November 2010), available at: https://www.business-humanrights.org/en/latest-news/france-national-railway-apologizes-for-its-role-in-deporting-jews-in-war/ (Access: 22/4/2023)
3. 'The future of European competitiveness: Part A- A competitiveness strategy for Europe' (2024) available at:

https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en (Access: 25/2/2023)

4. 'The I.T.T. and Chile' published at The New York Times (26 March 1972), available at: https://www.nytimes.com/1972/03/26/archives/the-itt-and-chile.html?smid=url-share (Accessed: 25/4/2023)
5. 'The UN and Transnational Corporations' (Briefing Note 17, July 2009), available at: www.unhistory.org/briefing/17TNCs.pdf
6. 'UN Global Compact exits tobacco companies' (12 September 2017), available at: https://www.uicc.org/news/un-global-compact-exits-tobacco-companies (Accessed: 23/4/2023)
7. "ESG round-up: Draghi report warns of 'regulatory burden' from EU sustainability rules' at: https://www.responsible-investor.com/esg- up-draghi-report-warns-of-regulatory-burden-from-eu-sustainability-rules/ (Access: 10/9/2024)
8. Aboutboul, S., 'Driving progress: Making good childhood nutrition a reality everywhere', available at: https://www.nestle.com/stories/childhood-infant-nutrition-health-sugar (Accessed: 10/7/2024)
9. Activists send plastic waste back to Nestle, call out company for greenwashing' (23/3/2022) https://www.greenpeace.org/southeastasia/press/45221/activists-send-plastic-waste-back-to-nestle-call-out-company-for-greenwashing/ (Access: 25/2/2023)
10. Barboza, D., 'After Suicides, Scrutiny of China's Grim Factories' (27 May 2010), The New York Times, available at: https://www.nytimes.com/2010/06/07/business/global/07suicide.html (Accessed: 10/9/2024)
11. Dao, A.,, 'The Good, The Bad, The Assemblage: ITT, IBM and Chile' Center of International Law-National University of Singapore, available at: https://cil.nus.edu.sg/blogs/the-good-the-bad-the-assemblage-itt-ibm-and-chile/ (Accessed: 25/4/2024)
12. Defense Department to increase PFAS cleanup efforts following new EPA Guidelines' (15 April 2024), available at: https://www.ehn.org/defense-

department-to-increase-pfas-cleanup-efforts-following-new-epa-guidelines-2667771043.html (Accessed: 20/6/2024)

13. Duhigg, C., and Barboza, D.,'In China, Human Costs are Built into an iPad' (25 January 2012) The New York Times, available at: https://www.nytimes.com/2012/01/26/business/ieconomy-apples-ipad-and-the-human-costs-for-workers-in-china.html (Accessed: 10/9/2024)

14. DuPont, 'Sustainability Report 2024', available at: https://www.dupont.com/content/dam/dupont/amer/us/en/corporate/about-us/Sustainability/2024Sustainability/DuPont_2024SustainabilityReport.pdf (Accessed: 1/7/2024)

15. Ellis-Petersen, H., 'How formula milk firms target mothers who can least afford it' (2018) available at: https://www.theguardian.com/lifeandstyle/2018/feb/27/formula-milk-companies-target-poor-mothers-breastfeeding (Access: 2/6/2023)

16. Environmental Protection Agency, PFOA Stewardship Program, EPA-HQ-OPPT-2006-0621 available at: https://19january2021snapshot.epa.gov/biosolids/basic-information-about-biosolids_.html

17. Environmental Working Gorup, 'Bold new water, hazardous substance rules boost Biden PFAS action plan' (April 2024), available at: https://www.ewg.org/news-insights/news-release/2024/04/bold-new-water-hazardous-substance-rules-boost-biden-pfas-action (Accessed: 20/6/2024)

18. EPA, 'Biden-Harris Administration finalizes critical rule to clean up PFAS contamination to protect public health' (19 April 2024), available at: https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-critical-rule-clean-pfas-contamination-protect (Accessed: 20/6/2024)

19. EPA, 'PFAS Strategic Roadmap: EPA's commitments to Action 2021-2024'; available at: https://www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-2024 (Accessed: 20/6/2024)

20. European Commission press release, 'Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains' (23/2/2022) available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145 (Access: 2/6/2023)
21. Galea, S., 'Public Health as a Public Good', available at: https://www.bu.edu/sph/news/articles/2016/public-health-as-a-public-good/ (Access: 22/2/2023)
22. Geneva Infant Feeding Association, 'Situation in Switzerland' available at https://www.gifa.org/en/switzerland/switzerland/ (Access: 10/6/2024).
23. https://bewell-project.eu/ (Access: 25/4/2023)
24. https://encyclopedia.ushmm.org/content/en/article/subsequent-nuremberg-proceedings-case-6-the-ig-farben-case (Access: 25/4/2023)
25. https://encyclopedia.ushmm.org/content/en/article/subsequent-nuremberg-proceedings-case-5-the-flick-case (Access: 25/4/2023)
26. https://encyclopedia.ushmm.org/content/en/article/subsequent-nuremberg-proceedings-case-10-the-krupp-case (Access: 25/4/2023)
27. https://mcr2030.undrr.org/ (Access:25/4/2023)
28. https://unglobalcompact.org/about/faq (Accessed: 23/4/2023)
29. https://unglobalcompact.org/what-is-gc/our-work/supply-chain (Accessed: 23/4/2023)
30. https://www.3m.com/3M/en_US/sustainability-us/social/ (Accessed: 1/7/2024).
31. https://www.breakfreefromplastic.org/2021/10/25/the-coca-cola-company-and-pepsico-named-top-plastic-polluters-for-the-fourth-year-in-a-row/ (Access: 25/2/2023)
32. https://www.dupont.com/about/sustainability.html#:~:text=Our%20sustainability%20strategy%20harnesses%20our,create%20impactful%20and%20enduring%20outcomes (Accessed: 1/7/2024)
33. https://www.forbes.com/sites/forbesbusinesscouncil/2022/08/08/how-companies-can-avoid-greenwashing-and-make-a-real-difference-in-their-environmental-impact/ (Access: 25/3/2023)

34. https://www.greenpeace.org/international/press-release/63892/unilever-sells-1700-highly-polluting-throwaway-plastic-sachets-per-second-greenpeace-reveals/ (Access:25/3/2023)
35. https://www.humanrights.dk/files/media/document/DIHR_The%20EU%20Corporate%20Sustainability%20Due%20Diligence%20Directive_0.pdf (Access: 25/8/2024)
36. https://www.humanrights.dk/files/media/document/DIHR_The%20EU%20Corporate%20Sustainability%20Due%20Diligence%20Directive_0.pdf (Access: 25/8/2024)
37. https://www.nestle.com/stories/tasty-healthy-nutrition-family (Access: 10/8/2024)
38. https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf (Access: 20/8/2024)
39. https://www.pewtrusts.org/en/projects/archived-projects/health-impact-project (Access: 25/4/2023)
40. https://www.planetaryhealthalliance.org/about-pha (Access:25/4/2023)

41. https://www.project-syndicate.org/commentary/intellectual-property-21st-century-economy-by-joseph-e--stiglitz-et-al-2017-10 (Access: 2/6/2023)
42. https://www.rfi.fr/en/americas/20140205-french-rail-company-challenged-over-nazi-deportation-us-rail-bid (Access: 25/8/2024)
43. https://www.un.org/Depts/ptd/about-us/un-global-compact#:~:text=Step%202-,Prepare%20a%20Letter%20of%20Commitment%20addressed%20to%20the%20UN%20Secretary,a%20biennial%20submission%20of%20a (Accessed: 25/4/2023)
44. https://www.undp.org/sustainable-development-goals/partnerships-for-the-goals?gclid=CjwKCAjw1YCkBhAOEiwA5aN4AQRm0pwPVtLrpTBDzv2v9W557ABZgpiYvKm5l3llqrjNCMeNnT72exoCuacQAvD_BwE (Access: 25/4/2023)
45. https://www.wbur.org/news/2014/01/09/keolis-commuter-rail-contract (access: 25/8/2024)

46. Italy and Germany block EU agreement on business ethics just before the finish line' (9/2/2024) available at: https://www.eunews.it/en/2024/02/09/italy-and-germany-block-eu-agreement-on-business-ethics-just-before-the-finish-line/ (Access: 25/8/2024) (Access: 9/2/2024)
47. Lepiarz, J., 'MassDOT selects new commuter rail operator' (9 January 2014), Available at: https://www.wbur.org/news/2014/01/09/keolis-commuter-rail-contract (Access: 25/2/2023)
48. Lepiarz, J., 'New Mass. Commuter rail operator faces Maryland opposition due to holocaust link' (26 February 2014), available at: https://www.wbur.org/news/2014/02/26/keolis-holocaust-maryland (Access: 25/8/2024)
49. Public Eye & IBFAN, 'Aufforderung zur Erhebung einer Bundesklage gegen die unlauteren Geschäftsmoden von Nestlé im Ausland (12/6/2024), https://www.publiceye.ch/fileadmin/doc/Konsum/Nestle_Bundesklage_2024_PublicEye_DE.pdf (Accessed: 10/7/2024).
50. RFI, 'French rail company challenged over Nazi deportation in US rail bid' (5 February 2014), available at: https://www.rfi.fr/en/americas/20140205-french-rail-company-challenged-over-nazi-deportation-us-rail-bid (Access: 25/4/2023)
51. Roth, M., 'Sullivan Principles' available at https://philadelphiaencyclopedia.org/essays/sullivan-principles/ (Access: 25/4/2023)
52. Sartore, M.,'Remembering the Nestle Baby Formula Scandal that Rocked the 1970s', available at: https://www.ranker.com/list/nestle-baby-formula-boycott/melissa-sartore (Accessed: 12/7/2024).
53. The Coca-Cola Company and PepsiCo named top plastic polluters for the fourth year in a row' (25/10/2021) Available at https://www.greenpeace.org/southeastasia/press/44767/the-coca-cola-company-and-pepsico-named-top-plastic-polluters-for-the-fourth-year-in-a-row/ (Access: 25/4/2024)
54. The White House, 'What they are saying: Biden-Harris administration takes critical action to protect 100 Million people from PFAS pollution in drinking

water' (16 April 2024), available at: https://www.whitehouse.gov/ceq/news-updates/2024/04/16/what-they-are-saying-biden-harris-administration-takes-critical-action-to-protect-100-million-people-from-pfas-pollution-in-drinking-water/ (Accessed: 20/6/2024).

55. Udasin, S.,'Federal court finalizes $1.2B 'Forever Chemicals' settlement involving major firms' (8/2/2024), available at: https://thehill.com/policy/equilibrium-sustainability/4456932-federal-court-finalizes-1-2b-forever-chemicals-settlement-involving-major-firms/#:~:text=A%20federal%20district%20court%20judge,spinoff%20firms%20Chemours%20and%20Corteva (Accessed: 2/7/2024)

56. Unilever sells 1700 highly-polluting throwaway plastic sachets per second, Greenpeace reveals' (28/11/2023) available at: https://www.greenpeace.org.uk/take-action/unilever-stop-the-harm/#:~:text=Unilever%20is%20the%20biggest%20corporate,2%20billion%20items%20a%20year (Access: 25/4/2024)

57. WHO, 'Scope and impact of digital marketing strategies on promoting breast-milk substitutes' (2022) available at:

https://iris.who.int/bitstream/handle/10665/353604/9789240046085-eng.pdf?sequence=2 (Accessed: 10/7/2024)

58. https://en.milieudefensie.nl/our-impact (Access: 10/9/2024)

59. André Nollkaemper and Laura Burgers, 'A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case' (2020) available at:

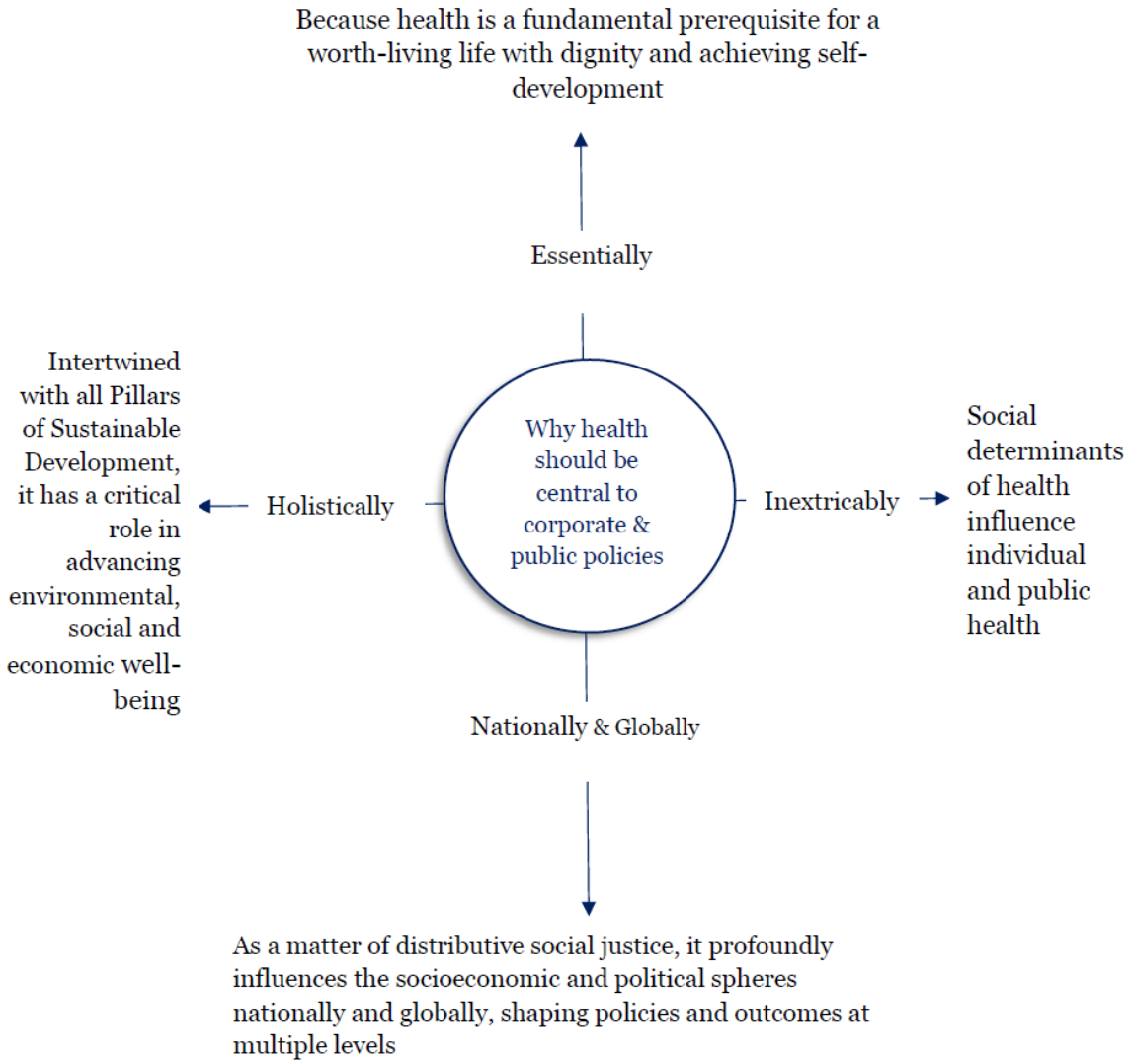
https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/ (Access: 10/9/2024)

60. Benoit Mayer, 'Milieudefensie v Shell: Do Oil Corporations Hold a Duty to Mitigate Climate Change?' (2021), available at: https://www.ejiltalk.org/milieudefensie-v-shell-do-oil-Corporations-hold-a-duty-to-mitigate-climate-change/ (Access: 10/9/2024)

APPENDIX
Tables and Figures per Chapter

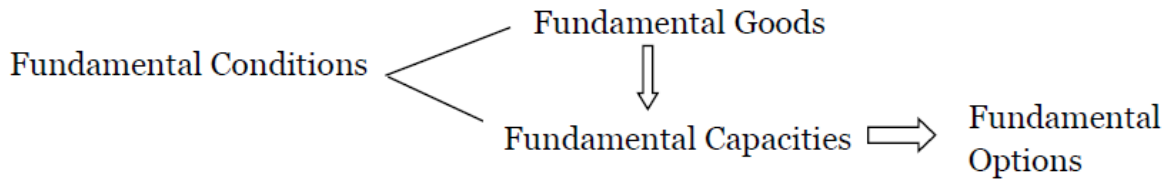
Chapter 1:

Figure 1. The Guiding Framework



Chapter 2:

Figure 2. Liao's Theory



Chapter 3:

Table 1. The most famous BHR scandals and their relation with the emergence of BHR

Year	BHR case	Summary	Relation with BHR framework	Case law
1984	Bhopal Disaster (India)	Chemical accident in which 45 tons of gas methyl isocyanate escaped from a plant owned by a subsidiary of the US-based Union Carbide Corporation	Preceded the 1990 Draft Code: Highlighted gaps in corporate accountability in developing countries.	(Civil and criminal cases in India) Union Carbide Corp. v Union of India (1989)
1990s	Shell (Nigeria)	Shell was accused of complicity in BHR abuses	During the drafting of the 1990 Draft Code: Underscoring the need for clearer regulation of TNCs	Kiobel v Royal Dutch Petroleum Co. (2013) US Supreme Court case on Alien Tort Statute (dismissed due to lack of jurisdiction)
1990s	Nike Sweatshops	Child labor, unfair wages and poor working conditions in Nike's supply chains	Raised concerns about supply chain responsibility, influenced discussions on corporate obligations under the 1990 Draft Code	Kasky v Nike (2002) California Supreme Court (addressed corporate free speech and labor rights)
1998	ExxonMobil (Indonesia)	Complicity in BHR abuses by security forces guarding its facilities	Occurred around the time discussions about stronger frameworks, when the 2003 Draft Norms were getting attention	Doe v ExxonMobil Corp. (ongoing since 2011 in US Courts under the Alien Tort Statute)
1999	Unocal (Myanmar)	Forced labor in the construction of a pipeline	Influenced the 2003 Draft Norms	Doe v Unocal (2000, 2005 settled with compensation to the victims)
2001	Trafigura Toxic Waste Dumping (Ivory Coast)	A ship chartered by Trafigura dumped toxic waste, causing widespread	Occurred shortly after the adoption of the 2003 Draft Norms	Trafigura Beheer BV v Stichting Union des Victimes des Déchets de Côte d'Ivoire (UK settlement in 2009) Public Prosecutor v Trafigura Beheer

		illness and deaths.		BV(Dutch Courts convicted Trafigura for illegal waste exportation)
2010	Apple and Foxconn (China)	Poor working conditions, physical and mental exhaustion of workers, suicides.	Triggered the discussion of the UNGPs.	N/A
2010	BP Deepwater Horizon Oil Spill (USA)	Explosion on BP's oil rig caused the largest marine oil spill in history, resulting in immeasurable environmental and human rights impacts.	Occurred just before the release of the UNGPs.	In re: Oil Spill by the Oil Rig Deepwater Horizon (2010) with BP paying over $ 20 billion in settlements.
1990s-2010s	Chevron (Ecuadorian Amazon)	Texaco's oil operations in the Amazon since the 1960s caused environmental damages. Despite ongoing litigation, Texaco refused to pay damages, sparking global debates on corporate accountability.	Pollution occurred in the 1960s, but litigation occurred after the UNGPs, scoring the limits of extraterritorial access to remedy.	Aguinda v Texaco Inc (1993); Chevron Corp. V Donziger (2011); Chevron was claiming fraud in the Ecuadorian proceedings, initiated multiple actions across jurisdictions, including the US.
2011	Royal Dutch Shell (Niger Delta)	Environmental degradation and human rights abuses due to oil spills and pollution in the Niger Delta. The Ogoni population suffered health and livelihood impacts.	Post-UNGPs, emphasizing the ongoing relevance of corporate responsibility with access to remedy.	Kiobel v Royal Dutch Petroleum Co; Wiwa v Royal Dutch Petroleum Co. (dismissed by the US Supreme Court due to lack of jurisdiction)
2013	Rana Plaza (Bangladesh)	Unsafe working conditions in global supply chains accompanied with a building collapse	Occurred after the introduction of the UNGPs, emphasizing the corporate responsibility of respecting human	Rahima Begum v Loblaw Companies Ltd (2015); Bangladesh High Court Division State v Sohel Rana (2017)

		resulted in the death of over 1.100 workers.	rights across supply chains.	
2015	Volkswagen Emissions (Globally)	VW was found to have deliberately cheated emissions tests, leading to severe environmental and health impacts.	Post-UNGPs, highlighting the need for corporate transparency and stronger regulations.	In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation. Total Settlement $ 17 Billion
2020 & 2024	Shell Climate Change (Netherlands)	Dutch Courts ordered Shell to cut its global carbon emissions by 45% by 2030, holding the company accountable for climate change.	Post-UNGPs, showing how the Tripartite Pillars can pave a new way in corporate responsibility.	Milieudefensie et al v Royal Dutch Shell (2021): Royal Dutch Shell was ordered to reduce its global emissions by 45% by 2030, in alignment with the Paris Climate Agreement. (2024): No scientific consensus on the obligation of specific reduction rates
2022-Present	'Forever Chemicals' (USA)	US Attorneys General have started lawsuits against 3M, Chevron, Chemours and other Corporations for the damage and risks they have caused to public health and the environment with the construction or disposal of PFAS chemicals.	Post-UNGPs and pending the Draft Treaty: Underscores the importance of judicial protection provided by public authorities	Pending lawsuits across several US Courts aim at restoring the environmental and public health harms occurred. (Extended analysis in Chapter 5)

Chapter 5.

Table 1. Overview of the differences among the cited case studies

	Nestlé Baby Formulae	'Forever Chemicals'	Royal Dutch Shell
Companies involved and main corporate purpose	Nestlé| nutrition	3M| technical safety products, office supplies, tools & medical equipment, cosmetics Chemours| innovator in titanium technology (Teflon etc) DuPont| fabrics, fibers, non-wovens	Royal Dutch Shell plc (the parent company of the Shell group) |energy
Alleged violations	-Adding unjustifiably excessive sugars on "Cerelac" and "Nido" baby products when sold in low and middle-income countries -Aggressive promotion and use of health professionals and influencers to amplify parental trust in the aforementioned products -Breach of the OECD Guidelines	-Conscious contamination of various territories with PFAS, resulting in severe environmental damage and potentially fatal disease for the local communities -Willingly concealing their awareness about the hazardous effects of PFAS both from public authorities and from local communities -Absence of restorative or preventive mechanisms for the mitigation of contamination and exposure	-Failure to take adequate actions for carbon emissions reduction -Contribution to climate change -Violation of the duty of care to protect human rights, including the right to life and well-being (indirectly mentioned health)
Legal procedures	Allegations upon the investigation of Public Eye and IBFAN. No lawsuits have been filed yet	One of the 30 pending lawsuits against the same Companies filed by Attorneys General in the United States	Milieudefensie et al. v. Royal Dutch Shell was heard in the District Court of the Hague

Reforms & Strategic litigation	-Nestlé has not admitted anything but declares it will improve its practices, learning from its past mistakes (the 1980s scandal with baby milk)	-Alongside the pending AGs' lawsuits there have been extrajudicial settlements for the imposition of fines (for clean-out phases and restorative damages for the victims) -Adoption and entry into force of approximately 500 Bills and Policies in more than 30 States banning the use of PFAS in various products -Strengthening of the monitoring of companies involved in PFAS manufacture and reporting obligation -Empowered civil engagement in public health initiatives, which have substantially contributed to the adoption of these legislative measures	-In 2021, the Court ruled that the company has a duty of care to reduce its carbon emissions and cut its global emissions by 45% by 2030 compared to 2019 levels. -The reduction applied not only to Shell's direct emissions, but also to its indirect emissions, which include emissions produced by consumers using Shell's products -In 2024, the Court of Appeals ruled that there is no specific consensus in the scientific community nor the legal frameworks imposing concrete reduction rates -Legal precedent: The first company to be held responsible for aligning its corporate policies with the Paris climate goals on a global scale
Relevance with BHR& CSR	Unethical marketing practices in developing countries, leading to health risks for infants	Toxic environmental pollution, raising questions about the long-term responsibility for public health & environmental harm	Legally accountable for its contribution to climate change, demanding corporate action to meet international environmental standards

Table 2. Sugar intake in Cerelac across different countries

Country	Product	Range in months	Serve	Added sugar	Added sugar/100g	Added sugar/serve
Brazil	Arroz & Aveia Integral	6	21	yes	18,5	3,9
Brazil	Multicereais	6	21	yes	20,2	4,2
Brazil	Milho	6	21	yes	15,8	3,3
Brazil	Arroz	6	21	yes	20,7	4,3
Brazil	Aveia Integral, Trigo e Leite	6	21	yes	20,0	4,2
Brazil	Aveia Integral e Ameixa	6	21	yes	20,9	4,4
Brazil	Seleção Natureza 5 Cereais	6	21	no	0,0	0,0
Brazil	Seleção Natureza Banana	6	21	no	0,0	0,0
Mexico	Cereal con Leche	12	30	yes	7,4	2,2
India	Wheat	6	25	yes	8,7	2,2
India	Ragi & Apple	8	25	yes	8,9	2,2
India	Multigrain & Fruits	12	50	yes	7,7	3,9
India	Wheat - Rice Mixed Veg	10	33	yes	9,4	3,1
India	Wheat Apple	6	25	yes	7,1	1,8
India	Wheat-Rice Mixed Fruit	10	33	yes	7,0	2,3
India	Wheat Apple Carrot	6	25	yes	9,1	2,3
India	Wheat Apple Cherry	8	25	yes	9,0	2,3
India	Khichdi with Vegetables	8	25	yes	1,3	0,3
India	5 Grains & Fruits	18	50	yes	8,6	4,3
India	Wheat Honey Dates	10	33	yes	10,8	3,6
India	Rice	6	25	yes	11,6	2,9
India	Rice Vegetables	8	25	yes	8,6	2,2
India	Wheat Orange	8	25	yes	8,1	2,0
India	5 Grains & Vegetables	18	50	yes	11,6	5,8
Malaysia	Beras - Rice	6	20	no	0,0	0,0
Malaysia	Rice & Mixed Vegetables	6	50	yes	/	/
Malaysia	Brown Rice & Milk	6	50	yes	/	/
Malaysia	Rice & Milk	6	50	yes	/	/
Malaysia	Rice & Mixed Fruits	6	50	yes	/	/
Malaysia	Rice & Chicken	8	50	yes	/	/
Malaysia	Wheat & Honey	6	50	yes	/	/
Malaysia	Wheat, Honey & Dates	8	50	yes	/	/
Indonesia	Susu Beras Merah	6	40	yes	12.5	5.0
Indonesia	Susu Pisang	6	40	yes	10.0	4.0
Indonesia	Kacang Hijau	6	40	yes	12,5	5,0
Indonesia	Apel, Jeruk & Pisang	6	40	yes	15,0	6,0
Indonesia	Bubur Tim Sayur	8	25	yes	4,0	1,0
Indonesia	Bubur Tim Ayam Wortel	8	25	yes	4,0	1,0
Indonesia	Bubur Ayam Bawang	6	40	yes	7,5	3,0

Indonesia	Bubur Tim Daging Sayur	8	25	yes	4,0	1,0
Indonesia	Bubur Tim Ayam Bayam	6	40	yes	10,0	4,0
Indonesia	Bubur Beras Merah Wortel	6	40	yes	12,5	5,0
Indonesia	Bubu Bereas Merah Ayam	6	40	yes	12,5	5,0
Indonesia	Bubur Sereal Susu Wortel	6	40	yes	10,0	4,0
Indonesia	Bubur Sereal Beras Merah	6	40	yes	12,5	5,0
Nigeria	Maize	6	50	yes	13,6	6,8
Senegal	Biscuty with Milk	6	50	yes	11,8	5,9
Ethiopia	Wheat	6	50	yes	10,4	5,2
Philippines	Mixed Fruits & Soya	6	50	yes	14,6	7,3
Philippines	Rice & Soya	6	50	yes	11,7	5,9
Philippines	Mixed Vegetables & Soya	6	50	yes	/	/
Philippines	Wheat & Milk	6	50	yes	/	/
Philippines	Rice & Soya	6	50	yes	/	/
Philippines	Wheat Banana & Milk	6	50	no	0,0	0,0
Philippines	Rice & Chicken	8	40	no	0,0	0,0
Philippines	Rice & Veggies	8	40	no	0,0	0,0
South Africa	Regular Wheat	6-12	50	yes	8,0	4,0
South Africa	Mixed Fruit	9-12	50	yes	8,0	4,0
South Africa	Biscuit Flavour	7-12	50	yes	12,0	6,0
South Africa	Rice	6	50	yes	8,0	4,0
South Africa	Banana	6	50	yes	8,0	4,0
South Africa	Maize	6	50	yes	8,0	4,0
South Africa	Honey	7	50	yes	8,0	4,0
South Africa	Strawberry flavour	7	50	yes	8,0	4,0
South Africa	Tropical fruit	9	50	yes	8,0	4,0
Bangladesh	Wheat with milk	6-24	25	yes	6,2	1,6
Bangladesh	Rice with milk	6-24	25	yes	12,2	3,1
Bangladesh	Wheat & 3 Fruits	6-24	25	yes	12,0	3,0
Bangladesh	Wheat, Apple & Cherry	8-24	25	yes	8,0	2,0

Bangladesh	Wheat & 4 Fruits	10-24	33	yes	8,6	2,8
Bangladesh	Multi Grain, 5 Vegetable	18-36	50	yes	11,0	5,5
Bangladesh	5 Fruits & Multigrain	18-24	50	yes	11,0	5,5
Thailand	Wheat with Banana and Milk	6	50	yes	5,0	2,5
Thailand	Wheat with milk	6	50	yes	12,0	6,0
Thailand	Soy and mixed fruit	6	50	yes	12,0	6,0

Table 3. Sugar distribution of NIDO products

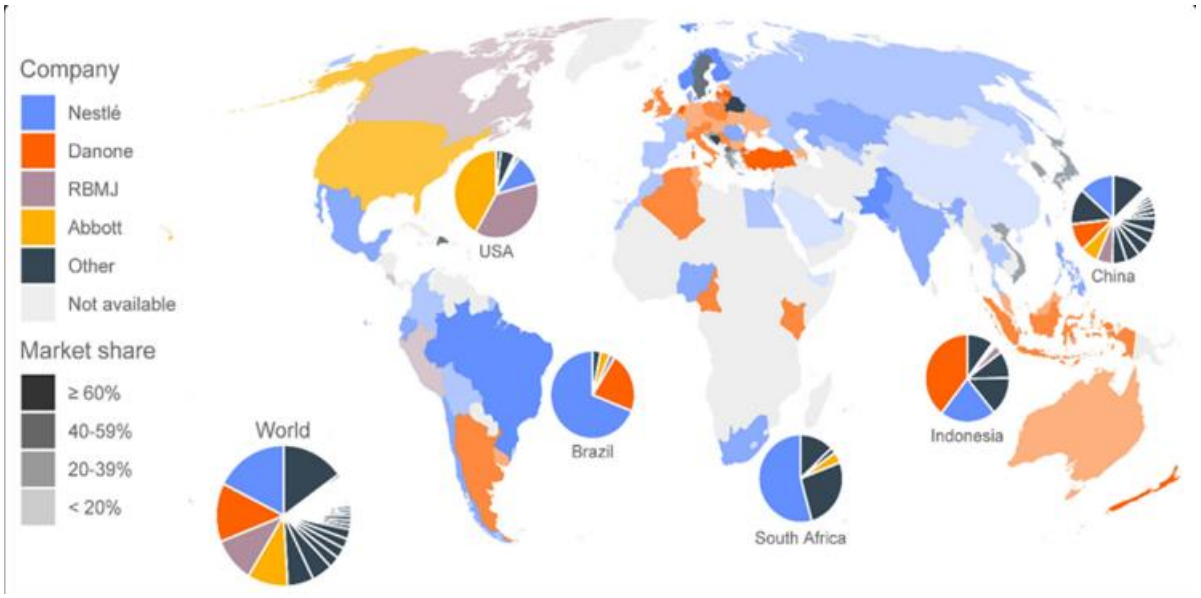
Country	Product	Range (in years)	Serve	Added sugar	Added sugar/100g	Added sugar/serve
Brazil	Ninho Fases 1+	1		no	0,0	0,0
Mexico	Kinder 1+	1	34	no	0,0	0,0
Mexico	Excella GOLD	1	36	yes	5,1	1,8
Mexico	Kinder 1+ Deslactazado	1	36	no	0,0	0,0
Indonesia	Kinder 1+ Madu	1	35	yes	2,0	0,7
Indonesia	Kinder 1+ Rasa Vanila	1	35	yes	1,8	0,6
Nigeria	Kinder 1+	1	36	yes	1,8	0,6
Senegal	Kinder 1+	1	36	yes	1,8	0,6
Philippines	Nido Jr.	1	36	no	0,0	0,0
South Africa	Powdered Drink for Children	1	36	yes	2,4	0,9
Chile	Nido 1+ Excella Gold	1	29	no	0,0	0,0
Chile	Nido Etapa 1+	1	29	yes	/	/
Chile	Nido Etapa 1+ sin lactosa	1	27	yes	/	/
Argentina	Nido 1+	1	29	no	0,0	0,0
Argentina	Nido Cero lactosa	1	26	no	0,0	0,0
Pakistan	Nido 1+	1	36	no	0,0	0,0
Costa Rica	Nido 1+	1	36	yes	4,3	1,6
Costa Rica	Nido 1+ deslactazado	1	36	yes	/	/
Panama	Nido 1+	1	36	yes	14,6	5,3
Panama	Nido 1+ deslactazado	1	36	yes	/	/
Nicaragua	Nido 1+	1	36	yes	13,0	4,7
Nicaragua	Nido 1+ deslactazado	1	36	yes	/	/
Guatemala	Nido 1+	1	36	yes	/	/
Guatemala	Nido 1+ deslactazado	1	36	yes	/	/
Honduras	Nido 1+	1	36	yes	/	/
Honduras	Nido 1+ deslactazado	1	36	yes	/	/
El Salvador	Nido 1+	1	36	yes	/	/
El Salvador	Nido 1+ deslactazado	1	36	yes	/	/
Bangladesh	Nido 1+	1	31,5	yes	/	/

[Data retrieved from the complaint of Public Eye and IBFAN]

Table 4. Legal status of the 1981 Code in countries where Cerelac and Nido contain high amounts of sugar compared to Switzerland

Country	Recent legal measure	Alignment with the 1981 Code	Independent, transparent, public monitoring compliance	Sanctions for breaches
Mexico	2012	Moderate	no	no
Panama	2012	Substantial	no	yes
Philippines	2012	Substantial	yes	yes
Thailand	2017	Moderate	yes	yes
Indonesia	2013	Moderate	no	yes
India	2003	Substantial	no	yes
Switzerland	2020	Partial inclusion	no	no

Figure 1. Transnational infants' nutrition & Nestlé's global market shares



[Source: Baker, Riss, Kang et al., 2021]

Figure 2. Introduction of PFAS measures in the US (www.saferstates.org)