

An Empirical Study on the Boundary of Corporate Human Rights Responsibility from the Perspective of Multi-level Governance

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I. State of the Art

The ever-increasing debate on the link between business and human rights has become one of the prominent changes in the realm of human rights since the outset of the 21st century (Choudhury 2017). However, there is currently no international legally binding treaty on business and human rights, which makes it difficult to make up for the governance gap of business human rights violations (Clapham 2017). Since the launch of business human rights treaty process in 2014 by the UN Human Rights Council, the consensus on the boundary of corporate human rights responsibility which is viewed as one of the crucial questions in business human rights treaty process is far away from achieving (Cassell and Ramasastry 2016, Backer 2017). Some authors argued that corporations shall be responsible for all human rights (Jean and Akandji 2007, Cheng 2015); whilst others believe business corporations should not be accountable for all human rights (Backer 2017, Aftab and Mocle 2019). On this basis, other authors indicate that a clear scope of corporate human rights responsibility contributes to (1) the advancement and implementation of corporate human rights responsibility (Li 2018); (2) the justiciability of business corporations' human rights violations (Bu 2010, Aftab and Mocle 2019); and (3) the acceptance and fulfillment of corporate human rights responsibility (Amao 2011, Esdile 2014). Therefore, it is necessary to delimit the boundary of corporate human rights responsibility.

While endless theoretical discussions fail to reach a consensus on the boundary of corporate human rights responsibility, in recent years, a growing number of international law and human rights law scholars have realized the importance of using empirical research to support academic debates. For example, Deplano (2016) used quantitative research to code and analyze 2,195 resolutions adopted by the UN Security Council from 1946 to 2014 to examine the relationship between UN Security Council and international law; McCorquodale (2017) applied an empirical approach including the quantitative analysis based on the collection of international and regional legal instruments, national laws and jurisprudence to consider to what extent companies are currently undertaking human rights due diligence. Others like Aceves

(2018) used empirical analysis to measure the outcome of human rights movement and called for involving empirical methods into human rights research. But to date little empirical knowledge exists regarding the boundary of corporate human rights responsibility. Considering the ultimate aim of the international legally binding treaty on business and human rights is to align business practices with legal principles embodied in national and international laws (Bu 2010), empirical research should be used to support existing normative analysis.

Ruggie (2014) based on lessons from the implementation of UN Guiding Principles, has upheld the multi-level governance as a possible path to fulfill the global governance on business and human rights. Norms and practices from different stakeholders, public or private, institutional or individual, are possible to be transferred into international law by the form of customary international law (Anyalem 2010), no any subject related can take decisions unilaterally, therefore the governance on business and human rights is a multi-level pattern, each of the stakeholders is an actor with rational thinking and decision-making skills and has influence on the final decision (Shackelford 2014). Multi-level governance theory requires academic attention to the interactions among stakeholders from multiple levels in the context of governance, and therefore it forms the methodological basis of this study.

Abovementioned literatures inspire this research to combine multi-level governance theory and empirical research to delimit boundary of corporate human rights responsibility, and realize the international rule of law in the context of business and human rights. Accordingly, the focal points of this work involve the global dimension (i.e. the UN and its family legal frameworks, institutions, policies and practices); the national contexts (national legislation, policies and National Action Plans); and the business corporations (human rights commitment, policies and report of corporate social responsibility).

II. Research Objectives

This research aims to employ a perspective of multi-level governance theory to combine empirical research (both qualitative and quantitative research) and a multi-dimension theoretical discussion (from international dimension, national level and the perspective of corporations) to make a concrete list of corporate human rights responsibility. And further to consider a standard to identify potential human rights which should be covered into that list in the future. Thus, make the boundary of corporate human rights responsibility concrete, identifiable, feasible and dynamic.

III. Research Questions

Q1: In present practices, where are the boundaries of corporate human rights responsibility in the views of the UN, selected States, and selected business corporations respectively? And does the boundary of corporate human rights responsibility exist?

Q2: Which human rights should be covered in the list of corporate human rights responsibility?

Q3: What are the rationales for the UN, selected national governments and selected businesses choose such boundaries respectively?

Q4: What kind of standards should be employed to delimit the scope of corporate human rights responsibility?

IV. Research Methods

According to the multi-level governance theory, in the realm of business and human rights, multi-level actors mainly include international organizations i.e. the UN, national governments and business corporations, inasmuch, the empirical research and theoretical analysis of this study will encompass the above three types of actors.

a) Main research methods used

(1) Literature method: by consulting all kinds of existing literature related to the research questions, select useful information on the basis of them, summarize the point of view, and make full preparations for the writing of the paper.

(2) Normative research method: by making a normative analysis of the relevant international conventions, soft laws, rules, domestic constitutions and laws this paper aims to map the normative landscape of business and human rights to lay the groundwork for further research. Accordingly, some methods used in international legal argumentation including Positivism, Policy Oriented Jurisprudence, Third World Approaches to International Law etc. will be adopted to gain a holistic understanding.

(3) Comparative research method: this research will employ the comparative research method especially in national level to consider the rationales of national legislation, policies as well as National Action Plans.

(4) Social science research methods: legal issues are not isolated, and the formulation and implementation of laws take place in the organism of society. Human rights itself is inclusive in nature, some fundamental theories from law, politics, economics and sociology will be adopted in this research to construct a multi-dimension theoretical framework.

b) Empirical research

(1) Sources of data

Given the requirement for sample size, this research will neither cover every

international organization, all national governments nor all business corporations. At international level this research will concentrate on the UN and its family. When determining the sample country, we need to take economic development level, political system, legal tradition and other factors of into account. When determining the sample companies, we need to consider various types of companies, such as State-owned companies, multinational corporations, startups, etc., with a sample size of about 50 to 100, which will be selected from the typical companies in the above sample countries.

Based on the *International Bill of Human Rights* and *ILO Declaration on Fundamental Principles and Rights at Work*, this research makes a sample list of human rights, and then collect provisions regarding corporate human rights responsibility from other international instruments, national legislation, human rights commitment from corporations.

(2) Qualitative analysis

Based on grounded theory, the main goal of this stage is to dig into the whole text object. Firstly, the different types of human rights involved in the text material are collated. Secondly, by sorting out the boundaries of corporate human rights responsibility established by multi-level actors, all the human rights involved are listed in descending order according to their frequency of occurrence, extracted from the list of corporate human rights responsibility approved by the above three types of actors, and finally a complete list of corporate human rights responsibility is determined.

(3) Quantitative analysis

Through different theoretical analysis and discussion of the reasons behind the decisions of different actors, this research aims to explain the relevant factors that affect the boundaries of corporations' human rights responsibilities.

V. Purpose and Expectations of the Research

This research aims to examine whether the boundary of corporate human rights responsibility exist. If it does, through theoretical analysis and empirical research to make a list of corporate human rights responsibility as well as a standard to identify potential human rights which should be covered into this list in the future. If it does not, through the grounded theory to discuss the rationales behind multi-level stakeholders' decisions regarding corporate human rights responsibility.

The completion of this work will contribute to the refinement of the theory of State responsibility in human rights law and the establishment of a border theory of corporate human rights responsibility; accumulation of interdisciplinary research experience and empirical research on the topic of business and human rights; incorporation of human rights in a cost-saving and benefit-maximizing manner into

corporations' daily operation; the justiciability and accountability of human rights violations conducted by business corporations.

This project will also lead to the following outcomes: (1) some academic papers regarding the best practices of corporate human rights responsibility in selected countries such as Italy and China and related research achievements will be published; (2) the experience of interdisciplinary research paradigm and empirical research with respect to business and human rights will be introduced to Chinese academia; (3) the promotion of academic communication and cooperation between the University of Urbino and Lanzhou University would be intensified.

VI. Timeframe

Phase Objective	1 st Year		2 nd Year				3 rd Year					
	Quarter											
	3	4	1	2	3	4	1	2	3	4	1	2
Phase I: Project Development												
1.Read Literature	█	█	█	█	█	█	█	█				
2.Enhance Empirical Research Ability	█	█	█	█	█							
3.Submit Research Proposal				█								
4.Exchange Study					█	█						
Phase II: Project Conduct												
5.Data Acquisition			█	█								
6.Draft Thesis						█	█	█				
7.Thesis Revision									█	█		
8.International Conference			█						█		█	
9.Write and Publish Papers			█	█				█	█	█		
Phase III: Completion												
10.Submit & Defense Thesis											█	█
11.Graduation												█

VII. Bibliography

- [1]. Andrew Clapham. (2017). Human Rights Obligations for Non-State Actors in Fannie Lafontaine and Francois Larocque (Eds.), *Doing Peace the Rights Way: Essays in International Law and Relations in Honour of Louise Arbour*. Cambridge: Intersentia. <https://ssrn.com/abstract=2641390>.
- [2]. Aceves, W.J. (2018). Cost-benefit Analysis and Human Rights. *St. John's Law Review*, 92(3), 431-452.
- [3]. Backer, L. (2017). *Shaping Global Law for Business Enterprises: Framing*

- Principles and the Promise of Comprehensive Treaty on Business and Human Rights. *North Carolina Journal of International Law*, 42(2), 417-504.
- [4]. Backer, L. (2017). The Human Rights Obligations of State-owned Enterprises: Emerging Conceptual Structures and Principles in National and International Law and Policy. *Vanderbilt Journal of Transnational Law*, 50(4), 827-888.
- [5]. Bilchitz, D. (2016). The necessity for business and human rights treaty. *Business and Human Rights Journal*, 1(2).
- [6]. Blackwell, S.; Vander Meulen, N. (2016). Two Roads Converged: The Mutual Complementarity of Binding Business and Human Rights Treaty and National Action Plans on Business and Human Rights. *Notre Dame Journal of International Comparative Law*, 6, 51-76.
- [7]. Cassell, D.; and Ramasastry, A. (2016). White Paper: Options for a treaty on business and human rights. *Notre Dame Journal of International Comparative Law*, 6.
- [8]. Choudhury, B. (2017). Spinning Straw into Gold: Incorporating the Business and Human Rights Agenda into International Investment Agreements. *University of Pennsylvania Journal of International Law*, 38(2), 425-482.
- [9]. Chris Esdile. (2014). A Step Forward? A Skeptical View on the Need for A New Business and Human Rights Treaty. *Open Democracy*. Available at: <https://www.opendemocracy.net/en/openglobalrights-openpage-blog/step-forward-sceptical-view-on-need-for-new-business-and-human-r/>
- [10]. Deva, S., & Bilchitz, D. (Eds.). (2013). *Human rights obligations of business: beyond the corporate responsibility to respect*. Cambridge University Press.
- [11]. De Schutter, O. (2016). Towards a new treaty on business and human rights. *Business and Human Rights Journal*, 1(1), 41-67.
- [12]. Edward Anderson. (2017). *Research Methods in Human Rights: A Handbook*. Edward Elgar Publishing.
- [13]. Eric Posner. (2014). The case against human rights. *The Guardian*, 4.
- [14]. Erik Hysing. (2019). *Responsibilization: The Case of Road Safety Governance*. *Regulation & Governance*. doi:10.1111/rego.12288

- [15]. Florian Wettstein. (2015). Normativity, ethics, and the UN guiding principles on business and human rights: A critical assessment. *Journal of Human Rights*, 14(2), 162-182.
- [16]. G.Skinner, R.McCorquodale. (2013). *The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business*. Available at:
<https://www.icar.ngo/publications/2017/1/4/the-third-pillar-access-to-judicial-remedies-for-human-rights-violations-by-transnational-business>
- [17]. Hans Peter Schmitz. (2014). Non-State Actors in Human Rights Promotion. In Anja Mihr and Mark Gibney, *The SAGE Handbook of Human Rights* (pp.352-372), SAGE.
- [18]. Hess, D. (2017). Business, Corruption, and Human Rights: Towards a New Responsibility for Corporations to Combat Corruption. *Wisconsin Law Review*, 2017(4), 641-694.
- [19]. Human Rights Council (HRC) (2014). *Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights*,
<https://www.ihrb.org/pdf/G1408252.pdf>.
- [20]. Jahn K. Hakes & W. Kip Viscusi. (2007). Automobile seatbelt usage and the value of statistical life. *Southern Economic Journal*, 659-676.
- [21]. Jean Francois & Akandji Combe. (2007). *Human Rights Handbooks*, No.7, Positive obligations under the European Convention on Human Rights.
- [22]. Jeffrey L. Duoff, Joel P. Trachtman. (1999). Economic Analysis of International Law. *Yale Journal of International Law*, 24(2).
- [23]. Karin Buhmann. (2015). Business and human rights: Understanding the UN guiding principles from the perspective of transnational business governance interactions. *Transnational Legal Theory*, 6(2), 399-434.
- [24]. Larry Cata Backer. (2015). Moving forward the UN guiding principles for business and human rights: Between enterprise social norm, state domestic legal orders, and the treaty law that might bind them all. *Fordham Int'l LJ*, 38,

457.

- [25]. Mary Ellen O'Connell. (1999). New International Legal Process. *The American Journal of International Law*, 93(2), 334-351. doi:10.2307/2997993
- [26]. McCorquodale, R.; Smit, L.; Neely, S.; Brooks, R. (2017). Human rights due diligence in law and practice: Good practices and challenges for business enterprises. *Business and Human Rights Journal*, 2(2).
- [27]. Michael A. Livermore and Richard L. Revesz. (2011). Retaking Rationality Two Years Later. *Hous. L. REv.*, 48, 1.
- [28]. Michael A. Santoro. (2015). Business and human rights in historical perspective. *Journal of Human Rights*, 14(2), 155-161.
- [29]. Michael D. McGinnis. (2011). An introduction to IAD and the language of the Ostrom workshop: a simple guide to a complex framework. *Policy Studies Journal*, 39(1), 169-183.
- [30]. Ming Li. (2014). What is Called International Law Study? *Chinese Review of International Law*. 99-107.
- [31]. Office of the United Nations High Commissioner for Human Rights (OHCHR) (January 2000). *Business and Human Rights: A Progress Report*, <https://www.ohchr.org/Documents/Publications/BusinessHRen.pdf>.
- [32]. Olufemi Amao. (2011). Human rights, ethics and international business: The case of Nigeria. In Aurora Voiculescu and Helen Yanacopulos and Zed Books, *The Business of Human Rights: An Evolving Agenda for Corporate Responsibility*. (pp.188-208).
- [33]. Qian Cheng. (2015). Corporate Environmental Responsibility from a Human Rights Perspective — and The Guiding Significance of the Framework of "Business and Human Rights". *Journal of China University of Geosciences (Social Sciences Edition)*, 15(5). 2-9.
- [34]. Ramasastry, A. (2015). Corporate social responsibility versus business and human rights: Bridging the gap between responsibility and accountability. *Journal of Human Rights*, 14(2), 237-259.
- [35]. Rosalyn Higgins. (1995). Problems and process: international law and how we

use it. Oxford University Press.

- [36]. Rossana Deplano. (2016). *The Strategic Use of International Law by the United Nations Security Council: An Empirical Study*. Springer.
- [37]. Ruggie, J. G. (2014). Global governance and new governance theory: Lessons from business and human rights. *Global Governance*, 20, 5.
- [38]. Ruggie, J. G., & Nelson, T. (2015). *Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementations Challenges*. *Brown J. World Aff.*, 22, 99.
- [39]. Shackelford, S. J. (2017). *Human Rights and Cybersecurity Due Diligence: Comparative Study*. *University of Michigan Journal of Law Reform*, 50(4), 859-886.
- [40]. Sha-sha Li. (2018). *Analysis of the boundaries of enterprise human rights responsibility*, *North Legal Study*. Vol.69,No.12.
- [41]. Stephen Holmes, Cass R. Sunstein. (1999). *The cost of rights: why liberty depends on taxes*. WW Norton & Company.
- [42]. Surya Deva, (2012). *Regulating corporate human rights violations: humanizing business*. Routledge.
- [43]. Varun Gauri. (2004). *Social rights and economics: Claims to health care and education in developing countries*. The World Bank.
- [44]. Wright, R. (2016). *Negotiating the Terms of Corporate Human Rights Liability Under Federal Law*. *San Diego Law Review*, 53(3), 579-608.
- [45]. Xiaohui Liang. (2018). *Business and Human Rights: A Study on the Interaction between Policy Concept Shifts and Business Practices in China*. *Chinese Review of International Law*, 6. 1-18.
- [46]. Yousuf Aftab & Audrey Mocle, (2019). *Business and Human Rights as Law: Towards Justiciability of Rights, Involvement, and Remedy*. LexisNexis.