

Tampereen yliopisto  
Politiikan tutkimuksen laitos

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**HUMAN RIGHTS AND GLOBAL CIVIL REGULATION – BUILDING ON EMBEDDED LIBERALISM**

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<b>1.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>2.</b>	<b>THEORETICAL FRAMEWORK: EMBEDDED LIBERALISM.....</b>	<b>12</b>
2.1	BACKGROUND FOR EMBEDDED LIBERALISM .....	14
2.2	EMBEDDED LIBERALISM AND INTERNATIONAL ECONOMY.....	16
2.3	EMBEDDED LIBERALISM AND GLOBALIZATION .....	18
2.3.1	<i>The backlash of globalization.....</i>	<i>19</i>
2.3.2	<i>Global public domain.....</i>	<i>20</i>
2.3.3	<i>Global economic sphere.....</i>	<i>22</i>
2.4	HUMAN RIGHTS MEET CORPORATE SOCIAL RESPONSIBILITY .....	23
2.5	CIVIL REGULATION FOR GLOBAL CORPORATE CONDUCT.....	25
2.5.1	<i>Business side for Civil Regulation.....</i>	<i>27</i>
2.5.2	<i>The Effectiveness of Civil Regulation.....</i>	<i>28</i>
2.5.3	<i>The UN’s role in Civil Regulation.....</i>	<i>29</i>
2.6	ENTRY OF EMBEDDED LIBERALISM?.....	31
<b>3.</b>	<b>NARRATIVES AS A METHODOLOGICAL APPROACH.....</b>	<b>32</b>
3.1	RESEARCHER POSITIONING; PRAGMATISM .....	36
3.2	RESEARCHER POSITIONING; SELECTED NARRATIVE ATTRIBUTES USED IN THE RESEARCH.....	38
3.2.1	<i>Temporality and event sequencing.....</i>	<i>40</i>
3.2.2	<i>Intertextuality and roles .....</i>	<i>41</i>
3.2.3	<i>Locus-narratives in the global public domain.....</i>	<i>43</i>
<b>4.</b>	<b>HUMAN RIGHTS AND BUSINESS – AS SEEN BY THE SRSG .....</b>	<b>45</b>
4.1	EMBEDDED LIBERALISM THROUGH THE MATERIAL.....	48
4.2	TEMPORALITY AND EVENT SEQUENCING.....	52
4.3	CONTEXT SETTING .....	57
4.3.1	<i>Intertextuality.....</i>	<i>58</i>
4.3.2	<i>Roles.....</i>	<i>64</i>
4.4	LOCUS.....	70
4.5	PRINCIPLED PRAGMATISM .....	75
4.6	WAY FORWARD.....	76
<b>5.</b>	<b>CONCLUSIONS .....</b>	<b>79</b>
	<b>BIBLIOGRAPHY .....</b>	<b>85</b>

## 1. INTRODUCTION

Social sciences are disputable, especially political science. This derives from the fact that in social science there are rarely, if ever, research results that can be taken as objective truths. In addition, researches in the field of social science do not always see the world through positivistically produced results, which can be presented in a quantitative form. Naturally, social science also produces quantitative researches but there is always at least some amount of interpretation in the results of researches. Also, it can be questioned exactly what certain quantitative results signify, and even more importantly; why something is interpreted as it is. For instance, it can be questioned why it is discussed more which is the percentage of a state's budget that is given to aid developing countries than why we are in a state that aid needs to be given in the first place. This means that social science has a huge potential to impugn matters that may be taken as granted by the vast majority.

Additionally, social science can take a critical view on settings that are supporting current social structures, which are building the social environments we live in, and therefore bring into broader knowledge the background of certain social matters. It can be said without too much exaggeration that the power of social science is in its capability to change the world by providing research that has the potential to change peoples' minds and behavior. I am hoping that a similar kind of approach can be applied to this particular research but, nonetheless, rather than giving straightforward answers this research strives to give a new and fresh outlook to an issue that has been topical for some decades already; the relation of human rights and business.

We can start by trying to define the current scope of the concept of human rights (including human rights protection), since this particular research balances between traditional and more topical human rights approaches. The first problem is that human rights per se are difficult to define exhaustively. The whole human rights concept is a highly emotional one. Generally, it is considered to be a human obligation to protect human rights. That is, there rarely is anyone that denies the value and virtues that are connected to human rights protection. Hence, human rights protection is considered to be a universal value. This is something that seems to be supported widely and that has not changed over time. However, since the human rights concept can be seen as a scalable one, it is the scope and actual content of human rights where we run into problems. Also, there are different opinions on what kind of practical measures should be taken to protect human rights and when and by whom these measures should be taken.

The second problem is that the international arena consists of various actors and if some fifty years ago states were the primary actors, those have had to give in for a set of different

civil society organizations (CSOs<sup>1</sup>) and, foremost, different sized enterprises. This is connected to the difficulty to define what human rights actually consist of. As it is known, the Universal Declaration of Human Rights is the most well-known human rights declaration in the Western world. Most certainly there are some aspects that are not covered by the Universal Declaration of Human Rights, or even many other declarations by the United Nations (UN) in the field of human rights. Additionally, the international arena has changed considerably after the Universal Declaration of Human Rights was introduced; hence, the Universal Declaration of Human Rights is still valid but a number of other guidelines have emerged to better cover the field of human rights protection and perhaps also accountability.

So, there is an abundance of different declarations, agreements, and codes of behavior when it comes to human rights. How is this research then validating its place? States no longer possess the similar kind of power and status in world politics as they did some decades ago but large, global enterprises have gained more and more power. Naturally other, different CSOs have also emerged but it is especially business enterprises that have increased their power during recent decades. It can be that political science has not really noticed or at least grasped the role of global business – or transnational corporations in the international arena. Therefore, there is a need to take a closer look at business behavior in the global arena and how it relates to current human right codifications. As we progress in this research, it becomes more and more evident that business is a huge actor also in the global political arena, though it likes to stay in the economical settings. Political science must more powerfully grasp the changing political environment in a global scale and notice new actors, be those from the business side or from civil society, in order to shape social world in a desired way and in a global scale.

As a conclusion, it is clear that effective human rights protection in the modern world cannot be only defined by one set of declarations for different purposes but needs more coherent, practical and detailed guidelines and requirements for various actors in the international arena. Additionally, the human rights and business nexus must be defined in a more detailed way; hence, the role of business enterprises in human rights protection must be defined more clearly. This means that the whole concept of human rights and its protection needs to develop constantly in order to keep up with the changing environment.

I will present the background and targets of this research in the next chapters. Since it is expected that different parties (enterprises, CSOs, governments) have different opinions on the topic of human rights and business, this research aims to find out what is being said by the mandate of the UN; what is the current way to understand and organize the field of business and human rights. The very latest development in the area of human rights and

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<sup>1</sup> Civil society organizations include not only nongovernmental organizations (NGOs) but also transnational social movements, coalitions and activist campaigns. Ruggie 2008, 241.

business – that was initiated by the UN – is a research conducted by John Ruggie. The main official reports of this research will be used as primary material in my research. The research mandated by the UN and conducted by John Ruggie is very interesting for many reasons; first of all the research was an extremely extensive one and lasted from 2005 till 2011. Secondly, the research was conducted in cooperation with several stakeholders and, thirdly, John Ruggie is a widely recognized political scientist, who has made significant contributions in the field of international relations, focusing especially on the impact of globalization and global rule-making. Especially his theory of embedded liberalism that combines social expectations, norms and economic ideas to an institutional framework seems an applicable theory to be used in the field of human rights. To be more precise, the theory was selected due to its “humanity” – combining social expectations, norms and economic ideas – and as an attempt to promote it as a challenger for the prevailing neoliberalism as the theory to be applied also in my research. This means that both the primary material and the theory used in my research have been produced by John Ruggie.

However, the primary material has been created by him in a role he was nominated in in 2005; the Special Representative of Secretary General (SRSG) on the issue of human rights and transnational corporations and other business enterprises. This is noted also in my research; whenever referred to the primary material, John Ruggie will be referred to as the SRSG according to the role in which he has created the material. When referring to his statements relating to embedded liberalism or other arguments in the field of social science, John Ruggie will be referred to as a private person. The methodology applied in my research is based on narratives and some selected narrative attributes. The usage of narratives will be explained in detail later. However, narrative methodology was selected due to its philosophical mindset, seen as one way to understand and organize the world.

Therefore, to put it more simply; **my research tries to clarify what can be found from the research conducted by the SRSG by using narrative methodology and whether it is based on the theory of embedded liberalism.** If this target is elaborated a bit, we can see that my research attempts to see whether the research conducted by the SRSG is underpinned by his theory of embedded liberalism, and what exactly is being said by the research when it has been interpreted by a few selected narrative attributes, i.e. how it understands and organizes the world. Furthermore, there is an expectation that the research conducted by the SRSG would provide practical guidance, which, in turn, would be targeted at progressive improvement of human rights in relation to business. As the research conducted by the SRSG was initiated by the UN, it can be stated that it also reflects the views of the UN. As stated, this is noted in my research by noting John Ruggie as the SRSG when referring to his research conducted in that role, but also by setting the UN into context as an actor in the field of civil regulation. However, it is not the target of my research to analyze the position of the UN in the field of human rights and business or civil regulation in general. Nonetheless, it is important to note when John Ruggie is being referred to as a political scientist and when he is being referred to in the role of the SRSG.

The following chapters will give an overview of my research; what exactly is being researched and how this research was conducted. As already mentioned, the primary material of my research is the main official reports of the research on the issue of human rights and transnational corporations. These reports were produced by the SRSR during the mandate of the UN (2006-2011). This primary material will be examined based on the selected theory and methodology, which are both presented in detail in the coming chapters. The main question is to note whether the presented theory can be seen to exist in the primary material and what kind of methodological findings can be discovered from the primary material. Consequently, the attempt is to find out what exactly the primary material has to say in the light of the selected theory and methodology and how it fits into the existing context of human rights and business. **The theory of embedded liberalism can be simplified as a joint institutional framework, which consists of state power and interests, prevailing social expectations, norms and economic ideas.** In a way, this theory gives civil society more power to take a stand, especially by producing and developing social expectations and norms. Embedded liberalism is a balance or a compromise between markets and the authority and therefore would prove as a solution for business enterprises' global regulation. There is also an ethical dimension in the theory.

Nonetheless, since the theory was introduced already in 1982, it is clear that it must be re-evaluated and assessed to see if it is still useful. Today, global markets have surpassed states when it comes to power relations. However, also different methods of global regulation are being developed. Indeed, Ruggie states that civil society development and engagement to the corporate sector has produced new global public domain. This new domain would ideally be ruled by cosmopolitan democracy, by equal participation from global citizens.<sup>2</sup> These developments to the original theory of embedded liberalism are actually clarifying the current environment and, on the other hand, the target state for managing that. Naturally, cosmopolitan democracy may be at this point in the distant future but, nevertheless, embedded liberalism can be seen as an institutional framework to be applied in the global public domain and to be used as a building block in order to achieve cosmopolitan democracy for global governance, or at least global regulation to start with. Although the concepts of human rights and civil regulation could be clarified also by the selected methodology for context setting, I have chosen to link these concepts to the selected theory framework to set the theory (alongside the primary material) in the context. This is therefore a point in which the selected methodology and theory overlap.

Even today, the Universal Declaration of Human Rights and its Covenants of Civil and Political Rights and Economic, Social and Cultural Rights are probably the most wide-spread human rights concepts. However, different agencies and business enterprises have created their own declarations and regulations to better suit their purposes, but also to better reflect

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<sup>2</sup> Ruggie 2008, 252–253.

the changed role of business enterprises. Therefore, the concept of Corporate Social Responsibility (CSR) is very much linked to the concept of human rights. Indeed, it can be said that CSR is used as a term for the role of enterprises in human rights protection. However, one needs to be careful here, since CSR has a connotation of perhaps being something “lighter” than human rights protection.

Civil regulation has developed and gained more legitimization as a controlling measure for transnational corporations and global supply networks. Because of the nature of global economy, civil regulation also needs to operate globally. Global civil regulation combines issues where business is the common nominator and covers labor practices, environmental performance and human right policies. It can be defined as voluntary, private, non-state industry and cross-industry frameworks and it bases itself on soft law. Soft law, on the other hand, can be described as voluntary standards that are governed by informal institutions either on international, transnational or national level.<sup>3</sup> It must be admitted that regulations created by the UN may not entirely be categorized as soft law. However, since the UN needs to rely on states to implement the regulations and have no legitimacy over sovereign states, I will count the regulation produced by the UN to the soft law category. Additionally, some civil regulation has been created with the support of governments or interstate organizations, like the UN. Nonetheless, regulations remain voluntary, since governments have not participated in the enforcement of these regulations. Regulation produced by the UN has leverage, but, on the other hand, it may risk remaining too theoretical.

It cannot be denied that the UN is a crucial player in the field of human rights. In addition, the UN has progressed also in the field of business and human rights; the Global Compact being the largest private business code. As stated previously, the most recent development started in 2005, when the Secretary General, Kofi Annan, initiated a research of business - human rights nexus under the United Nation’s mandate. This research continued until 2011 and it produced a significant amount of material, alongside with specific guidelines for various stakeholders. Although it would be interesting to study the position and role of the UN, my research concentrates on studying the material created from this recent research using embedded liberalism as a theory framework and narrative as the methodology. Also, this gives an opportunity to study whether the research of the SRS is based on embedded liberalism or not. The clarifications of the concepts of civil regulation and human rights were added to my research as an attempt to set the theory and also the primary material into context.

In this research, narratives are used as a methodological approach. The methodology selection was based on its controversy. Research conducted by using narrative methodology does not give universal truths but something between universal “truths” and relativism. The

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<sup>3</sup> Vogel 2010, 72, Kirton & Trebilcock 2004, 4.

topic of human rights and business is scalable; by using a theory that includes norms and methodology that balances the relativity of truths and allows coexistence of several truths, the multidimensional topic can be explored without too many short cuts. The risk here is that also the results are multidimensional to the point that they become irrelevant. However, this is a risk taken in this research. Narratives can be defined to be used as a common tool in communication and understanding the world. Narratives can also be used as an instrument for organizing the world. Related to this kind of an approach and to relay somewhat on reductionism, the primary material will be dissected by selected narrative attributes in order to study more thoroughly what groundings it lies on.

By selecting narrative attributes I try to cut the primary material from one holistic story to smaller parts in order to understand the story again but with additional viewpoints. The “core” of narrative methodology is understood in this research as **noticing stories as transmitters and creators of the reality and meanings**<sup>4</sup>. The narrative attributes used to dissect the primary material are *temporality* and *event sequencing*, *intertextuality*, and *roles*. In addition, connected to intertextuality and a change in the international sphere, *locus* of narratives is briefly presented. Paradoxically, by using this kind of reductionism with the help of narrative attributes, the primary material can be better set into the contexts of the “big picture” of human rights. For this purpose there are separate chapters for clarifying the concept of human rights and civil regulation, although these are covered jointly in the theory section. Therefore, it can be said that the selected theory and methodology are slightly overlapping. Brief definitions of the selected narrative attributes are presented in the following chapters.

Temporality and event sequencing are time-based attributes that can be found helpful in this research, since although the primary material has been created in a short period of time, there are several events that are closely linked to the material. Teleology of narratives is seen in this research as a process or a gradual one, instead of a linear one. There is a distinction between temporality of events and narratives; narratives can be based on events or experiences, which possess a beginning and an end, but a narrative itself may be constructed in a sequence, series or in a process, and those can be endless, which means that narrative worlds can be created through a process of composition and decomposition<sup>5</sup>. The temporal profile and particularized events of a narrative also help to pinpoint which kind of selections were made by individuals, which in turn have led to consequences and setting the consequences in a larger context.<sup>6</sup> Therefore, besides giving a possibility to break down narrative by noticing particularized events, temporality anchors the research conducted by the SRSR in connection with other researches in the field of human rights; this approach can be clarified more with the help of intertextuality.

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<sup>4</sup> Heikkinen, Huttunen Kakkori 1999, 40.

<sup>5</sup> Carr 1986, 47, Herman 2009, 111

<sup>6</sup> Herman 2009, 18–19, 104.

Intertextuality represents the complex relationship between a narrative work and narrative environments. Intertextuality helps to understand the contextuality of narrative, which, on the other hand, facilitates critical viewpoints. Narratives are not created in a vacuum but in time and place via different actors. There can be several different roles in narratives, the most traditional ones being producer of the narrative (author), narrator and receiver. However, to make this research more pragmatic, we concentrate on the roles described by the primary material. Temporality, intertextuality and roles together create a frame that is used as a method to examine the primary data in order to both detect and interpret narratives, but also to dissect those for more close and detailed examination. The remaining narrative attribute – locus – is used differently than the previously explained narrative attributes, since locus is an environment for narratives. This is regarded as useful and needed due to the global nature of the topic. Hence, also narratives need to occur in the public domain. Global public domain is the locus or environment in which narratives must be present and survive in. Also, it effects for its part what kind of narratives “make it” – that is, survive – in that environment.

Since now the selected theory, methodology and conduct of my research have been explained, we can continue with a summary of the research and its findings. As mentioned previously, the primary material of this research is the main official reports created by the SRSG during 2006-2011, under mandate of the UN. The primary material was created in order to answer a request made by The Commission of Human Rights<sup>7</sup> to research the human rights - business nexus. The request consists of five elements: identifying corporate **responsibility and accountability**, clarifying **implications of corporations** and business in general, elaborating **the role of states**, and developing **methodologies for assessments** and a compendium of **best practices**. This request will be presented in detail in chapter four. Reporting by the SRSG has been annual and other material has been created alongside the main official reports. Those are not included, but merely acknowledged in this research.

First of all, it must be investigated whether the reports produced by the SRSG underpin the theory of embedded liberalism. The issue of human rights and business is being framed in the first main official report by a familiar concept, explaining a change in the global public domain from “inter-national” economy to a global world with a variety of actors that the territorial state has no primary organizing principle, but that it may have important public roles<sup>8</sup>. Though this is only a framing and more like an explanation of a locus for the issues, embedded liberalism is being stated more explicitly further on in the report. For instance, it has been referred to in severe imbalances between markets and business, and also in an inadequate capability of societies to protect and promote the core values of a social communi-

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<sup>7</sup> The United Nations Commission on Human Rights was replaced by the United Nations Human Rights Council in 2006.

<sup>8</sup> A/EN.4/2006/97, 4.

ty<sup>9</sup>. This can be seen as a referral for a need to promote social expectations and norms in conjunction with state power and interests, much like in the theory of embedded liberalism.

Embedded liberalism emerges also in the main official report submitted in 2007; there is, for instance, a statement that without efficient institutional underpinnings in place markets may become socially unsustainable. In addition, there is also a note that governments need to join public interest of other social actors and utilize other social institutions, including market mechanisms.<sup>10</sup> This can be seen as quite a clear indication that states must take the interests of other social actors into account and also that market mechanisms are included as a part of social institutions and therefore must be managed by states. Additionally, the responsibility of execution seems to be laid on states.

The main official report submitted in 2008<sup>11</sup> is a conceptual and policy framework for the work at hand; it lays a common framework for business and states in the issue of business and human rights. Yet again, it is noted that markets work optimally only if they are embedded within rules and institutions. It is stated that the risks referred to concern both the society and business itself, hence rules, customs and institutions are needed for markets to thrive and sustain as well as for a society to manage the adverse effects of market dynamics.<sup>12</sup> It seems that the approach is based on embedded liberalism, but also it is underlined strongly that cooperation would be the key and that institutional framework would strongly benefit both businesses and the civil society.

The main official report of 2009 is more of a strategic plan for operationalizing the Framework, and the content is strongly basing itself on the previous report. Although more emphasis is being placed on the current economic crisis, it is being repeated that markets need to have institutional underpinnings in place and that markets should also be embedded in the broader values of social community.<sup>13</sup> This can be interpreted so that also global governance mechanisms are needed to manage the global economic sphere. Likewise, social expectations are needed to be implemented in economic ideas, for sustainability and equitability.

The main official report submitted in 2010 is a progress report with some pragmatic guidance and descriptions of the progress of the work, and in that sense it is hard to detect any direct theoretical references. Since the strategy has already been framed and selected in 2008, the official main report of 2010 concentrates on explaining the Framework in a more pragmatic way. There are no explicit references to embedded liberalism as such, though there is a similar remark that was also made in the addendum report submitted in 2008 that

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<sup>9</sup> A/EN.4/2006/97, 6.

<sup>10</sup> A/HRC/4/35, 3.

<sup>11</sup> Later referred as; the Framework.

<sup>12</sup> A/HRC/8/5, 3.

<sup>13</sup> A/HRC/11/13, 5.

by not giving guidelines to businesses, governments may think they are doing a favor to corporations, but instead they are exposing companies to risks if necessary guidance is lacking. In addition, it is a misconception of states to stay inactive, since business actually would require more guidance on how to manage risks in charged political situations.<sup>14</sup> The solution is once again described as a “win-win situation”.

The last report was submitted in 2011. It summarizes the work of the SRGS and presents an implementation for the Framework<sup>15</sup>. Its main focus, according to the function of the report, is on pragmatism and operationalization of the work that has been done. Therefore, theoretical investigation is not relevant in this case.

All in all, the main official reports seem to be based profoundly on the theory of embedded liberalism. The tone of the report is cooperative and there are several referrals of state activity to hear and execute social expectations with the help of social institutions – of which market mechanism is a part. It can be said that the need to promote social expectations and norms in conjunction with state power and interests is quite visible in the primary material.

After noticing that the primary material is supported by the theory of embedded liberalism, we can summarize the findings done by the selected methodology. Since narrative methodology does not give universal truths but something between universalism and relativism, the results of my research must also be positioned according to that. The role of different actors, like corporations, states, and private actors – such as citizens and employees – and their existence in the international sphere will be covered in the upcoming chapters of intertextuality and roles. However, next the findings of temporality and event sequencing will be summarized. Following events can be connected to the primary material; approval of the policy framework (the Framework) by the Human Rights Council (HRC), multi-stakeholder consultations and a survey of the scope and patterns of alleged corporate-related human rights abuse, followed by operationalization and progress report, the concluding report, which presents implementation of the Framework (Guiding Principles) and its approval by the HRC.

These events can be seen to form a linear narrative, where the primary material has a beginning, where first of all framing the issue is being done and data and information is being collected (by multi-stakeholder consultation and the survey) to produce settings for continuation, a middle point where the policy framework is being operationalized and its progress is being followed, and an end that can be seen in the form of an implementation of the Framework – by providing the final report, Guiding Principles. On the other hand, the end is left open, since after the Guiding Principles had been approved by the HRC, a working

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<sup>14</sup> A/HRC/8/5Add1, 17, A/HRC/14/27, 10.

<sup>15</sup> A/HRC/17,31, 1

group was created for further managing the implementation of the Guiding Principles; hence, the entity of human rights - business narrative continues.

It has been said that the temporal profile and particularized events of a narrative help to identify selections that were made. Therefore, these can be said to guide the direction of the human rights - business narrative in a larger context, too. So, besides giving a possibility to break down narrative by noticing particularized events, temporality anchors the research done by the SRSB in connection to other researches in the field of human rights; this approach can be clarified more with the help of intertextuality. On the other hand, the narrative is based on a process, if continuing the temporal approach. Each official main report clearly builds on another and follows the selected strategy (the Framework). Additionally, those several small scale key events, which were organized by SRSB for several stakeholders, also shape the primary material.

Narrative attributes of intertextuality and roles as can be seen together especially as context setting features. Additionally, intertextuality and roles are interconnected, and, in fact, intertextuality can be seen as connecting and anchoring the primary material to the entity of business - human rights issue with the help of any narrative attribute. The primary material maps itself to the context of business and human rights by elaborating international standards for corporate responsibility. Roles that are the most relevant in the material of the SRSB are the roles of states and corporations. State's role as a human rights protector is stated to be based on duty, while the role of corporations is based on responsibility. It is noted that at least current international human right instruments do not pose direct legal responsibility to corporations. With this respect it is social expectations that are guiding responsible corporate behavior. Also, it seems that states are voluntarily leaving the civil regulation to be idle, leaving room for consumers and civil society organizations to struggle in order to create civil regulation. Therefore, according to the primary material, the role of states should be essential and urgently enhanced, so that there would be more transparency and accountability of the responsibilities of states for regulating corporate behavior in the international sphere.

Although it has been stated that corporations should also be responsible and accountable, the difference is that according to the primary material, states have a *duty* to protect human rights. It is clearly indicated that states are the main duty bearers of human rights protection for its citizens. It is also being indicated that states should aim to drive corporate culture, which favors human rights, but also policy alignments to increase coherence in human right commitments and implementation (vertical) and including different departments at cross purposes (horizontal) should be made to implement human rights obligations. All in all, it is stated that the human rights regime bases itself on the bedrock of states. Corpora-

tions are described to have a responsibility to respect and their responsibility is further defined as due diligence, sphere of influence, and complicity concepts.<sup>16</sup>

It is not easy to study how locus is related to the primary material. Locus can be said to be a collection of elements that are related to narratives in a global public domain. the global public domain is a sphere where legitimate social purposes are being generated and formed into social facts<sup>17</sup>. However, it is not clear how this process goes, and this cannot be studied easily since the global public domain is not a static environment but keeps changing rapidly. Additionally, there is no public authority or authority of any kind in the global public domain. It is clear from the primary material that several stakeholders, who operate in the global public domain, were contributing to the creation of it. The multi-stakeholder consultations that were organized by the SRSR give dimensions to this global issue, and perhaps have promoted discussion and awareness in the global public domain. The concept of locus can be broken down into elements such as issue-driven testimonies, representation, interpretation, dissemination and control over voice. However, these elements can be only partially studied and interpreted from the primary material.

First of all, if we take a look at the issue of driven testimonies, representation, and interpretation elements; it can be interpreted that the stakeholder consultations have provided a way to give voice to the stakeholders, especially, since all except for one consultation have been face to face ones. Also, stakeholder coverage has been wide; there are several civil society organizations (like Amnesty International, the Peacebuilding Centre and Fafo) and private business enterprises, especially law practitioners. Additionally, governmental institutes like two Norwegian research institutes have also been involved in the work of the SRSR. States have also participated by being a target of a survey in order to provide information about the current situation. Discussions of these consultations were documented in a way that anonymity of statements was protected. This can be seen as an attempt to create groundings for free discussion. On the other hand, since there is no access to the original statements, it cannot be verified how interpretations and representation have been done. However, interpretation does not pose a problem with online tools that provide global, interactive discussion; two of these kinds of tools were launched by the SRSR in an attempt to enable global discussion. Additionally, a questionnaire survey for states and corporations was made and a summary from up to 320 cases of alleged corporate-related human rights abuses was created. These both fulfill elements of issue-driven testimonies and interpretation, though detailed analysis remains limited.

What comes then to the element of dissemination; the amount of official reporting is large, and total amount of documents, analyses, briefings and submissions, consultation documents and correspondence is impressive. In addition, commentaries issued by various

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<sup>16</sup> A/HRC/8/5, 9–14.

<sup>17</sup> Ruggie 2004, 504–505.

stakeholders after the framework endorsement are available on the webpage. This particular webpage has been selected as a portal to the material of the SRSB's work. In fact, the total amount of collected data available and produced either by the SRSB and his team or various stakeholders is staggering, and this data is publicly available. Hence, dissemination of voices can be noted to be wide, since also comments by civil society and academics, the business community and law firms, governments and also correspondence with NGOs is available alongside with the official reports<sup>18</sup>. All in all, transparency in material creation, availability of the published material and technical methods for dialogue give a solid base for fruitful debate and more control on individual or organizational voices.

## **2. THEORETICAL FRAMEWORK: EMBEDDED LIBERALISM**

There are several powerful non-state actors and complex interdependencies in the field of global politics and economy. Though, on the other hand, states have had to give in to other global actors, they are still held responsible for the wellbeing of their citizens. One can argue how well states have succeeded in this mission; however, this responsibility has not been transferred to any other actor although one must admit that several CSOs have entered the stage to protect the rights of individuals. Traditional welfare offered by the state has gradually deteriorated by the current system that prevails in the Western world: neoliberalism. In addition, the neoliberal approach has been efficiently penetrating nearly every region in the world and affecting millions of people.<sup>19</sup> It can be asked if neoliberalism has gone too far, benefitting less and less the majority. Simultaneously, corporations have increased their power and ability to operate globally. Questions on how corporations should conduct themselves and how they should be regulated are becoming more and more important.

All in all, the public domain has transferred from state-driven into a complex interplay between several non-state actors, while the power of states has steadily decreased, or at least changed its form. The purpose of this chapter is not to take a stand or to examine further the current economic structures, but to introduce and give background to the theory of embedded liberalism that is being used as the theoretical standpoint in my research.

To give more background on why embedded liberalism was selected, it is necessary to briefly introduce the father of it. As mentioned in the introduction, John Ruggie is a widely recognized scholar in the field of international relations. He is the Berthold Beitz Professor in Human Rights and International Affairs at the Kennedy School of Government, and an Affiliated Professor in International Legal Studies at Harvard Law School.<sup>20</sup> Besides pro-

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<sup>18</sup> List of documents prepared by and submitted to the SRSB on Business and Human Rights As of 10 August 2010, 1–33.

<sup>19</sup> Patomäki & Teivainen 2004, 113.

<sup>20</sup> <http://www.hks.harvard.edu/about/faculty-staff-directory/john-ruggie>

ducing several publications, he has been awarded by the American Political Science Association for “outstanding public service by a political scientist” (Hubert Humphrey award). Additionally, he is a Fellow of the American Academy of Arts and Sciences and he has received the International studies association’s “Distinguished Scholar” award as well as a Guggenheim Fellowship.<sup>21</sup> In addition to his academic experience, John Ruggie has worked for the UN during 1997-2001 and 2005-2011. Currently, he is working as a Senior Advisor within the Corporate Social Responsibility Practice in Foley Hoag’s practice.<sup>22</sup>

John Ruggie’s theory draws from Karl Polanyi’s theory of the new economic order that he expected to emerge after World War II and to end the “capitalist internationalism”<sup>23</sup>. Embedded liberalism can be described as **an institutional framework that reflects not only state power and interests but prevailing social expectations, norms and economic ideas**. This theory was originally introduced by John Ruggie in 1982 to explain how capitalist states after World War II sought to fit together market efficiency and values of social community by combining liberalization of markets with a desire to acquire domestic stability.<sup>24</sup> It seems that the capitalist internationalism – or neoliberalism – keeps on going, although not so strong anymore, since some fractions, like major financial transactions from national governments that have been needed in order to keep financial systems up and running – for example in Greece and Ireland but also in the USA, have occurred, creating concerns and increased critical thoughts.

However, although Ruggie recognizes that there is no end for the internalization of production and finance in the near future, he notes that governments are now assuming more direct responsibility for domestic social security and economic stability. By this, the balance between market and authority has been taken to an upper level.<sup>25</sup> On the other hand, there are potential rivals for states, and it may be that this level is not satisfactory for all; global civil society has been organizing itself for a while and some progress has been demonstrated via the World Social Forum, which can be seen as an emerging institution of global democracy or at very least as a domain for actors who construct democratic projects in different contexts<sup>26</sup>. It seems that states need to react more attentively to the current changes if they have any genuine will to get democratic and economic structures in balance globally.

I regard the embedded liberalism theory as a standpoint, or better as an optimal goal that states should reflect in their ambitions. In addition, I will elaborate briefly the concept of global public domain also through the embedded liberalism standpoint that hopefully further clarifies the situation and issues that global politics currently faces. This global public

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[http://www.oecd.org/speaker/0,3438,en\\_21571361\\_46558043\\_47338582\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/speaker/0,3438,en_21571361_46558043_47338582_1_1_1_1,00.html)

<sup>22</sup> <http://www.csrandthelaw.com/john-g-ruggie.html>

<sup>23</sup> Ruggie 2008, 69.

<sup>24</sup> Ruggie 2008, 3.

<sup>25</sup> Ruggie 2008, 69.

<sup>26</sup> Patomäki & Teivainen 2004, 117, 121.

domain was also presented in relation to the used methodology; however, it is necessary to revisit the topic from a theoretical point of view, as well.

It is certain that norms and values should play an integral role in state behavior. After all, states are at least currently regarded as a major responsible party for protecting and offering their citizens means to improve their lives. Nonetheless, due to the complexity of the relationship between states, TNCs, INGOs, and CSOs, the roles of each player in the global domain may not be clear. However, interpretations by states regarding political issues are the most visible via intergovernmental organizations, like the UN. As mentioned in the introduction, the UN has taken steps in order to create rules for TNCs but also to define responsibilities for states. In 2005, the Secretary General, Kofi Annan, appointed John Ruggie as Secretary General's Special Representative (SGSP) on business and human rights, and requested him to create and implement a framework with regard to roles and responsibilities that TNCs or other business enterprises and states have with regard to human rights<sup>27</sup>. It could be assumed that the work produced by the SGSP is based on embedded liberalism as its theoretical standpoint. The next chapters introduce embedded liberalism in a more detailed and practical way. In addition, embedded liberalism will be mapped with globalization.

## **2.1 Background for embedded liberalism**

Ruggie states that embedded liberalism was reflecting international power relations after World War II, but it also reflected shared values and understanding of the legitimate role of the state in managing economic relations at home and abroad.<sup>28</sup> According to Ruggie, examples of this social bargain can be called different names, such as social democracy or the social market economy. Nonetheless, the core idea remains the same; a grand bargain where all sectors of society share the social costs although, at the same time, agree to apply open markets.<sup>29</sup> In this sense governments had a crucial role in economic development, which was conducted in accordance with social development. It can be seen that these governments of the industrialized world formed a basis for one of the equitable periods of economic expansion lasting from the 1950s until the 1980s. However, embedded liberalism was eroded by the domestic front that has given up neoliberalism and even laissez-faire preferences.<sup>30</sup> The following chapters will observe how and in what circumstances the theory of embedded liberalism was created.

As previously mentioned, the embedded liberalism theory has been derived from Karl Polanyi's analysis of the collapse of laissez-faire liberalism in the postwar era. Ruggie himself

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<sup>27</sup> Human Rights Resolution 2005/69.

<sup>28</sup> Ruggie 2008, 4.

<sup>29</sup> Ruggie 2000, 37.

<sup>30</sup> Ruggie 2008, 4.

notes that he observed the lack of idealism in the international relations discipline in the early 1970s, and felt that it was due to the underestimation of ideational factors, like collective identities, norms or aspirations. The theories that are called neoliberal institutionalism and neorealism were, according to him, emphasizing the trend. Instead, Ruggie draws from social scientists, like Max Weber, when noting that social constructivism is based on human behavior and different interests and prefers that actors possess are socially constructed.<sup>31</sup> I dare to claim that this social constructivism is the core of Ruggie's theoretical thinking and that embedded liberalism is a continuation, or better yet, a viewpoint to global economic constructions. I will not go deeper into the definitions of social constructivism, because the whole theoretical field of constructivism is vast, but just note that social constructivism emphasizes the importance of normative principles in international relations. The same importance of norms can be seen in embedded liberalism although it is based on a state – market interplay. Also, I hope that the knowledge of John Ruggie having a social constructivist background gives more insight when trying to comprehend the theory of embedded liberalism.

Although economical wealth matters, Ruggie claims that it is not the pure economical features but the shared social purposes that matter, since those determine the roles between authority (state) and the markets. This means that the state – society relations are processed as shared social purposes.<sup>32</sup> These shared social purposes are processed into actions to achieve bargain with markets. Although instruments, such as regimes or institutions, could change during time, Ruggie states that the underlying objectives and normative ideas that are embedded in those instruments continue to exist, unless the state – society relations start to erode.<sup>33</sup> What this means is that we cannot use the complexity of global economics as an excuse, but accept the responsibility – which goes hand in hand with the decisions behind every agreement, rule, process, and law – and bear it, too. After all, the rules of global politics and economics are defined by humans, none other.

So, the postwar international economic order can be described with two arguments that differ from the mainstream. First of all, as already mentioned, Ruggie claims that the political authority is a combination of power and legitimate social purpose, and that those should be acknowledged as such, if international economic order or the regimes that serve it shall be researched content-wise. When this is taken into the post World War II context, it defines economical era as embedded liberalism. The second argument concerns the possibility of change in and of regimes. It can be noted that although instruments, like international regimes, rules or procedures, can and will change, the principles and norms would not.<sup>34</sup> This refers to content in which certain values, transferred as norms, will remain the same, although the instruments or powers that utilize those instruments will change during time.

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<sup>31</sup> Ruggie 1998, xi.

<sup>32</sup> Ruggie 1998, 62.

<sup>33</sup> Ruggie 1998, 62.

<sup>34</sup> Ruggie 1998, 64–65.

Nevertheless, it must be also noted how these values that will be transferred to norms are created and refined. It must, once again, be noted that these two arguments are combined together and supported by Ruggie's standpoint of power and legitimate social purpose as the basis of international authority<sup>35</sup>.

## 2.2 Embedded liberalism and international economy

By observing developments in the international economy from a historical perspective, the theory of embedded liberalism may become clearer. This chapter tries to illustrate, by historical examples, how embedded liberalism relates to changes in the international economy. Also, it hopefully opens John Ruggie's groundings for his theory a bit more. It is noteworthy also to pay attention to the way Ruggie describes international regimes and the whole international economic order. Since, there is an assumption that legitimate social purpose combined with power determines international economic order. In this sense, it is essential to understand how power and legitimate social purpose are combined to create political authority in the international system.<sup>36</sup> It must also be noted that international regimes are intersubjective social constructions. In other words, those need to be studied as phenomenal, not only as elements it consists of.<sup>37</sup> Supported by these statements, this chapter will take a look at the history to observe past international economic orders. Nonetheless, since the purpose is only to give historical illustrations to back up the theory of embedded liberalism, not to research the theory itself, the text is more like a brief description with critical notes as a balance.

Already in the nineteenth century, the rise of free trade policies defined state – society relationships in a new way. Ruggie states that the Pax Britannica was not just due to Great-Britain's hegemony but also that these new state – society relations were expressed in a collective reality.<sup>38</sup> This emphasizes the fact that it is the community that should be engaged to implement values of social community to markets. Also, it emphasizes how markets and society / state can benefit from the common agreement or better, the common social bargain.

Going forward in history, Ruggie follows Polanyi and describes the transformation of ideas as a state in the mediating role between market and society in the period after World War I. Ruggie claims that there was a large amount of social reaction in Europe and in the United States against market rationality during that time. In addition, he claims that this transformation fundamentally changed the social purpose of domestic and international authority.<sup>39</sup>

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<sup>35</sup> Ruggie 1998, 66.

<sup>36</sup> Ruggie 2008, 17.

<sup>37</sup> Ruggie 2008, 18.

<sup>38</sup> Lang 2008, 18.

<sup>39</sup> Lang 2008, 18.

Although open markets were in some cases much administered or even autarchic during the 1930s, there was social adjustment costs produced by those, like any open markets. Also, a grand social bargain was commonly accepted and the essence of the embedded liberalism compromise was realized.<sup>40</sup> Evidently, this ideational change of proper social purpose and power influenced the construction of the international economic order.<sup>41</sup>

The question remains how nationalism and other issues that triggered World War II were related to this economic development. Obviously, it may be impossible to find one or even a set of reasonable explanations for the changes that evidently led to World War II. However, Ruggie claims that both international trade in the Victorian era and the laissez-faire system after World War I collapsed, because governments were not able to meet the domestic needs for full employment and better economic equity<sup>42</sup>. It can be noted that these changed structures of economic order during a long period of time set the stage for the new liberal economic order that emerged after World War II<sup>43</sup>.

It is interesting that after World War II, the most devastating war at least in that time, the economic order was built in a new way. Nonetheless, it seems reasonable that there was a common ground for the winning parties to stabilize any potential domestic turbulence and, on the other hand, to revive trade. It was just that there happened to be a rivalry between two antagonistic doctrines: capitalism and communism. Although the battle of doctrines continued after World War II, the Bretton Woods regime was based on a shared sense of legitimacy and a necessity of governmental interventions in order to guarantee domestic stability. It can be noted that the economic order after World War II was based on safeguarding domestic stability without triggering mutually destructive external consequences.<sup>44</sup>

The same vision of states as mediators between market and society, balancing external actions to domestic social measures, evolved in the texts of the General Agreement on Tariffs and Trade (GATT). It can be argued that, although GATT was a liberal trade regime, it was a particular one, since it combined multilateralism with domestic stability. Although there were protectionist measures taken in the 1970s, those did not, according to Ruggie, jeopardize the entire trading order but introduced measures to slow down structural change and minimize the social costs of domestic adjustment. In other words, Ruggie interprets that embedded liberalism was making an effect in the changed global economic conditions.<sup>45</sup>

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<sup>40</sup> Ruggie 2008, 231.

<sup>41</sup> Lang 2008, 18.

<sup>42</sup> E/CN.4/2006/97, 6.

<sup>43</sup> Lang 2008, 18.

<sup>44</sup> Lang 2008, 18.

<sup>45</sup> Lang 2008, 19.

These snapshots from economic history gave some practical examples on how, according to Ruggie, embedded liberalism was emerging in different historical milestones. Nonetheless, it is not my intention to claim that embedded liberalism operates only through trade regimes, but to emphasize that it is the state – society relations that are in the core when we are trying to regulate the markets. It has been stated previously that it is the state – market interplay that is in stake, but the method to do it may vary. It is essential that social purposes are taken into market bargains, which will in turn benefit also markets as stability. As said, this bargain enabled in the industrialized countries the longest and most equitable economic expansion in human history<sup>46</sup>. However, this embedded liberalism was ruptured after the 1980s due to regime and policy changes towards neoliberalism. The following chapter enlightens the challenges both globalized economy and politics set for the embedded liberalism theory.

### **2.3 Embedded liberalism and globalization**

The theory of embedded liberalism was introduced to the international scholar community three decades ago. Although it was described as ‘highly original’, it was not until the mid-1990s when the theory started to catch more interest among international scholars. Indeed, it offered a useful tool for economists and other scholars interested in trade liberalization. Especially trade lawyers have shown much interest in the theory.<sup>47</sup> A lot has changed from the times the theory was first introduced; the whole international sphere has changed and trade has become more complex, involving more and more transnational activities in global productization and finance. This chapter will present difficulties that the embedded liberalism theory encounters when tried to be applied in the age of globalization.

According to Ruggie, the problem of the embedded liberalism theory is that it presupposed an international world, where national economies operate with external transactions, conducted at arm’s length, which in turn can be mediated at borders by states.<sup>48</sup> Now, the international sphere and international economic order are much more complex. The globalization of both production and financial markets create a threat for any solely national social bargain<sup>49</sup>. Since it seems that national social bargains will not have the needed leverage to enter the global domain, it would be necessary for the global social community to organize itself in a more global way, too.

Ruggie admits the magnitude of the task. He states that the global market needs to be embedded within shared social values and institutional practices. In addition, he recognizes that international institutions are too weak to fully compensate for the lack of global gov-

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<sup>46</sup> Ruggie 2008, 231.

<sup>47</sup> Lang 2008, 13–14.

<sup>48</sup> Ruggie 2008, 232.

<sup>49</sup> Ruggie 2008, 232.

ernment. Further, it is the lack of global government that hinders any attempts to introduce common good, such as on a national level.<sup>50</sup> The whole essence of embedded liberalism is that it recognizes states as mediators between social values and markets. Now it seems that states have steadily lost their leverage and global productization and financial markets have started to live a life of their own, in a transnational sphere. Moreover, it is questionable whether all states have protected their citizens; it can be questioned if states can be trusted at all and, on the other hand, how independently states can make decisions bearing in mind that TNCs may freely choose the most attractive location to be benefitted from.

As mentioned, the current international institutions cannot handle global markets by presenting any collective social values. However, states cannot be neglected as actors, either. Although non-state actors have entered the public domain, they have not replaced the state system. In fact, it seems that states will remain as actors in the international sphere for the foreseeable future. Also, though corporations have gained much power, they still need to operate in a certain soil. In this sense, states hold power to affect the behavior of TNCs. Also TNCs that hold CSR as an important part of their operations risk losing in competitiveness for those discarding any CSR-related activities. This demonstrates that more cooperation between states, CSOs and TNCs is urgently needed for defining common values and norms to be implemented globally. The following chapters concentrate on describing the changed mindsets; the political and economic sphere in the era of globalization.

### 2.3.1 The backlash of globalization

The change of millennium witnessed some heavy protests against globalization. The most notable one took place in Seattle in 1999, when anti-globalization protests stated their message by very forceful ways and compelled the WTO ministerial conference to end prematurely. However, it has been contested that these protests are not actually anti-globalization, but against the spatial expansion of social relations. This implies the fact that distant decisions, actions and process conditions will have more and more effect on social existence and actions. In this sense, globalization is actually restructuring of social space; technological changes that have diminished physical distances are just one part of it.<sup>51</sup> This means for instance that implications of some decisions that are being made may greatly disfavor others but, nonetheless, those disfavored impacts never reach the ones making decisions, or worse, impacts may not be predicted or even detected. Social distances keep on widening though technology has diminished distances continuously.

Nonetheless, the concept of the term globalization can be debated and it is not in the scope of this research to clarify it in more detail, just to note that globalization has profoundly

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<sup>50</sup> Ruggie 2008, 232.

<sup>51</sup> Patomäki & Teivainen 2004, 114.

changed the international sphere and that the means to governance it are lagging behind. Ruggie notes three negative attributes that especially create concerns with regard to globalization. The biggest issue may be that globalization does not share its benefits equally. Secondly, there is also imbalance what comes to rule-making; certain rules that favor global market expansion, like intellectual property rights, have become more enforceable compared to social objectives, like labor standards or human rights, which at least should be equally valid. That is, the promotion of social objectives is lagging behind or, even worse, has in some cases actually become weaker. The third attribute is the general uncertainty and vulnerability to unpredicted forces, which can cause economic instability and social dislocation. Also the speed of these forces has accelerated.<sup>52</sup>

It seems that there are hardly any common social values entering global economics. The current neoliberalistic approach has also been criticized greatly, where undemocratic and unaccountable mechanisms of global control and power are being created and used. In addition, those mechanisms are being protected by several international institutions, like the WTO and the Bretton Woods institutions.<sup>53</sup> Yet, on the other hand, many CSOs and TNCs have created and adopted different tools for responding to the demands in the field of the CSR. However, the measures taken by single actors, like some TNCs, are not enough, if there are none or only a few common global social demands to comply or the coverage of measures is inadequate. In a summary, one can state that the international sphere has changed and so have the actors, too. Big scale anti-globalization protests have faded, but several CSOs have become more powerful and increased their leverage in the global domain. This topic will be presented in the next chapter.

### 2.3.2 Global public domain

The global public domain is emerging due to the changing international arena. According to Ruggie, the Westphalia-based interstate system is being replaced by the global public domain. Public domain can be described as a sphere where legitimate social purposes are being generated and transformed to social facts. According to Weber, public authority possesses the combination of power and legitimate social purposes.<sup>54</sup> In general, the private sector has gained much power within the global public domain; one example of the trend is the privatization of international standard setting, like International Accounting Standards Committee, International Organization of Standardization (ISO) or International Association of Insurance Supervisors. This is demonstrated also by the abundance of global guidelines and instruments that cover corporate responsibility. However, the problem is that the guidelines are independent and thus lack coherence.<sup>55</sup> In addition, lack of effective and co-

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<sup>52</sup> Ruggie 2008, 233–234.

<sup>53</sup> Patomäki & Teivainen 2004, 114.

<sup>54</sup> Ruggie 2004, 504–505.

<sup>55</sup> Dashwood 2004, 197–198.

herent monitoring and transparency of actions make the existing instruments more an illusion of governance or expression of good will than genuine will for accountability and ethical behavior.

Ruggie claims that states were in the leading role in global governance by institutions and regimes right after World War II. Governance is defined here as managing public affairs. This includes both authoritative rules and processes as well as practices to implement the rules. During the postwar period, global governance was much simpler because external transactions management could be done at the point of entry or exit between states. The governance of this kind of a public domain was simpler also because the interests of states were more similar compared to the current situation. Actually, one could say that during that time, the public domain, interstate realm, and system of government were all the same.

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What is different today, compared to the Westphalia system, is that states no longer possess monopoly in the international sphere. Alongside the change in the international sphere, the change in actors has been occurring, too; who is then the public authority in the international sphere? Non-state actors, who are not organized by territorial state, like CSOs and TNCs, have gained more influence and somewhat surpassed states' influence. The public domain can be said to have transformed to a global one. Actually, there are views that a whole global institutions transformation is needed in order to respond to global democracy initiatives. This would concern also economical global institutions.<sup>57</sup> Ruggie criticizes the international relations discipline for not paying adequate attention to the non-state actors and movements. He also states that those are underestimated in the mainstream literature due to the fact that they tend to be viewed through 'institutional substitutability', that is, since they are not replacing the territorial state at an international level as an institutional form, they are not recognized as interesting in the theoretical point of view, but perhaps in practice, though.<sup>58</sup> However, the global public domain is rapidly changing and creating more possibilities for civilians to participate in. Ruggie notes that the emergence of the global public domain can be seen as

"...an arena of discourse, contestation and action organized around global rulemaking – a transnational space that is not exclusively inhabited by states, and which permits the direct expression and pursuit of human interests, not merely those mediated by states."<sup>59</sup>

Already one can see some of the possibilities advanced information technology has created, not only allowing the CSOs to interact efficiently around the globe, but also creating channels for individuals, especially through social media, accessible for example via personal mobile devices. These new participation technologies may open a door for a totally new way of arranging global governance. Nevertheless, it is vital that this emergence with civil

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<sup>56</sup> Ruggie 2004, 504–505, 507.

<sup>57</sup> See for example Patomäki and Teivainen.

<sup>58</sup> Ruggie 2008, 240–241.

<sup>59</sup> Ruggie 2008, 241.

society participants starts to raise more interest in the field of international relations. According to Ruggie, the role of civil society, which continues to expand, and the interplay between CSOs and TNCs will drive the formation of the global public domain<sup>60</sup>.

When examining the relations between state, CSOs and TNCs in more depth, one can point out some factors that have enabled globalization of the public domain. First of all, the interplay between civil society actors and TNCs has created corporate social responsibilities at the global level. Secondly, the global public domain can be identified better as states dive deeper into an embedded part of global domain with the production of global goods.<sup>61</sup> Complex supply chains that are used for products can go through several states, in the same way as actual production can be done globally, where parts of the product can be logistically unified only at the very end of the production. However, in addition to the ongoing change in the public domain, there are signs that the public domain is shrinking due to the global political influence of neoliberalism. The diminishment of the public domain is being observed by several critical theorists and activists.<sup>62</sup>

So, how to make the global public domain work based on embedded liberalism? It must be noted first of all that global governance may not be a reality in the near future but, however, a more transparent and coherent global public domain may be. Ruggie states that the civil society expansion together with its engagement to the corporate sector has created the new, global public domain<sup>63</sup>. Also, in addition to traditional interstate governance system, there are multiple heterogeneous CSOs and civil society movements that are making an entry to global governance. Ruggie notes as well the emergence of private certification institutions as components of global rulemaking, but sees private governance as a partial solution. Nonetheless, a desired end result would be turning industrial state consumers, employees of TNCs and activists as global citizens that would have equal participation possibilities through cosmopolitan democracy.<sup>64</sup>

### 2.3.3 Global economic sphere

Today, the global markets have surpassed both states and social bargains within those states<sup>65</sup>. It is easy to see that global productization and other transnational activities that TNCs can easily conduct may overcome any national obstacle, if intended so, by using global production chains and financial operations. As long as there is a lack of consistent, global regulation for TNCs, there are little changes for social bargains to get back in the game. After all, states cannot “afford” to stand out because the risk of losing current TNCs

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<sup>60</sup> Ruggie 2008, 241.

<sup>61</sup> Ruggie 2004, 499.

<sup>62</sup> Ruggie 2004, 504–505, 507.

<sup>63</sup> Ruggie 2008, 252.

<sup>64</sup> Ruggie 2008, 253.

<sup>65</sup> Ruggie 2000, 37.

or not attracting new TNCs to state's soil could drastically diminish its citizens' standard of living and thus potentially the wellbeing, too.

It has become clear that Ruggie expects states to bear the main responsibility of protecting citizens' rights even when different transnational actors, like TNCs, would in some cases have more power to do so. This can be seen in the way he has called for a strengthened global community in order to regain embedded liberalism and to move away from globalization. Also, he clearly states that we need open markets; it is just the common values that need to be integrated into the corporate realm and global market. This can be done by increasing corporate social responsibility globally.<sup>66</sup> Now there remain questions how TNCs should participate in the social responsibility realm; should they be encouraged to incorporate only voluntary initiatives to share social responsibilities? Or should there be some compulsory or even juridical initiatives to comply with?

In 2000, Ruggie stated in the UN Chronicle three actions that would enable to sustain the global economic sphere; corporations should embrace voluntary initiatives in order to reduce the governance load from governments, concept of corporate citizenship should be defined to operate in the global community and finally, more effective global governance mechanisms should be advanced.<sup>67</sup> This can be seen as an analogy to the work that he is currently occupied with and mandated by the UN; definition of the roles and responsibilities for the TNCs (and other business) and states with regard to human rights.

#### **2.4 Human Rights meet Corporate Social Responsibility**

Human rights as a concept cannot be exhaustively defined; however, this chapter presents human rights as understood and used in this research. Also, the relation to Corporate Social Responsibility will be presented. As said, there is no single, common definition for the human rights concept, but probably the most common and wide-spread is the Universal Declaration of Human Rights (UDHR) by the UN. The UDHR was approved by the UN's General Assembly in 1948 and, although it is not juridically binding, it has been regarded as a moral guideline for human rights protection for states and all other actors, as well.

The UDHR was adopted unanimously by the General Assembly of the UN; however, there were eight states that refrained from voting. The UDHR comprises of 30 articles, which are aimed to give instructions for protecting and respecting universal human rights. The principles of the UDHR were set out to be translated into international treaties by the Commission on Human Rights. It was decided by the General Assembly to create two Covenants that codify the two sets of rights outlined in the UDHR: Civil and Political Rights and Eco-

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<sup>66</sup> Ruggie 2000, 37.

<sup>67</sup> Ruggie 2000, 37.

nomic, Social and Cultural Rights. The two International Covenants made many of the provisions of the UDHR effectively binding for states that ratified them. These two International Covenants, together with the UDHR and the Optional Protocols, comprise the International Bill of Human Rights.<sup>68</sup> In this sense, the International Bill of Human Rights may be regarded as a global “baseline” for protecting human rights. However, more work needs to be done in order to see how the articles can be transferred into practice in the current international sphere.

In addition to the International Bill of Human Rights, which was the effort of the UN, agencies or organizations that work closely with the UN, such as the International Labor Organization (ILO), have also created declarations and regulations that aim to protect human rights. The ILO gives guidelines for employment and work with regard to ethical norms. In this sense, the policies created by the ILO can be regarded as an important component of the human rights realization from a corporate point of view. The ILO aims to bring together governments, employers and workers to create policies and programs that promote Decent Work for all<sup>69</sup>. Since corporations and especially TNCs have a great potential influence on human rights, it is natural that the human rights concept needs to be applied in a more practical way to the current international sphere and also to the current economical processes. One must also remember that the UDHR was created over 60 years ago and, although the spirit of human rights defined by the UN remains unchanged, the environment has changed rapidly. There is an urgent need to keep human rights applicable in the current environment.

Framework for human rights and corporate ethics today combines development, human rights and the environment. The viewpoint is much wider than when the International Bill of Human Rights was created.<sup>70</sup> It has been stated that TNCs potential impact on human rights is very wide; also it is not easy to measure the potential impact by TNCs. In addition, there is no clear answer whether the impact of TNC to human rights protection as a whole has been a positive or a negative one<sup>71</sup>. It may be impossible to have a final solution of the overall effect. Although some TNCs or other corporations are found to be guilty for some flagrant human rights violations, business has also created development and raised living standards for a great amount of people. As stated earlier, some decisions TNCs or other businesses do may even have a direct (negative or positive) implication on human rights in some particular state. In every case, though, the main responsibility of human rights protection has stayed with states.<sup>72</sup> That is, business is not being regarded as the primary protector in the human rights context. However, since business continues to exist, as well as TNCs, those actors and the changed environment need to be noted and human rights protection

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<sup>68</sup> <http://www.un.org/rights/HRToday/declar.htm>

<sup>69</sup> <http://www.ilo.org/global/about-the-ilo/lang--en/index.htm>

<sup>70</sup> Pegg 2003, 6–7.

<sup>71</sup> Meyer 2003, 34.

<sup>72</sup> Pegg 2003, 11–15.

must be applied accordingly to these new dimensions. The following chapter presents the concept of corporate social responsibility that is the concept that is used in the business side, when circulating in the area of human rights and business.

The term CSR has many definitions, one of which is created by the Business for Social Responsibility, a global non-profit organization funded by corporations. Their definition is the following: “achieving commercial success in ways that honor ethical values and respect people, communities, and the natural environment” (BSR 2003).<sup>73</sup> Naturally, this is only one example of CSR definitions; nonetheless, the common determinant of any CSR definition is its voluntary aspect. In fact, the initiatives are responsible due to the fact that those are not mandated by any governmental or intergovernmental institutions<sup>74</sup>. This all relates to the fact that corporations can use CSR as a part of their brand building, although responsible actions can and should be considered as a norm. Nonetheless, CSR has a connotation of a corporation as a “philanthropist”, in some cases without any relevant monitoring. On the other hand, corporations are subjected to state legislation, so it would be unwise to “go the extra mile” without any benefits from it, though voluntary regulation is much more beneficial to corporations than regulation by jurisdiction.

## **2.5 Civil Regulation for Global Corporate Conduct**

In order to set the work of business and human rights (as mandated by the UN) in a context – or intertextualizing it – we must present the concept of civil regulation for corporate conduct. Global civil regulation can be defined as voluntary, private, non-state industry and cross-industry frameworks, which cover labor practices, environmental performance, and human right policies. These have become more visible and have gained more and more legitimization for trying to govern global economics and by trying to control transnational corporations and global supply networks. In addition, civil regulation is not based on public authority but “soft law” or private law.<sup>75</sup> The largest private business code is the UN Global Compact with over 3,500 corporate participants. Business Charter by the ICC has some 2,300 corporate participants and 70 global financial institutions have signed the United Nations Principles of Responsible Investment.<sup>76</sup> It must be added that the field of global civil regulation is vast and there are also many other large scale codes of conduct, either industry-based or cross-industry ones. Also, single corporations have created their own codes of conduct.

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<sup>73</sup> Lipschutz & Rowe 2005, 131.

<sup>74</sup> Ibid.

<sup>75</sup> Vogel 2010, 68–69.

<sup>76</sup> Vogel 2010, 72.

Soft law can be categorized as voluntary standards governed by informal institutions either on the international, transnational or national level.<sup>77</sup> Based on this definition, regulations created by the UN cannot entirely be categorized as soft law. Nevertheless, since the UN needs to rely on states to implement the regulations and have limited legitimacy over sovereign states, I will count the regulation produced by the UN to the soft law category. Also, it must be said that some civil regulations have been created with the support of governments or interstate organizations, like the UN. Nonetheless, governments have not been participating in the enforcement of these regulations, that is to say, the regulations remain voluntary. States have been supporting facilitation of those regulations by bringing firms, labor unions and other CSOs together to agree on common ground for standards.<sup>78</sup> In fact, one can note that the UN has moved closer to the private business zone with the Global Compact business code, since it is not under any public authority.

It is clear that transnational democratic control (civil regulation) is needed, yet at the same time the war against terrorism has increased security levels and made the work of CSOs much harder.<sup>79</sup> In addition, the so called Washington Consensus has directed global agenda to the direction where private investment, privatization of public assets, protection of private intellectual property, and enhancement of the rights of investor have increased their shares.<sup>80</sup> There is a serious need to agree on plausible, common, holistic, efficient, and transparent rules for corporate conduct. Even many of the OECD countries have noted the concern of the CSOs and are supporting changes to the existing neoliberal procedures that are manifested by the World Trade Organization (WTO). It can be argued whether the current process of trade liberalization is on a sustainable basis at all, either economically or politically.<sup>81</sup>

There is a need for the UN to raise its profile as a serious civil regulation author, since from the 1970s, corporations have turned more increasingly towards new informal international institutions that are often dominated by those leaders themselves, like APEC or G8.<sup>82</sup> On the other hand, the governance gap between global markets and corporations and government regulation of multinational corporations has widened and civil regulation can propose a fill for that. One could say that civil regulation is intended to help governments in their decreasing capabilities and power.<sup>83</sup> As the power of multinational corporations keeps on accumulating, their responsibilities have not been increasing. Several CSOs have raised this issue and started to increase their influence directly towards many corporations, especially those that can be easily identified by the large audience in industrialized countries.

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<sup>77</sup> Kirton & Trebilcock 2004, 4.

<sup>78</sup> Vogel 2010, 74.

<sup>79</sup> Foster 2004, 206–210.

<sup>80</sup> Foster 2004, 206.

<sup>81</sup> Patomäki & Teivainen 2004, 105.

<sup>82</sup> Kirton & Trebilcock 2004, 5.

<sup>83</sup> Vogel 2010, 73.

### 2.5.1 Business side for Civil Regulation

Transnational Corporations (TNC) possess capabilities and power to operate in the global domain, and although they themselves would like to be regarded as non-political objects, the decisions that they make have an impact, either indirect or direct, on societies on a global range. This is the reason why corporations cannot be ruled out when talking about international relations, or better, politics in the global domain. It can be said that corporations have the option and power to choose the location of their activities and they try to select the most attractive and low cost locations to invest in. Also, big TNCs have to continuously make decisions on how they operate in different locations and, also, in which ways they note regional differences in their workforce. There is no global standardization that could be applied here, instead TNCs, which have activities in several regions, operate based on several guidelines offered by various organizations and also naturally based on the TNCs' own ethical values. It is noteworthy to mention that it is not the global similarity in wages, but adequate wage for living that must be pursued and guaranteed for everyone.

Naturally the main purpose of all business is to be profitable, at least in the long run. The core activities are tied to shareholders' wellbeing. Nonetheless, civil regulation has been adopted, at least by some industries. There can be several reasons for this, and the main one may be that civil regulations have been adopted in order to avoid additional government regulation.<sup>84</sup> On the other hand, according to Vogel another and more typical reason is that the regulation has been adopted due to civil pressure<sup>85</sup>. After all, the brand of corporations plays a big part in profit making nowadays.

In addition, modern telecommunication has increased both the amount of knowledge that citizens may acquire of the actions of a certain corporation and the speed of information sharing. At the same time, costs have diminished. This has all had a positive effect on establishing different communities and support groups in addition to more "traditional" CSOs. Also, a lot of new "ethical brands" that are entirely built on the responsibility concept have been emerging. However, it must be noted that the ethical "awakening" has been mostly happening in developed countries, although there are differences within those, too. In fact, global CSR is nowadays more important in Europe than in the United States. One can say that the "Europeanization" of CSR has significantly expanded the international scope and the amount of corporations that have accepted civil regulations has increased.<sup>86</sup>

It is obvious that there lays pitfalls in the realm of private civil regulation. The fact that citizens may affect the acceptance of a certain civil regulation is a positive effect but, however, the increased amount of civil regulation has not reduced the importance of corporations to

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<sup>84</sup> Vogel 2010, 76.

<sup>85</sup> Ibid.

<sup>86</sup> Vogel 72.

place profit maximization.<sup>87</sup> The profit maximization remains in the very core of business activities but also, at the same time, the expansion of the civil regulation field makes it harder to stand out as an ethical corporation among the other corporations in the field. As the CSR becomes a norm, it can even be said that at the same time as the amount of corporations that commit to civil regulations increases, the competitive advantage for a corporation deriving from any of the regulations has diminished.<sup>88</sup> This may have an effect on keeping civil regulations outside corporations' core activities, and prohibiting full extent of the potential of civil regulation. After all, if CSR is not fully integrated to corporations' functions, how efficient can it be in a fast paced business life?

### 2.5.2 The Effectiveness of Civil Regulation

The effectiveness of civil regulation can be seen as a relative one. It has been criticized that it is concerned more with the actions of consumers than states<sup>89</sup>. First of all, there is uncertainty in the monitoring of the corporate conduct. Also, the amount of regulations is vast but there is a clear lack of effective screening and compliance monitoring. Especially host countries – countries that provide location for multinational corporations – have no influence over market forces. This leads to the fact that state jurisdictions are likely to have only a limited effect. On the other hand, CSOs have increased their influence over corporations, but the fragmentation of regulation has led to a situation where each and every issue has been privatized.<sup>90</sup>

Neoliberalism has encouraged not only privatization of economics but also its regulation. States have embraced neoliberalism and markets as determinants to the extent where they limit regulation for the benefit of business. However, civil society is not regarded by states with the same enthusiasm.<sup>91</sup> It is clear that if negative impacts or uncertainty caused by globalization keep on increasing, more efficient and coordinated regulation will be needed. More coherent and transparent regulation would benefit also companies, since any free riding would be more visible for consumers and states, too. Although CSOs have increased their influence, states would need to step up and at least acknowledge that there is room for improvement. Nonetheless, effectiveness of civil regulation is a topic that might remain controversial.

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<sup>87</sup> Vogel 2010, 79.

<sup>88</sup> Ibid.

<sup>89</sup> Lipschutz & Rowe 2005, 16–17.

<sup>90</sup> Lipschutz & Rowe 2005, 42–44.

<sup>91</sup> Lipschutz & Rowe 2005, 45.

### 2.5.3 The UN's role in Civil Regulation

Those non-state actors that are not corporations, like different CSOs or intergovernmental organizations (INGO), usually need to struggle with their financial resources in order to carry out their activities. In addition, there is not yet a common, global regulation in place to control TNCs, although the UN has recently taken some firm steps in order to achieve that. One of the key concerns is the relative weakness of the UN compared to many corporate actors. The weakness is shown for example by the fact that the UN has been seeking funding from wealthy private citizens, like Bill Gates and Ted Turner.<sup>92</sup> It is hard not to create any reliance or conflicts of interests, if there are investments or even continuation of operations in stake in case no funding is received. Usually corporations expect return on their investments, be it improved image or something more tangible. This can lead to an effect where the UN will give a boost to corporate brands and be more like an add-on to corporate public relations.

There is a historical aspect in the relationship with the UN and regulation of transnational governments. In 1976, the UN Commission on Transnational Corporations (UNCTC) decided that a draft for a comprehensive and legally binding UN code of conduct for transnational corporations would be one of its top priorities. Before there was any material produced, the Organization for Economic Cooperation and Development (OECD) had created its guidance on Multinational Corporations, a voluntary code of conduct.<sup>93</sup> It is clear that there had to be a lot of discussion behind the scenes with regard to corporations' responsibilities and the way to address those. A discourse shift can be seen, since by the time the UN introduced its code in 1977, the mechanism of them was turned into a voluntary one. The OECD's guideline was in fact the first voluntary code of conduct for corporations.<sup>94</sup> The UN either had to adapt to the discourse of the OECD guidelines or voluntarily choose to do so.

Global Compact was established in 2000 by the initiative of Kofi Annan, the seventh Secretary-General of the UN. The purpose of Global Compact is to spread the policy worldwide and develop functions that would support diffusion of the objectives of the UN.<sup>95</sup> Global Compact is an organization under the UN, and its objective is to unite the norms that have been created to define the human rights, rights of labor, environment protection and anti-corruption as one common guidance for businesses to apply. Thus, the policy encompasses nine principles that concern human rights, labor, environment and actions against corruption. Global Compact has used the following global agreements as a basis of its policy: the declaration of Human Rights, ILO's Declaration on Fundamental Principles and Right to work, The Rio Declaration on Environment and Development and The UN's Convention

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<sup>92</sup> Foster 2004, 206.

<sup>93</sup> Lipschutz & Rowe 2005, 137–138.

<sup>94</sup> Ibid.

<sup>95</sup> Overview of the UN Global Compact.

against Corruption.<sup>96</sup> Global Compact regards itself as a strategic policy initiative, not just as a collection of norms. Additionally, it is a voluntary policy that is recommended for businesses as one approach of corporate responsibility.

The policy also offers participants a platform in which they can build their commitments towards society. The initiative is both public and private.<sup>97</sup> What sets the Global Compact apart from other private and independent initiatives, like OECD's Guidelines for Multinational Enterprises, is that it collects the norms and tries to move away from ad hoc approaches of corporate responsibility. In addition, since the Global Compact is under the UN umbrella, it has an organizational forum that has the possibility to monitor activities of the partnership corporations. Global Compact introduced a new type of partnerships among the UN that combined the member states, multinational corporations, international labor and CSOs.<sup>98</sup> The effect of the initiative can be criticized<sup>99</sup>, but, on the other hand, the dialogue opening between different parties can be regarded as a positive aspect.

Global Compact has been criticized due to the fact that it lacks a mandate for effective monitoring, and also a critical and credible review of corporate compliance<sup>100</sup>. In other words, the participation of corporations may give more than it requires. This can be linked to the UN brand's possible diffusion to the corporate sphere without requiring compliance from corporations. In addition, the birth of Global Compact can be seen also in a more critical light. In fact, the birth of Global Compact needs to be set in a context of political shifts.

In 1992, the UN Center of Transnational Corporations (UNCTC) was terminated. One trigger for this downsizing can be seen to be the UN Conference on Environment and Development (UNCED; the Earth Summit) that was possibly seen by the business side as a threat to neoliberalism. This relates to the fact that the UNCTC had been requested by the UN Economic and Social Council (ECOSOC) to produce recommendations for corporations and to be used by the governments in the summit. It took a lot of business lobbying and pressure by Northern governments to stop the activity. However, the mission was successful and the official recommendations in the Earth Summit were represented by the Business Council for Sustainable Development (now the World Business Council for Sustainable Development, WBCSD) in cooperation with the ICC. Most of the recommendations and references to multinational corporations in the summit texts referred to self-regulation. In fact, it has been argued that Kofi Annan was promoting neoliberal values because of his close cooperation with business.<sup>101</sup> Although the amount of private regulation has expand-

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<sup>96</sup> Global Compact.

<sup>97</sup> Ibid.

<sup>98</sup> Dashwood 2004, 197–198.

<sup>99</sup> See example UN Global Compact: Ten years of greenwashing?

<sup>100</sup> Foster 2004, 206–207.

<sup>101</sup> Lipschutz & Rowe 2005, 157–159.

ed, Global Compact remains as one of the most recognized policies in the realm of corporate responsibility.

In 2003, a report called "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights" (Norms) was released by the Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Economic, Social and Cultural Rights. The report's approach was to define norms related to human rights that corporations would be juridically responsible for on a national level. On an international level corporations should subject their operations to monitoring by the UN. In addition, it is mentioned in the report that after the agreement by corporations regarding compliance to the Norms would be done; any wrongdoings by corporations could be taken into international tribunal.<sup>102</sup> It is clear that the report was much criticized and even rejected by the business front.

## **2.6 Entry of embedded liberalism?**

Due to the fact that the response of the Norms was so negative from the business side, a new project was launched by the UN in 2005. Commission of Human Rights mandated John Ruggie as a Special Representative of the Secretary General for business and human rights (SRSG), and requested him to deliver views and recommendations on the following subjects: to identify responsibilities and accountabilities of transnational corporations and other business enterprises with regard to human rights, to define the role of states in regulating and adjudicating transnational and other business enterprises with regard to human rights. In addition, it was requested to research and clarify the following business-related concepts: complicity and sphere of influence. Also material and methodologies were requested to be provided for undertaking human rights impact assessments on the activities of transnational corporations and other business enterprises. As a result of all this, a manual of best practices would be created to guide both states and business.<sup>103</sup> This shows that the UN, on the other hand, sees the Norms as not a solution but also that there should be more enhanced guidance in place in addition to the current Global Compact.

As a short timeline it can be noted that after applying a one year extension for the mandate in 2007, the "Protect, Respect and Remedy" Framework (Framework) was handed to the Human Rights Council (HRC) in April 2008. Since the Framework was a policy framework, it was requested to continue the mandate another three years, until 2011. The HRC was unanimous in welcoming the Framework and a request was set for the SRSG to opera-

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<sup>102</sup> E/CN.4/Sub.2/2003/12/Rev.2, 6.

<sup>103</sup> Human Rights Resolution 2005/69.

tionalize it, in order to create concrete guidance both for states and businesses.<sup>104</sup> This operationalization should be available for HRC in June 2011.

The Framework consists of three pillars: state duty to protect, corporate responsibility to respect and the need for greater access to remedy. Although Ruggie has stated the importance of civil society as an important player in the global public domain, it seems that the main bearers of responsibility are still states and the corporate sector. Nevertheless, the influence of civil society actors is very much shaping and influencing the conduct of both states and the corporate sector. Also, Ruggie has invited multiple CSOs to participate in his work and exposed the material to public discussion. In this sense, the voice of CSOs has been taken into account. Researching how much this voice has been conveyed to the framework and further material produced by the SPSG would need a separate study.

Already prior to the Framework submission, the SRSG had reported on an annual basis. This research will dive deeper into those official reports produced by the SRSG and submitted to the HRC. Nonetheless, as a prerequisite one can state that it is clear that global regulation for corporate conduct should extend both to a national and an international level; in addition, it should cover all corporate functions that might have an effect on human rights. Voluntary regulations will not be adequate as such but need at least some judicial methods to be applied. The current political tendency of neoliberalism that relies heavily on market regulation, or even laissez-faire economy, gives much liberty to corporations, and it seems that many “traditionally” political issues have been “apoliticized”, yet, at the same time, counter effects start to rise and a number of new, non-traditional agents have emerged into the field that has previously been dominated solely by states. It is important that states will seize opportunities to increase their leverage, convince markets of social bargains and start to correct the current prevailing global economic imbalance. The content of the operationalization material, which was submitted to the HRC in 2011, will be analyzed later on as a closure for the mandate and perhaps in the issue of business and human rights as it currently exists.

### **3. NARRATIVES AS A METHODOLOGICAL APPROACH**

Metaphors can be found good ways to illustrate more deeply theoretical and methodological descriptions. Hence, if theory can be said to be like researcher’s glasses with which s/he is examining a certain research question, then methodology can be described as a fork and a knife which are used for dissecting the research material. Methodology is therefore more like a tool that is used for managing research material.

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<sup>104</sup> Resolution 8/7.

Narrative methodology has been selected in this research due to the following groundings. As previously mentioned, narratives can be used as a method for understanding and organizing the world. With this regard, I feel that narrative as a methodology would enable us to examine more thoroughly the current status of business and the human rights field. In this research, the primary material will be dissected by selected narrative attributes in order to study more thoroughly what groundings it lies on. By selecting narrative attributes I try to cut the primary material from one holistic story into smaller parts and reconstruct the story again, but with an additional viewpoint or, better yet, with additional attributes. Like mentioned in the introduction, the issue of human rights and business should be progressing into coherent, practical and detailed guidelines and requirements for various actors in the international arena. I feel that this requires a more pragmatic approach in order to succeed. With this regard, I have also included pragmatism as one approach to explain my personal positioning as a researcher, but also to investigate whether the primary material has any pragmatic targets.

Narrative is a loose methodological framework, which, like many other concepts used in social or political science, does not have an unambiguous or exhaustive definition. Narratives do not have any one particular form, but they can appear via texts, verbal forms or even via pictures or gestures. Sometime narratives may also be a combination of all these forms.<sup>105</sup> Narratives can be seen as one means or an instrument in social life, since narratives exist everywhere. We all communicate and understand the world with the help of stories, at least to some extent. This applies especially to traditional knowledge; hence, researchers are unanimous in their views of stories as a predominant form in the creation and mediation of traditional knowledge<sup>106</sup>. Narratives were actually born along with human history.<sup>107</sup> Since narratives are a common instrument in the creation and function of different societies, it is also necessary to attach narratives to social and political research, as well. Narratives offer a universal method for social and political research, although one must admit that interpretation of narratives is anything but universal due to unambiguity in the concept definition.

As a result, narratives are common and universal in all societies, that is, social life is based on stories that are constantly created, transmitted, interpreted, and redefined. However, what is not a universal or even commonly shared approach among scientists is exactly how narratives can be used as a method of research. There is always controversy what comes to the narrative theory but, on the other hand, there is also always controversy what comes to social and political science in general.

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<sup>105</sup> Barthes 1977, 79. in Hanska 2010, 27.

<sup>106</sup> Lyotard 1985, 36.

<sup>107</sup> Barthes 1977, 79. in Hanska 2010, 27.

In the following chapters, I will position the research by presenting and framing my interpretation of narratives that will be applied in this study. This chapter defines how narratives are understood in this research, and the following chapters of this section will define how the narrative theory and certain related attributes are used in this research. In addition, I will elaborate how narratives are positioned when trying to define truth by a philosophical mindset.

As said, narratives cannot be defined unambiguously, but the spectrum of definition is a wide one. According to Gerald Prince, a narrative can be described very loosely as a temporal occurrence of at least two real or fictional events of which neither one precedes or follows the other<sup>108</sup>. In this definition, there is no reference to any actor; instead, narrative is close to the description definition. Mieke Bal notes actors in narratives when defining narratives as a transition from one state to another, either performed by an actor or experiences by them<sup>109</sup>. The definition can be processed further into a more operational direction, as David Herman does when noting different narrative genres intertwining actions, events and situations, and further on creating different chains of events, (unintended) operation models, and (unintended) phenomena.<sup>110</sup> If the definition is continued even further, as intended action, a plot may be added. According to Boje, a narrative is a coherent entity, which has a plot.<sup>111</sup>

As mentioned before, narratives are a common instrument in communication and in understanding social life. This is to the point that, according to MacIntyre, narratives are the main form of social life, because narratives are used for understanding, not only for interpreting but also for understanding social life<sup>112</sup>. Because narratives can be seen as an instrument of communication in social life, it can be argued that narratives also have a place in social and political science. Nonetheless, evaluation methods used in natural science cannot be applied to narrative research, instead new validation methods, like trustworthiness and authenticity, have been developed<sup>113</sup>. The legitimacy of narratives in social and political science can be argued, though. However, this debate is out of the scope of this particular research. It is only stated here that narratives per se are not valuable in research; simply discovering a narrative is not enough<sup>114</sup>. The attention has to be focused on the observation that stories are transmitters and creators of the reality and meanings<sup>115</sup>. Hence, interpretation and understanding of narratives are subjective; one must note the researcher's presence. A researcher may present and make research scientifically by using the narrative method; however, a research that uses narrative methods can never be objective.

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<sup>108</sup> Prince 1982, 4. in Hanska 2010, 30.

<sup>109</sup> Prince 1982, 4. in Hanska 2010, 30.

<sup>110</sup> Herman 2002, 82–83. in Hanska 2010, 31.

<sup>111</sup> Boje 2001, 1, 6.

<sup>112</sup> Czarniawska 2008, 11.

<sup>113</sup> Guba & Lincoln 1994, 107 in Heikkinen, Huttunen Kakkori 1999, 39.

<sup>114</sup> Czarniawska 2008, 10–11.

<sup>115</sup> Heikkinen, Huttunen Kakkori 1999, 39.

Though narratives are used universally, a research using the narrative method does not produce universal truths, but settles somewhere between universalism and relativism. "Traditional" science has been challenged by relativism, in which different stories create their own reality; hence, there is no universal truth but several truths that coexist simultaneously. The problem in narrative research is that it must be placed somewhere between these two extremes; universal with one truth and relativism with several truths, but it must be done without more specific navigation, since there is no final solution for this metaphysical problem.<sup>116</sup> Hence, it can be noted that in research that uses narratives as methodology, relativity of truths is emphasized and coexistence of several truths is allowed.<sup>117</sup> Once again, the role of the researcher and the selections done by him/her rise up, the reliability and transparency can be measured only case by case, depending on each research and how well the researcher has been able to present his/her methodology through the particular research.

So, it has become evident that a researcher researches and explains social and political phenomena via a selected method and theory. With this in mind, when using narrative methodology the researcher must define how the method or some parts of it are applied in the research. Because the research result received by using the narrative method is always relativistic, the relevance of the narrative method can be considered questionable. Nonetheless, as mentioned before, social and political phenomena or issues are not simple to understand and seldom, if ever, is there one silver bullet solution to be discovered. In this sense, with the help of narratives, but by using narrative as a method, different phenomena can be better structured and understood. In addition, because norms and values are constantly being defined by different social actors, we ourselves are defining what kind of a society we want to live in. This leads to the question how norms and values are being shaped, especially when globalization has changed the international sphere we operate in. In particular, human rights as a concept is loaded with expectations for certain norms and values. The international sphere is presented in more detail in the coming chapters.

The subjectivity of the researcher is emphasized in narrative research, so no universal truths are expected but pluralism is allowed. This can be seen as a benefit, since substances of one social world may differ from the substances of another; similarities and differences between lives and worlds can be noted by narratives<sup>118</sup>. So, paradoxically, subjectivity and even emotionality to some extent can be seen as the assets of narrative research and as a legitimation of its existence in social and political science. This can be said because these attributes, subjectivity and emotionality, are important tools in raising discussion in the social life. In this sense, narrative is an essential method also in the field of international relations discipline. The next paragraphs will define how narrative as a method is viewed by the au-

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<sup>116</sup> Guba & Lincoln 1994, 107 in Heikkinen, Huttunen Kakkori 1999, 39.

<sup>117</sup> Penttinen 2004, 53, 55–56.

<sup>118</sup> Gubrium & Holstein 2009, 16.

thor in attempts to define truth and which narrative attributes are used in this study. In addition, with the author's background, all of those will be combined as a description of the selected method and, similarly, a description of the researcher positioning.

### **3.1 Researcher positioning; pragmatism**

Researcher's role is vital in every field of science. Nevertheless, especially in social science it is important and beneficial to keep the researcher's role transparent with regard to the research done for the reliability of the research. This statement is based on the special starting point according to which social science has been compared to natural science, as previously mentioned; as there are no such regularities that are present in natural science, social science may be more vulnerable to defects in reliability. Nevertheless, although technology has advanced amazingly, researcher's humanity cannot be ruled out even in natural science. Researcher is always a component in his/her research, for example, it is imperative that a researcher in the medical field has integrity and ethical values. However, especially in social science a researcher must be aware of his/her premises, and potential effects on conducting and finalizing a research. The same applies to any other variant that could potentially influence the conducted research. Here it gets tricky, though, since measuring variants and also the results of a research is difficult, since it cannot be done with the same methods as in traditional natural science.

However, social science uses tools for putting research results and also her-/himself into "a context", i.e. giving information to another science community on how and with which methods a particular research has been conducted. This secures the fact that the science community can evaluate the results of a research and, if needed, carry out researches in order to continue investigating some social concepts. This is done by selecting and presenting a theory and a method that will be applied in the particular research. With the help of theory, a researcher can set the research question and material into frames in which the research is conducted. Methodology, on the other hand, gives repeatability for the research, because a research can be repeated by using the same methodology. Nevertheless, it must be stated that sometimes the line between theory and methodology can be blurry but, then again, theory and methodology should support one another. As mentioned, by revealing theory and methodology that are used in a particular research, the research is opened to the science community to be discussed by using same scientific language. Additionally, discussions and possible critiques can be done logically and in such a manner that benefits the whole community. This also means that results of certain researches can be tracked as contributing science. Nonetheless, in talking about social science, there is always a certain amount of interpretation, although a researcher would have indicated the used theory and method. What needs to be noted is that reliability improves if theory and methodology are thoroughly explained.

Therefore, the role of a researcher is not a variant that can be left untouched. Consequently, it is essential to make known both how the narrative and narrative attributes are understood and also how they are applied in a particular research. This chapter has more of a philosophical approach, since it defines how I understand narratives in the philosophy of science and especially in relation with the definition of truth. Additionally, the author's background is presented very briefly for those parts I feel relevant with regard to this study. Nonetheless, since several attributes, like the researcher's background, personal views and environment, contribute for their part, it is relevant to note that the researcher is a female, a Finn and has worked several years in a multinational corporation. However, it must be noted too that the researcher's job description has never even crossed the topics studied in this particular research.

It is important to note that although personal aspects influence the way the researcher observes and analyzes the world, it must be stated that explaining one's personal viewpoints in a way, or to the extent, which is relevant and sufficient to scientific studies is not possible. Hence, the personal viewpoints are and remain latent; below surface and unreachable by explanations or any presentations. Nonetheless, even though these kinds of personal viewpoints should be spelled out directly and if there would be a way to do it objectively, it would perhaps tell less than readers of this research would be able to form in their minds. By this I mean that since personal viewpoints are most subtle ones, sometimes more is received by interpreting personal work than would be able to be represented by direct characterizations. As a final statement one can mention that, on one hand, one cannot define characterizations by knowing some background that would be stereotypical but, on the other hand, some background information can give hints or some explanations why certain approaches have been selected.

I use a concept of truth as being defined as a pragmatic idea. Additionally, this definition of truth is used as a contributing attribute to the narrative method, which is used in this research. In other words, truth is defined as succeeded practice (pragmatic idea). According to Charles Sanders Peirce, practice guides scientific community, shaping it continuously. The process unfolds as the following; new concepts are being formed constantly according to practical feedback received by a scientific community. In this respect, a new concept is being formed by a scientific community according to practical feedback. This new concept, on the other hand, is then applied into practice. Nonetheless, the pragmatic viewpoint includes a viewpoint of what is in general regarded as a successful practice.<sup>119</sup>

Consequently, pragmatism is itself a strongly subjective starting point for a research, but, on the other hand, this diminishes the possibility of discovering "one single truth". Though, on the other hand, there is a risk that a result of the research is itself defining the truth of the research in a wrong way. This can be illustrated better by considering that a research is be-

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<sup>119</sup> Heikkinen, Huttunen, Kakkori 1999, 119–120.

ing regarded as truth only if it gives desired results from the viewpoint of the researcher.<sup>120</sup> Nonetheless, although not exhaustively solid, pragmatism is necessary for justifying and also measuring the necessity of a research.

Because the primary data used in this research is based entirely on written material, the pragmatic approach can be criticized. Nonetheless, it is my personal belief and approach that there should be some pragmatic target state of the primary material. Accordingly, if pragmatism is simplified a bit, one can say that stories that result in "good" are themselves good and stories that result in "bad" are themselves bad ones<sup>121</sup>. With this respect, the primary material should be examined also by pragmatic attributes; hence, the guidelines of the work done by the SRSB should work as a successful practice. However, in this sense pragmatism is more my personal viewpoint and serves better as explaining positioning than a directly applicable attribute in the research method.

### 3.2 Researcher positioning; selected narrative attributes used in the research

As mentioned before, simply by selecting a research method the researcher has already made a statement regarding how this particular topic should be researched. Chapter three tried to give background on how narratives are *understood* by the author. The primary material of this research is comprised of the official main reports produced during 2006–2011 by the SRSB in his research of the issue of human rights and transnational corporations. These reports are being researched by using selected narrative attributes. In order to make the selection more transparent, and to explain how narratives are *used* in this particular study, the following chapters present in detail the particular narrative method used in this research. As already explained, the primary material will be dissected by the selected narrative attributes in order to study more thoroughly what groundings it lies on. The primary material is being cut from one holistic story into smaller parts and reconstructed again, but with an additional viewpoint or, better yet, with additional attributes.

The one single statement, that guides the narrative method used in this research is conclusion of the "core" of narrative methodology understood as; **noticing stories as transmitters and creators of the reality and meanings**<sup>122</sup>. However, in order to avoid speculation the researcher wants to warn, not to make too straightforward conclusions. Yet, at the same time, it must be born in mind that human rights are created and continually defined and shaped by social actors, they are not some rules that are based on natural laws nor are they an objective reflection without any cultural or time-based connections. This particular statement of a narrative's core methodology can serve as a critical approach and also as a tool in setting the research into a bigger context. Also, I would like to point out that stories

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<sup>120</sup> Heikkinen, Huttunen, Kakkori 1999, 119.

<sup>121</sup> Heikkinen, Huttunen, Kakkori 1999, 40.

<sup>122</sup> Heikkinen, Huttunen Kakkori 1999, 40.

are in fact instruments of the reality and the creation of meanings, meaning that stories or narrative theories should be taken as an important part of social and political science.

On a conceptual level, narratives are seen and applied in this research as defined by Herman; where stories are – at a minimum – situations and events unfolding in time, which means that stories concern temporal sequences. In addition, Herman emphasizes empirical approach; stories as accounts that were experienced by particular people.<sup>123</sup> Although this kind of an experience-related approach cannot and will not be directly applied in this research, it relates to the previously noted possibility of emotionality raised by narrative research. Also, what is applicable and used in this research is the conceptual definition of a narrative that notices temporality and also that a narrative may be viewed under several profiles; as cognitive structures for clarifying the experience, text types, and as a resource for communicative interaction.<sup>124</sup>

According to Herman, a narrative can be dissected to four basic components; mode of representation (situatedness), structured time course of events (event sequencing), introducing disruption into the storyworld (world making / world disruption) and consciousness awakening (what's it like). Here narratives are seen as blueprints of world creation and storyworld as worlds evoked by narratives. Also, a narrative that represents events will have such an effect that it creates a disruption or disequilibrium.<sup>125</sup> Nonetheless, I will use only one element, *event sequencing*, as a narrative attribute and abandon the other elements. Event sequencing will be presented in more detail in the chapter that takes a look into the temporality of narratives.

An approach defined by Heikkinen, Huttunen and Kakkori brings forth multidimensionality and defends the position of narratives in science as creators and transmitters of reality and meaning. The narrative theory applied in this research settles within these frames – somewhere between the definitions presented by Herman and, on the other hand, the somewhat philosophical views presented by Heikkinen, Huttunen and Kakkori – in the narrative spectrum. In addition, to this spectrum scaling, I have selected few attributes that are used as a method in this research. These attributes are *temporality* and *event sequencing*, *intertextuality*, and *roles*.

Event sequencing bases on Herman's approach but is connected to other dimensions of temporality, as well. The backbone of intertextuality and roles is collected and constructed from various sources. In addition, connected to intertextuality and change in the international sphere, *locus* of narratives is briefly presented. The following chapters dive more into these attributes. By allowing relativism in methodology and tolerating plurality in narra-

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<sup>123</sup> Herman 2009, 1–2.

<sup>124</sup> Herman 2009, 1–2, 7.

<sup>125</sup> Herman 2009, 9, 105–106.

tives, one can perhaps study more intensely how material produced by the SRSG note different actors, like corporations, states, and private actors like citizens and employees, in the international sphere and which kind of roles are offered for those. The next chapters present the selected narrative theory attributes.

### 3.2.1 Temporality and event sequencing

Temporality of narratives is a difficult topic. If we think that **stories are transmitters and creators of the reality and meanings** and that those stories are being understood via narrative methodology, one can say that narratives are not necessarily built in a linear way, but they are complex and may be reconstructed again and again. Narratives may not comply with Aristotle's concepts: beginning, middle and an end, but especially if reconstructed, narrative temporality may be more of a spiral mode.<sup>126</sup> Nonetheless, Claude Berlot argues that narratives are not spiral ones and cannot continue linear but that they are gradual ones, in which case a narrative may continue seamlessly in time. This approach of narratives as gradual or rather gradient ones is also supported by Herman.<sup>127</sup>

Nevertheless, temporality of events and narratives must be defined separately; narratives can be based on events or experiences, which possess a beginning and an end but a narrative itself may be constructed in a sequence, series or in a process and those can be endless, which means that narrative worlds can be made through a process of composition and decomposition<sup>128</sup>. Narratives as a process seem to fit well into this particular case, because even though the primary material used in this research has been created recently and in a short period in time, the field of human rights and corporate conduct has been developing for decades. It is highly unlikely that narratives detected from the primary material will have a beginning, middle and an end. Nevertheless, one must pay attention to the events the primary material is basing itself on.

Going deeper into the event sequencing definition, it is noted that event sequencing is a temporal structure that consists of particular events. It is a mode of representation that focuses on the time course of particular events. The temporal profile, particularized situations and events, of a narrative also sets it apart from plain descriptions. It also helps to trace back which kind of selections were made by particularized individuals, which in turn has led to consequences and setting the consequences in a larger context.<sup>129</sup> This does not mean that one could foresee by using narratives, but it does not mean that one could not analyze and explain<sup>130</sup>. Temporality is important in the context of this particular research, since it

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<sup>126</sup> Aristotle, *Poetics*, 1450b27, 1459a20 in Carr 1986, 47, Hanska 2010, 34.

<sup>127</sup> Hanska 2010, 39, Herman 2009, 14–15.

<sup>128</sup> Carr 1986, 47, Herman 2009, 111

<sup>129</sup> Herman 2009, 18–19, 104.

<sup>130</sup> Czarniawska 2008, 12–13.

must be taken into account that Ruggie has created plenty of studies, clarifications and other material what comes to Human Rights or Corporate Social Responsibility (CSR) during 2006-2010. A great part of this material is based on some event that has been organized for the stakeholders.

As mentioned, the topic of Human Rights and corporate conduct is not a brand new one and, in that sense, this research most certainly does not enter a narrative in its beginning. Instead, this research settles into a bigger picture of the issue of Human Rights, which must be taken into account and is clarified more with the help of intertextuality, a narrative attribute that will be presented in the next chapter. All in all, the teleology of narratives in this context may be more of a process than linear, which also relates to the intertextuality concept.

### 3.2.2 Intertextuality and roles

Intertextuality represents the complex relationship between a narrative work and narrative environments. If this will be applied to literary works, it means that intertextuality conveys how the meaning of a text is moderated by the meaning of other texts.<sup>131</sup> It may be that intertextuality serves more as an important process in social and political science. It can be seen as an interactive process when attempting to approach diverse social questions, which might be more of a “big picture” definition. On the other hand, as a more fragmented approach intertextuality can be seen as an interpretation of different works, situations or presentations – how we understand various written or oral works.

As a more narrow definition, Julia Kristeva offers an explicit explanation; texts draw their meanings from other texts and there is an ongoing interplay of reading and interpretations<sup>132</sup>. This seems like a familiar mode of operation. Texts are often even re-written in order to clarify the message, which can be seen in several works explaining for example philosophers’ works, interpreted by new authors. Continuing with intertextuality definitions in literary work, Foucault argues that frontiers of a book continue beyond its “physical” form and it’s caught up in a system of references to other literary works; books, texts, sentences<sup>133</sup>. This implies that the narrative environment is diverse and mediates meaning making<sup>134</sup>. Human Rights and CSR are more widely studied; hence, chapter 3.4 tries to set the research in a big picture of Human Rights and CSR in the context of civil regulation. Intertextuality is linked closely to roles and temporality in this research.

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<sup>131</sup> Gubrium & Holstein 2009, 185.

<sup>132</sup> Kristeva 1973, 1980, in Gubrium & Holstein 2009, 186.

<sup>133</sup> Foucault 1973, 23, in Gubrium & Holstein 2009, 186.

<sup>134</sup> Gubrium & Holstein 2009, 187.

There can be many different roles in narratives, depending on the selected approach. There can be at least the producer of a narrative (author), a narrator and a receiver. Roles can also be mixed, hence author and narrator can be also participants in the narrative. On the other hand, it can be argued that the narrator, author and possible indirect authors should be separated from each other.<sup>135</sup> In other words, the researcher should indicate who talks and to whom. This may have an effect on reliability. Though reliability is affected many other aspects, too, as does the narrator's function according to norms.<sup>136</sup> The role of the author, but also roles of different social actors, like states, corporation and the UN, is important in the primary material. The role of the author is being mapped into the context of Human Rights, but it is the various social actors, states and corporations that are concentrated on more.

As said before, intertextuality is closely linked to both roles and temporality attributes, because intertextuality can be used for studying story exchange and dialogue. Intertextuality creates a network where dialogue between authors and receivers is possible.<sup>137</sup> Intertextuality helps to understand the contextuality of a narrative, which, on the other hand, facilitates critical viewpoints. Narratives are not created in a vacuum but in a time and a place via different actors. Intertextuality means that the interpretation of texts (or other forms of narratives) is in relation of other texts (or other forms of narratives). Narratives are created both communally and privately. This explains why in certain cases also different roles, like author, may have different viewpoints on the narrative created as a receiver, for instance. Bearing that in mind, the meaning of a text, for example, may not be conveyed in the same way to an author and a reader.<sup>138</sup>

Besides the author, also a reader may have earlier experiences in the particular topic in question, into which the text is mapped to, by a way that also personal characteristics play a role in the interpretation. The role of a researcher is though relevant also in this sense. I have no previous researches from this particular field, however, based on studies relating to this research I may possess some predefined approach and a viewpoint of different standpoints between different actors what comes to Human Rights and corporate conduct. In addition, active participation in work life has brought some perspective, too. These different standpoints that are dominant in the international sphere were presented in chapter 2.5.

Temporality, intertextuality and roles together combine a frame that I will use as a method to examine the primary data, in order to both detect and interpret narratives, but also to dissect those for more close and detailed examination. The next chapter will add yet another narrative attribute, but one that is used differently as the previously explained narrative attributes; as an environment for narratives. This I regard as useful and needed due to the global nature of the topic, hence narratives need to occur in a public domain.

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<sup>135</sup> Hanska 2001, 109-110.

<sup>136</sup> Hanska 2001, 112.

<sup>137</sup> Boje 2001, 74.

<sup>138</sup> Gubrium & Holstein 2009, 185-186.

### 3.2.3 Locus – narratives in the global public domain

The international sphere – global public domain was already covered in the theoretical viewpoint in chapter 32.2.2, and in some ways these two chapters collide. However, it is necessary to take a look at what should be considered when narratives get global and take a place in the global public domain. It can be noted that the new information technology and the more accessible media have enabled narratives as a form of personal testimony power for activism, politics and even history making starting from a grassroots level. What this means in context of the global public domain is that self-reflection and modes of behavior have to be adjusted to the constantly changing environment, which, in addition, is not possible to be adjusted to control.<sup>139</sup> The research subject itself has ethic and political dimensions, so it is necessary to point out what kind of challenges may be attached to narratives in a public domain per se.

It was mentioned that due to the new information technology it is easier to “get a voice” and also make it heard. However, Spivak argues that these marginalized technologies still have little or no control over representation, interpretation and dissemination<sup>140</sup>. On the other hand, it can be argued that interpretation and dissemination of a message can hardly be controlled by anyone. How some voices gain public “acceptance” or become a dominant view is an extremely complex occurrence where any causality is hard to detect. There is a question of ownership and control over voice or a personal narrative that is taken in to the public domain. Interconnection of globalization, human rights and personal narratives accelerated during the 1990s and escalated personal narrative or testimonial as a medium of global human rights claims.<sup>141</sup> Further on, developing social media has created new opportunities and modes of broadcasting personal narratives, which can be seen for example in the uprisings in Syria and Libya. Also, social media has provided a channel for increased dialog, which we can benefit from when attempting to develop global ethical norms. Other interactive information technology tools, like wikis, have also lowered the threshold for contributing to discussions and getting personal viewpoints public.

How, then, to address and include ethical dimensions to narratives in a global public domain, so that ownership and control are taken into account? Gready suggests that both local and international actors must be involved in the analysis in order to avoid relativism. It must be emphasized that analysis and judgment are vital and must be done for selecting those narratives that must be respected as such as issue driven testimonies, which contribute to the issue in question. The latter one may be prioritized over an individual life story.<sup>142</sup> Is-

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<sup>139</sup> Gready 2008, 137.

<sup>140</sup> Spivak 1988, in Gready 2008, 138.

<sup>141</sup> Schaffer and Smith 2004, in Gready 2008, 138.

<sup>142</sup> Gready 2008, 145–146.

sue driven testimonies may occur for instance when alleged wrongdoings of corporations are being reported. Similarly, usage and interpretation of a text are two distinct actions, where usage of a text for another agenda than that of its author's differs from interpreting with respect to its author's intentions and origins<sup>143</sup>. Ethics arise again as a value that is hard to measure and that should be used delicately. It is impossible to define direct guidelines on how to interpret with respect; at least some must be left on a level that can be defined as "good intentions".

As was indicated, it can be said that rather than making your voice heard, it has got more to do with gaining control over voice, representation, interpretation and dissemination. In order to comply ethical requirements and to create grounds for a fruitful dialogue; a research agenda that notes the inequalities of the global public domain in addition to taking care of applicable research method, including ethics.<sup>144</sup> In this sense, it is noteworthy to investigate how SRSR has produced the material, what kind of sources and events are used and how different tones of voices may possibly be presented. This can be seen as a critical approach of the material produced by SRSR. Also, like stated in the beginning of this chapter, the global public domain sets a global environment, in which this approach and study of Human Rights must be present and discussed.

As a summary, the narrative attributes described above can be categorized in two different dimensions. Temporality, intertextuality and roles can be combined as attributes, with which narratives can be on one hand taken down and examined in more detailed way and, on the other hand, taken together as one representation that defines a created narrative. SRSR's work is, on the other hand, a continuation of the work previously done within the same thematic by the UN, in this sense narratives can be placed in a context and possibly redefined and changed gradually. It is ambiguous, however, to evaluate how well temporality can be examined, since the actual primary data is created in a very short period of time.

Where temporality, intertextuality, and roles can be used as unifying attributes in order to examine narratives; the global public domain is the locus or environment in which narratives must be present and survive. Also, it effects for its part which kind of narratives "make it", that is, survive in that environment. the global public domain may be helpful for discovering possible grassroots voices and getting a critical approach on the unification of norms, values and politics. All in all, the study circles around ethical values, which, nonetheless, are not defined any further in the context of this study. Although ethics and morality are notably attached both to human rights and CSR, it is not the mission of this study to take part in that conversation. On the contrary, this study concentrates on examining the primary data via narrative attributes that have been described above and through a theoretic-

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<sup>143</sup> Eco 1992, 68–9, in Gready 2008, 146.

<sup>144</sup> Gready 2008, 147.

cal viewpoint, which will be covered in the next chapter, bearing in mind that Human Rights are indeed defined by social actors and cannot be taken as granted.

#### 4. HUMAN RIGHTS AND BUSINESS – AS SEEN BY THE SRSG

The primary data that has been analyzed in this research is the official documents that have been created during 2006-2011 by the SRSG and submitted to the HRC. It must be mentioned that this material is, however, only a fraction of all the material that has been created by the SRSG and his team since the appointment in 2005. For a better access and transparency to the material published, the SRSG has created a website that serves as an access portal to all related data (<http://www.business-humanrights.org/SpecialrepPortal/Home>). To give background for the analyzed primary data, the mandate of the SRSG is presented in detail. In 2005, the Commission on Human Rights requested the Secretary-General to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises. The request was also to hand over a report to the Commission on Human Rights with views and recommendations. The mandate was given to the SRSG for an initial period of two years and the following elements were requested:

- ...” (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.”...<sup>145</sup>

Since his appointment, the SRSG has reported annually to the HRC. These annual official reports form the primary material used in this particular research and that is analyzed with the method and theory presented in previous chapters. As mentioned, the official documents have been created during 2006-2011 by the SRSG and submitted to the HRC. The official reports from 2005-2010 are being analyzed in more detail and the final report is included in this research only with regard to the last part of it. This is because of the time limitation of the researcher. However, it is a risk that has been taken in order to submit the research in time. Also, the primary data is being analyzed according to the selected theory and methodology; nonetheless, the last two main official reports are positioned a bit differently due to their operative nature. The primary material is dissected by each methodological attribute and also by theory in this section and the final recapitulation of the research is done in chapter 5. Due to chapter dedicated for the conclusions, this section will move

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<sup>145</sup> Human Rights Resolution 2005/69, 1.(bold added)

freely in each methodological attribute and theory framework without a rigorous step by step approach.

The SRSG has reported six times to the HRC during his mandate: in 2006, 2007, 2008, 2009, 2010 and 2011. Since each of the produced official reports responds one or more specific elements of the mandate, the main function of each official document will be presented, as well, in order to intertextualize each report with regard to the mandate and overall field of human rights and business. Hence, the official reports are represented function wise in a chronological order, before entering the research that is based on the selected methodology and theory. The first official report was submitted to the HRC in 2006 and it is an interim report to frame the context of the mandate as the SRSG sees it and also to pose main strategic options and to summarize current and planned program of activities<sup>146</sup>. In other words, it sets the basis for the work at hand.

The official report submitted in 2007 aims to respond to “a”, “c” and “e” - elements of the resolution. Those elements are: to identify and clarify standards of corporate responsibility and accountability for business enterprises with regard to human rights (a), to research and clarify the implications for business of concepts “complicity” and “sphere of influence” (c) and to create a summary of the best practices of states and business enterprises (e). In addition, the report requests for an extension for the mandate in order to create strategic assessment of major legal and policy measures that could be taken and to produce views and recommendations of options or combinations for effective remedies.<sup>147</sup> The report then tries to respond to conceptual definitions, but also to create some practical offering for best practices in a global sphere.

There were four addendums and one companion report that were created in conjunction with the 2007's official report; addendum 1 represents state responsibilities to regulate adjudicate corporate activities according to the core human right treaties created by the UN<sup>148</sup>. Three other addendums were also produced, one that targets to tackle corporate responsibility as guided by current international law and, on the other hand, to define issues of extra-territorial regulation. Addendum 2 represents the results of four workshops that had the following aims: to study government regulation of corporate human rights issues, corporate

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<sup>146</sup> E/CN.4/2006/97, 1.

<sup>147</sup> A/HRC/4/035, 1, 26.

<sup>148</sup> A/HRC/4/035/Add.1, 2–3, 7. Core treaties selected and included to the research by the SRSG are the following; the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Civil and Political Rights (CCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW); and the International Convention on the Rights of Persons with Disabilities (ICRPD).

complicity in human rights violations, role of extraterritorial jurisdiction in improving TNCs' accountability and attributing TNCs' human rights responsibilities under international law<sup>149</sup>.

The third addendum produced in 2007 presents the results of questionnaire surveys sent to governments and Fortune Global 500 firms. The aim is to find out existing human rights policies and management practices. The last addendum summarizes the human rights standards by cross-section of companies, collective initiatives and responsible investment funds.<sup>150</sup> The companion report targets to clarify methodical questions related to human rights impact assessments, and also to evaluate the concept of existing environmental and social impact assessments<sup>151</sup>. It can be seen as an attempt to respond to the mandate's element "d"; to develop materials and methodologies for undertaking human rights impact assessments of the activities of business enterprises.

The official main report submitted in 2008, the "Protect, Respect and Remedy" Framework, is the conceptual and policy framework on which the discussion on business and human rights is based on. In addition, it is a strategic policy framework that represents three principles that are the underpinning of the whole strategy created by the SRSG.<sup>152</sup> In 2008, two addendums and one companion report were submitted, as well. The first addendum lays out a summary of five multi-stakeholder consultations; the second represents a survey of scope and patterns of alleged corporate related human rights abuse from sample cases that were posted on the Human Rights Resource Center web during the time period of February 2005 to December 2007<sup>153</sup>.

In addition to these addendums, which are more of a practical nature, a report to clarify more concepts of "sphere of influence" and "complicity", which are a part of the second principle of the strategic policy framework, a companion report was submitted to respond to the element "e" (create a summary of best practices of states and business enterprises) of the mandate<sup>154</sup>. Since it was requested by the HRC when extending the SRSG's mandate in 2007 to provide recommendations, the recommendation of 2008 was for the HRC to endorse the Framework and to create an authoritative focal point for the business and human rights discussion<sup>155</sup>. This provided another period for the SRSG to continue his work and to start creating operational guidelines based on the Framework. This milestone can be seen as surpassing the previous attempt to create common ground and regulation for business and human rights. However, the work was still in a conceptual phase, and the most difficult challenge, operationalization, remained.

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<sup>149</sup> A/HRC/4/035/Add.2, 2.

<sup>150</sup> A/HRC/4/035/Add.3, 1-4, A/HRC/4/035/Add.4, 2.

<sup>151</sup> A/HRC/4/74

<sup>152</sup> A/HRC/8/5, 1.

<sup>153</sup> A/HRC/8/5/Add.1, 2. A/HRC/8/5/Add.2,2.

<sup>154</sup> A/HRC/8/16, 1.

<sup>155</sup> A/HRC/17/31, 3.

In 2009, a main report and one addendum were submitted as official reports by the SRGS. Since the mandate of the SRSG was extended by another three year period in 2008 after the HRC unanimously accepted the policy framework and the mandate was specified to operationalize the submitted policy Framework, the report submitted in 2009 was recapping the key features of the Framework and defining the strategic directions for the Framework operationalization. Hence, the main report concentrates on the operationalization of the strategic policy framework that was submitted a year earlier and indicates the progress made but also sets the mission in a context by explaining the prevailing economic situation. The addendum presents state obligations to provide access to remedy for human rights abuses.<sup>156</sup>

The latest progress report, before submittal of the final report, was submitted to the HRC in 2010 and it represents further steps towards operationalization of the strategic policy Framework, thus it is a progress report to follow-up the A/HRC/8/5 report.<sup>157</sup> The last report was submitted in 2011, aiming to finish the mandate and provide implementation to the Framework<sup>158</sup>. The following chapters will dive deeper into the analysis via selected methodology and theory of these official reports, which were submitted to the HRC during 2006-2010. The final report will be analyzed only with regard to the two last chapters in this section, because the main focus is, according to the function of the report, on pragmatism, operationalization and also on finding out if any conclusions or an ending for possible narratives is presented.

#### **4.1 Embedded liberalism through the material**

One of the aims is to analyze whether the submitted reports, that is, the responses and recommendations to the HRC, are underpinned by the theory of embedded liberalism. The definition, which was used previously to capture embedded liberalism, is that there needs to be an institutional framework that reflects state power and interests but also prevailing social expectations, norms and economic ideas. Also, there was a request that all stakeholders would be turning to global citizens and have equal participation possibilities through cosmopolitan democracy. It seems that embedded liberalism is present in the SRSG's work, since already in the first report submitted there is a familiar conceptualization of globalization and the basis of the strategy seems to be laid on the embedded liberalism theory.

The issues are being framed in the first main official report by a familiar concept, explaining change in the global public domain from "inter-national" economy to global world with a variety of actors that the territorial state has no primary organizing principle but that may

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<sup>156</sup> A/HRC/11/13, 1–5, A/HRC/11/13/Add.1, 1.

<sup>157</sup> A/HRC/14/27, 1–3.

<sup>158</sup> A/HRC/17,31, 1

have important public roles<sup>159</sup>. Though this is only a framing and more of an explanation of locus for the issues, embedded liberalism is being more explicitly stated further on. For instance, it has been referred to severe imbalances between markets and business and also the inadequate capability of societies to protect and promote the core values of a social community<sup>160</sup>. This can be seen as a referral for a need to promote social expectations and norms in conjunction with state power and interests.

Also, the same historical explanation to frame the issue that draws from embedded liberalism is being stated. The historical explanation starts from the Victorian era until the post-1945 institutional arrangements and emphasizes the positive effects of social safety nets and other social investments done in post-1945 as a contrast to the Victorian era and aftermath of the First World War, which both failed to maintain and restore economic equity, leading to inimical consequences. In addition, it has been noted that ...“Embedding global markets in shared values and institutional practices are a far better alternative; contributing to that outcome is the broadest macro objective of this mandate.”...<sup>161</sup> This statement strongly indicates that social expectations and norms need to be tied into economic ideas, for profitable and enduring solution. On the other hand, global governance gaps may remain if these shared values are not implemented efficiently, either via international or national institutions. However, staying at a theoretical viewpoint, it seems that embedded liberalism is taken into use.

Thus, it can be interpreted that the foundation of the mission is being laid to embedded liberalism already in the beginning of the mandate. As norms are a part of embedded liberalism and, indeed, building blocks of social expectations and the whole issue of business and human rights is greatly based on normative judgments, norms would deserve to be mentioned, as well. In fact, it has also been noted that there will be normative judgments, as well, and that these judgments will be based on a principled form of pragmatism, which, on the other hand, is being described as a commitment to strengthening the promotion and protection of human rights as it relates to business together with a pragmatic attachment in creating a change in the daily lives of people<sup>162</sup>. Thus, both normative and practical dimensions, in addition to embedded liberalism, are being presented in the first official main report submitted in 2006.

The official main report that was submitted to HRC in 2007, tackles the resolution’s element of identifying standards of corporate responsibility and accountability for TNCs (and other business) with regard to human rights. Hence, the function of the report is to map international standards of responsibility for corporate acts.<sup>163</sup> Here, too, some particular refer-

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<sup>159</sup> A/EN.4/2006/97, 4.

<sup>160</sup> A/EN.4/2006/97, 6.

<sup>161</sup> A/EN.4/2006/97, 6.

<sup>162</sup> E/CN.4/2006/97, 20.

<sup>163</sup> A/HRC/4/35, 1–3.

ences to embedded liberalism can be found, like reference to it without efficient institutional underpinnings in place, markets may become socially unsustainable. In addition, there is also a note that governments need to join public interest of other social actors and to utilize other social institutions, including market mechanisms.<sup>164</sup> Both of these references are stated in the beginning of the report, as a frame for the report's mission. Consequently, there is a worry that social sustainability might not survive if institutional framework is not in place. In addition, the dialogue between state and civil society is seen as important and courageous. States should acknowledge civil society's voice and use existing mechanisms to regulate companies, however still keeping the economic system vital. Also, in the very end of the report as a conclusion, steps towards the selected strategy can be found when the historical perspective is taken again as a lesson and when framing the issue by presenting misalignment between governments and businesses of core values of the social community<sup>165</sup>.

The main official report submitted in 2008 serves as a conceptual and policy framework for the work at hand. It was therefore at that time the main achievement by the SRSR in fulfilling the mandate, since it lays a common framework for business and states in the issue of business and human rights. Yet again, it seems that the framing is based on the principles of embedded liberalism, as it is explained in the introduction that markets work optimally only if they are embedded within rules and institutions. In addition, the historical perspective is taken again as an argumentation in explaining that markets pose risks when they exceed the reach of the institutional underpinnings that both ensure their political sustainability and also allow them to run smoothly. The risks referred to concern both the society and business itself, hence rules, customs and institutions are needed by markets to thrive and sustain, as well as the society to manage the adverse effects of market dynamics.<sup>166</sup> It seems that the approach is based on embedded liberalism, and also underlining strongly that cooperation would be the key and that the institutional framework would enable both business and the civil society to thrive. Like it was stated earlier, although a framework for enabling the market-society balancing would be in place, if there is a lack of an authoritative actor, it makes it difficult to develop and promote mechanisms to manage business and human right nexus in a positive way. This main official report is further referred to as the "Framework".

As the official report in 2009 is more of a strategic plan for operationalizing the Framework, the content is strongly based on the previous report. Nonetheless, more emphasis is being placed on the current economic crises, which form a context of the official main report that was submitted to the HRC. It sounds very familiar when it is repeated that markets need to have institutional underpinnings in place and that markets should also be embedded in the boarder values of the social community. Also, it is being stated that both global and national efforts are needed to limit damages and to restore economic momentum when ma-

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<sup>164</sup> A/HRC/4/35, 3.

<sup>165</sup> A/HRC/4/35, 25.

<sup>166</sup> A/HRC/8/5, 3.

major downturns occur.<sup>167</sup> This can be seen as a note that also global governance mechanisms are needed in order to manage the global economic sphere. Likewise, social expectations are needed to be implemented in economic ideas, for sustainability and equitability.

It is interesting that economic and human rights standards are now linked more explicitly together. This is noticeable when it is being warned not to create protectionist barriers – and therefore escalation of protectionism – or to lower human right standards for businesses. Hence, investment and trade are seen as the engines of economic growth, which for its part is seen necessary for economic and social development.<sup>168</sup> This indicates also that investments and trade are seen as positive and a supported way to increase wellbeing and prosperity. However, responsible actions are needed in both sides; states should not give in to either protectionism or deteriorated human right standards in order to allure more investments.

On the other hand, it has been stated that also companies should be responsible if downsizings or even plant closings are needed. Public trust and confidence in business is seen as an immediate challenge in economic downturns. More emphasis is placed on government responsibilities for recalibration of the balance between market and state, in the form of social investments and safety nets, so that the realization of economic and social rights of citizens is realized. Also, it has been argued that also companies need to integrate social concerns better into their long-term strategic goals.<sup>169</sup> This all manifests elements of embedded liberalism. It is not that states should punish companies but that they should balance markets and society needs better and also regulate companies in favor of improved social sustainability which, in turn, will profit business.

Nonetheless, the last official report before the final report has been submitted to the HRC in 2010. It is a progress report with some pragmatic guidance and descriptions of the progress of the work and, in that sense; it is hard to detect any direct theoretical references in it. Also, the strategy has already been framed and selected in 2008, explained in detail and supported in the previous reports. The official report of 2010 concentrates on explaining the three pillars, which were introduced in the Framework in a more pragmatic way; hence, there are no explicit references to embedded liberalism as such, though there is a similar remark that was already made in the addendum report, submitted in 2008, that by not giving guidelines to businesses governments may think they are doing a favor to corporations, but instead they are exposing companies to risks by lacking the necessary guidance. In addition, the inaction by states in this matter is a misconception, since, instead, business would require more guidance on how to manage risks in charged political situations.<sup>170</sup> Thus, it is repeated that regulation and governance would benefit both sides. Also, the main

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<sup>167</sup> A/HRC/11/13, 5.

<sup>168</sup> A/HRC/11/13, 5–6, 10.

<sup>169</sup> A/HRC/11/13, 5–6.

<sup>170</sup> A/HRC/8/5Add1, 17, A/HRC/14/27, 10.

responsibility for acting remains with states, and it should be understood that cooperative actions and dialogue between civil society, states and business is needed, but that there also should be authoritative actors to coordinate and implement.

## 4.2 Temporality and event sequencing

It was predefined that temporality applicable to the primary data is gradual and that narrative is more like a process. However, if taking an overall look at the primary material, it can be noted that linear approach may be fitted, too; reporting quite simply starts by framing issues and selecting a strategic approach, then moves towards mapping existing standards and treaties<sup>171</sup>, creating support material and new methodologies for the existing improvement methods<sup>172</sup>, collecting new information by questionnaires, multi-stakeholder workshops and studies<sup>173</sup> for formulating conceptual framework<sup>174</sup>. Once conceptual policy framework has been launched, it is requested to be approved by the Human Rights Council for further work; to operationalize the selected conceptual approach. In connection with the proposed framework, there is still complementary material; based on multi-stakeholder consultations<sup>175</sup>, from a survey<sup>176</sup> and a further clarification of two of the key concepts<sup>177</sup> represented in the framework.

Following the approval of the policy framework, work is continued by operationalization and progress reporting<sup>178</sup> on the selected and approved framework. As a conclusion of the mandate, the final report presents implementation of the policy framework and also recapitulates the work done during the mandate<sup>179</sup>. One can say that there is a beginning, middle and an ending with regard to the work defined directly by the mandate; hence, the narrative seems to be fairly linear. However, if looking at human rights and business in a bigger context, there is no final ending yet in place; the issue of human rights and business remains unfinished. On the other hand, it would have been unrealistic to assume that the work of SRSB would have brought human rights and business to an end. It is definitely unclear if there can be an ending as such for this particular issue at all. Hence, instead of trying to find an ending for the whole issue, one can say that the work defined by the mandate given in 2005 has now come to its end. This is the same approach the SRSB has when indicating that the final report is the end of the beginning<sup>180</sup>. Therefore, the work, which was conduct-

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<sup>171</sup> A/HRC/4/35 and A/HRC/4/35/Add.1.

<sup>172</sup> A/HRC/4/74.

<sup>173</sup> A/HRC/4/35/Add.2, A/HRC/4/35/Add.3, A/HRC/4/35/Add.4.

<sup>174</sup> A/HRC/8/5.

<sup>175</sup> A/HRC/8/5/Add.1.

<sup>176</sup> A/HRC/8/5/Add.2.

<sup>177</sup> A/HRC/8/16.

<sup>178</sup> A/HRC/11/13, A/HRC/14/27.

<sup>179</sup> A/HRC/17/31.

<sup>180</sup> A/HRC/17/31, 5.

ed, contributes to human rights and business in a larger context, though with an ambition to set frames for collaboration between various stakeholders.

Taking a process view on this, it can be noted that each official report submitted builds on another by staying rigorously with the selected strategy and also tying complementary material into official main reports. In addition, as mentioned previously, there is a quite clear linear proceeding in the work from strategy to implementation, but the way each set of annual reports has been created seems to be more of a process kind of a way of working. Also, due to the large amount of workshops, consultations, questionnaires and other studies, it seems to be quite clear that narratives are being formed as a gradual process. It can be interpreted that the message conveyed by the official main reports is consistent and has been building up in time implemented by the selected strategy. For example, building roles already starts in the first official report submitted in 2006 and further developed by following reports until the official main report submitted in 2008 represents the final set of roles and responsibilities for states and companies. Also, it can be noted that the roles defined for states and businesses are an integral part of the narrative emerging from the work.

If we take another viewpoint of temporality and event sequencing, we can examine the primary material by searching for events and situations. These too can be examined based on either linear or the process viewpoint. First of all, as previously mentioned, particularized events and situations are followed by selections, which in turn continue into consequences and build on context. There are some key events that form the primary material creation. If we use a clear cut linear approach in this, the first key event is obviously the mandate given to the SRSG that sets the grounding for the work. The next one would be informing of the selected strategy, followed by submitting a proposal and its approval. Final key event would then be submitting the final report to implement the approved proposal. Another very simple linear approach would be just to note that each annual submitted report create a key event of a kind, taking steps from strategy to execution. These key events based on a simple linear approach build on a context of the work by anchoring strategic, conceptual and implementation settings for the issue at hand.

Additionally, there are several key events that are taking place in a smaller scale compared to the main reporting. Consequently, if taken a process view one can say that the work must have benefitted from these several smaller key events. Also, it must be noted that even though events were happening in a linear order, same as official reporting, the content of the official reports is always overlapping, indicating that the work has been done more in cycles than in a linear way. Consequently, the work mode has been more of a process form than a linear one. This does not eliminate that fact that events were occurring in a linear way.

However, since these key events, which are smaller scale ones, can open up more of the process work mode by indicating, in a more detailed way, what kind of events were con-

tributing to the work and, on the other hand, on what kind of events it is building on. These smaller scale key events are presented next. After the first official (interim) report had been submitted in 2006, a discussion was organized for governments and NOGs to express their views in the report. Although the full text statements are not published, excerpts of it are publicly available<sup>181</sup>. Since the material produced by the discussion is not a part of the official reports that were selected as the primary material, it is not analyzed further but, however, it was needed to be noted as a key event, which can be assumed with reasonable doubt to have affected the selections made for continuing the work.

Another set of particularized key events that can be said to shape and support the work are pointed out in the main official report submitted in 2007; three regional multi-stakeholder consultations that took place in Johannesburg, Bangkok and Bogotá, civil society consultations in five continents, several visits to the firms in four industry sector in developing countries, four legal expert workshops, two multi-stakeholder consultations on the extractive and financial services industries and discussions with representatives of multilateral institutions and some government officials. It is further elaborated that a great amount of written submissions were received by the SRSG, including International Chamber of Commerce, Allens Arthur Robinson, EarthRights International and International Commission of Jurists.<sup>182</sup> The amount of events held in 2006-2007 seems to be substantive and, indeed, uses a global scale. However, there were only two legal workshops in which the addendum for the official main report were created. Otherwise, the main official report submitted in 2007 states to draw from research papers produced by or for the SRSG, which, nonetheless, include information collected via questionnaire surveys<sup>183</sup>. These events clearly show how wide a stakeholder group has been involved in the work. Nonetheless, one cannot evaluate how the voice of each stakeholder is being heard and represented. This particular aspect, control over voice, will, however, be elaborated more in chapter 4.4 and is just a side note in this context.

Continuing further on to the year 2008, the following key events are stated in the official main report, which is the report that defines and proposes conceptual and policy framework for the issue. First of all, it is stated in the introduction that a totality of 14 multi-stakeholder consultations in five continents have been conducted after the appointment of the SRSG<sup>184</sup>. Also, five multi-stakeholder consultations are summarized in a separate addendum, which means that in totality seven out of 14 multi-stakeholder consultations are conducted in the year 2008 and rather definitely also included in the official reporting submitted to the HRC, since two of the multi-stakeholder consultations were reported already in 2007.

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<sup>181</sup> Discussion of the interim report by the HRC.

<sup>182</sup> A/HRC/4/35, 4.

<sup>183</sup> A/HRC/4/35, 4, 7, 20.

<sup>184</sup> A/HRC/8/5, 3.

Also, in the official main report submitted in 2008, there are further explicit referrals to stakeholder consultations; one in collaboration with Global Witness organization, one referring to domestic policy incoherence within states and one related to non-judicial grievance mechanisms and, in addition, stakeholders are referred to in a general manner as expressing an urgent need for a common conceptual and policy framework<sup>185</sup>. In addition to these key events, elements of a process type approach are also present in 2008's reporting. One of the addendums concentrates entirely on presenting alleged corporate related human rights abuse by basing its material on cases posted in Business and Human Rights Resource Centre during 2005-2007<sup>186</sup>.

The five multi-stakeholder consultations held during the second half of 2007 and presented by the first addendum for the official main report were called to address the following issues: the role of states to regulate and adjudicate corporations with respect to human rights, business and human rights in conflict zones, corporate responsibility with respect to human rights, accountability mechanisms for solving corporate related human right disputes, and improving human rights performance of business with the help of multi-stakeholder initiatives.<sup>187</sup> All in all, these five multi-stakeholder consultations were addressing two specific elements (to identify and clarify standards of corporate responsibility and accountability and to elaborate the role of States in effectively regulating and adjudicating the role of business enterprises) of the five elements requested by the SRSG's mandate. It was mentioned that all of these multi-stakeholder consultations were co-convened with a NGO<sup>188</sup>.

The approval by the HRC of the policy framework in 2008 can be seen as one key event, once again taking the linear viewpoint. However, if one takes a closer look at the approval, it is clear that it further processes the work forward by granting an extension for the mandate and requesting an operationalization of the approved framework by providing "practical recommendations" and "concrete guidance" for states, businesses and other social actors regarding its implementation.<sup>189</sup> As such, this can be seen as a particularized event that further guides to make selections and result consequences in a selected context. There is one event referred to in the official main report submitted in 2009; consultation on grievance mechanisms<sup>190</sup>. Otherwise, the report elaborates the response to the policy framework from other social actors, sums up made efforts and lays out next steps of his work.

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<sup>185</sup> A/HRC/8/5, 4, 11, 14, 24, grievance is defined by the SRSG as "a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on a law, explicit or implicit promises, customary practice, or general notions of fairness that may differ from standard economic and bureaucratic rationales" A/HRC/14/27, 18.

<sup>186</sup> A/HRC/8/5/Add.2, 2.

<sup>187</sup> A/HRC/8/5/Add.1, 2.

<sup>188</sup> A/HRC/8/5, 4, A/HRC/8/5/Add1, 2.

<sup>189</sup> A/HRC/11/13, 3.

<sup>190</sup> A/HRC/11/13, 22.

The report submitted in 2010 states that since 2008, there have been further multi-stakeholder consultations in New Delhi, Buenos Aires and in Moscow; in addition, an EU wide consultation and a global consultation organized by the Office of the High Commissioner for Human Rights (OHCHR) were also held. An online consultation has also been arranged in December 2009 that has had visitors altogether from 101 countries.<sup>191</sup> Since the report is more of a progress report of the operationalizing work, the following key events illustrate the operationalization of the framework; however, they form by particularized events, with different stakeholders, information for further support of the operationalization work and, therefore, also for contextualizing it. In this sense, we are approaching the next attribute of context setting, which is further elaborated in the following section. However, before entering that, it is necessary to present in a more detailed way the particularized events that are noted in the main official report submitted in 2010.

In addition to the multi-stakeholder consultations, cooperation with law practitioners and also with NGOs has been strengthened. There is a mention of the SRSR working together with 19 law firms to map existing jurisdictions. It is noted, though, that further work from the results found by the legal group will be done in an international expert workshop.<sup>192</sup> Although, it is not specified who would be participating in this expert workshop. On the other hand, certain NGOs, Amnesty International, the Peacebuilding Centre and Fafo to be more precise, arranged together with two Norwegian research institutes a meeting with legal practitioners for creating information on obstacles for accessing judicial remedy.<sup>193</sup> There are also businesses and states that have been participating in the operationalization. Company based grievance mechanisms are being tested by five voluntary corporations and the SRSR has gathered a small group of states to brainstorm for ideas about how host, home and neighboring states could prevent or mitigate any potential business-related human right abuses in conflict areas.<sup>194</sup> These particularized events contribute in a more detailed way to the progress and operationalization of the policy framework.

The latest official report submitted to the HRC and taken into the scope of this research has been devised in 2011. This report is the final report submitted by the SRSR and it is, as such, a conclusion for the work. The report will be examined more in chapter 4.6, which is a more appropriate place considering the content of the report. Nevertheless, the main official report submitted in 2011 presents implementation guidelines for the policy framework. In that sense, there are no particularized events but the report is more of a detailed and coherent guide that lays out both the foundation and operational principles for each of the three pillars; state's obligations to respect, role of businesses to comply with all applicable

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<sup>191</sup> A/HRC/14/27, 4.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

laws and to respect human rights, and the need for appropriate and effective remedies when human rights are breached<sup>195</sup>.

### 4.3 Context setting

Mandate is being set in a context right from the start, when the first official report was submitted. As mentioned in chapter 3.5, previous work for defining issues of human rights and business – the Norms report – was released by the Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Economic, Social and Cultural Rights in 2003 but greatly criticized and rejected by the business front. Therefore, the SRSB frames the strategic directions by positioning and dissecting the Norms but clearly stating that the Norms – though possessing useful elements – have certain flaws and therefore are not suitable for a basis to continue the SRSB's mandate forward<sup>196</sup>. There is a clear indication that the Norms do not possess the right methodological approach, nor are they seen as a sustainable way to build on.

It has also been recapitulated later on in the following official reports why the Norms do not apply as a strategic approach to build on<sup>197</sup>. Instead, the SRSB uses principled pragmatism and evidence-based approach as the selected strategy in order to respond to each element of the mandate, though normative judgments are admitted to be made, as well.<sup>198</sup> There are also some framing tools used, as institutional features of globalization, overall patterns in alleged corporate abuses and strength and weaknesses of existing responses to deal with human rights issues.<sup>199</sup> Though the Norms are being discarded as the selected standing point, there is, nonetheless, other material created by the UN that is taken as the baseline for the business and human rights work. These treaties will be presented a bit further on.

As mentioned in the civil regulation section, there is a need for the UN to raise its profile as a serious civil regulation author, since it is losing positions to many new informal international institutions. Nonetheless, since the UN equals its member states and does not have its “own” will, it is then time to find common ground among member states to regulate more efficiently the actors that are based on their soil and also, though sovereignty remains the bedrock of any state, some methods for regulating in locations that lack governmental power should be found. It also became painfully clear while studying the primary material that states have a lot to improve what comes to executing existing international treaties and agreements. However, it must be also kept in mind that the civil society must be strongly

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<sup>195</sup> A/HRC/17/31, 6.

<sup>196</sup> E/CN.4/2006/97, 14–17.

<sup>197</sup> E.g. A/HRC/11/13, 16–17.

<sup>198</sup> E/CN.4/2006/97, 18–20.

<sup>199</sup> E/CN.4/2006/97, 4.

involved in working to solve human rights and business issues. Like presented in the civil regulation section, CSOs have expanded their influence directly to business enterprises. When this is being added to more accessible social media tools to channel voice globally, it is evident that the civil society will increase its importance even more.

As referred previously, the capitalistic model has brought many problems but has also raised the living standards of many; in addition, the total impact of business to human rights cannot be measured and represented as one indicator. What is important to remember is that it is in the hands of us – speaking in the broadest meaning – to define and shape capitalism to serve us – globally – in the most convenient way. This brings us to values; a framework of commonly shared values must be defined for businesses to function globally in an ethical manner. Although it is one of the most difficult topics, at least some common ground for operations must be found. Values that are embedded in operations will become norms and then institutionalized; by making this kind of a full circle, there should not be any room for “free riders” among stakeholders.

It is not only roles and intertextualizing that are interconnected, but rather intertextuality is anchoring the primary material via different attributes a narrative can be examined with. Nonetheless, it can be said that the SRSG is the primary author of the material submitted to the HRC, but then there are a set of social actors that are, on one hand, receivers but may, on the other hand, also have a part in the author’s role. In this sense, narratives created from the primary material are a mix of private and communal. In addition, the author of this particular research is also a receiver with regard to the SRSG’s work. This can be seen as just a side note, to be added to other remarks for positioning the researcher of this work. The following chapters will take a closer look at intertextuality and the roles of different social actors in the official reports created by the SRSG.

#### 4.3.1 Intertextuality

The official main report submitted in 2007 can be seen as an intertextualizing element, since it drives to map international standards for corporate responsibility. This is done by laying out the existing international law, soft law mechanisms and self-regulation. Besides these, the report aims to describe which kind of responsibilities and accountability corporates have for international crimes. Though the report concentrates mainly on the corporate side of the issue, it begins with describing state’s role as the main duty bearer with regard to protection against human rights violations<sup>200</sup>. Besides the roles of author, narrator and receiver, the official reports present special roles for the main actors in this issue; states and business.

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<sup>200</sup> A/HRC/4/35, 5–7.

As mentioned in the methodology description, roles and intertextuality can overlap in many cases; however, the role a state is being given is presented more fully in the coming paragraphs. It is necessary, though, to note at this point that the role a state is given, according to the submitted official reports, is based on a duty, not on responsibility, and this is stated by the UN's human rights treaties and also by the international law<sup>201</sup>. Nonetheless, it must be added here that also individuals are regarded as actors, who have direct responsibility for international crimes, and that individuals can also be prosecuted at the international level and held accountable for crimes against humanity and also war crimes if states fail to perform<sup>202</sup>. Yet, although it can be said that in that sense corporations are accountable under international law (via individuals) it must be remembered that crimes that reach the International Criminal Court (ICC) are the most severe ones. It can be agreed on that human rights protection can hardly rely only on accountability for such flagrant violations.

To develop jurisdictional dimension, it has been suggested by the SRSR that corporate responsibility would be modified through both; individual responsibility by the international ad hoc criminal tribunals and the ICC status and extension of responsibility for international crimes to corporations under national law<sup>203</sup>. Although it is a welcomed approach to take human rights protection further than jurisdiction for crimes against humanity, it is a regretted fact that also those extreme processes must be in place for aiming a full scale protection of human rights. Also, a solid jurisdiction for the most severe human right abuses in connection with corrective measures by soft law mechanisms would be needed to form a coherent approach.

As corporate responsibility for international crimes is growing more acceptable, what comes to corporate responsibility with regard to other human right violations under international law is a different matter<sup>204</sup>. There is much dissecting of the UDHR, its provisions and treaty bodies' interpretations for support to define corporate responsibilities referrals but there cannot be found any explicit corporate legal definitions<sup>205</sup>. One could criticize that is it excluded to create a new baseline, since especially the UDHR has been created in a very different environment to be directly applicable to the current international actors. Nonetheless, the conclusion is that the current international human rights instruments do not impose direct legal responsibilities on corporations<sup>206</sup>. This can be seen as one argument further on when developing a role for corporates in human rights protection. Although it is vital that protecting human rights is not concentrated on litigations, on the other hand the spectrum of methods to protect human rights must be extensive.

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<sup>201</sup> Ibid.

<sup>202</sup> A/HRC/4/35, 8.

<sup>203</sup> A/HRC/4/35, 9.

<sup>204</sup> A/HRC/4/35, 12.

<sup>205</sup> A/HRC/4/35, 13–14.

<sup>206</sup> A/HRC/4/35, 15.

Soft law mechanisms are seen as driving a normative force from social expectations. There are three sets of soft law that are defined by the SGSR's main official report in 2007; a traditional standard setting role by intergovernmental organizations (like ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, or OECD's Guidelines for Multinational Enterprises), enhanced accountability mechanisms that are added by some intergovernmental initiatives (like National Contact Points, which are offered by the OECD for non-judicial review procedures) and emerging multi-stakeholder forms (like Voluntary Principles on Security and Human Rights, Kimberley Process Certification Scheme or Extractive Industries Transparency Initiative), which involve corporations directly.<sup>207</sup> These lastly mentioned initiatives have a more agile approach and are more open to civil society pressure. It is debatable whether the direction offered by the soft law approach is sufficient or not. However, according to the SRSR, soft law remains an important standard definer to crystallize and convey the shaping of international norms in the international community<sup>208</sup>.

Lastly, self-regulation has been studied by the SRSR in order to touch on social expectations for responsible corporate citizenship. That is, to respond to "a" (to identify and clarify standards of corporate responsibility and accountability for business enterprises with regard to human rights) and "e" (to compile a compendium of best practices of states and business enterprises) elements of the resolution. For these purposes, a questionnaire was sent for the Fortune Global 500 firms and three other studies to collect human rights standards that are referenced in the policies of business organizations were made. In these studies, both references to human rights defined by the UDHR and accountability mechanisms within companies were examined. Also referrals to human rights defined by other international instruments (like OECD) were also investigated.

Findings of the Fortune 500 survey note that, like indicated in the section presenting CSR, based on the survey it seems that European-based companies are more likely to favor a human rights concept compared to United States based companies, which tend to recognize a much narrower spectrum of both rights and right holders.<sup>209</sup> There are other patterns, though, that were discovered, as well. One positive aspect is that nearly all companies have human right management practices in place; in addition, this has been achieved proactively, based on the companies' own initiatives, not as a result of any incident. In addition, those practices are based on international instruments and developed in coordination with external stakeholders.<sup>210</sup> Naturally, this does not indicate how well accountability or transparency are realized. Nonetheless, as it is noted also by the SRSR, there has been positive progress with regard to this issue<sup>211</sup>.

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<sup>207</sup> A/HRC/4/35, 15–17.

<sup>208</sup> A/HRC/4/35, 19.

<sup>209</sup> A/HRC/4/35/Add.3, 26.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

Findings of human right standards that are referenced in the policies of business were categorized in three different ways: recognition of labor rights (e.g. nondiscrimination, freedom of association, rights for minimum wage) and non-labor rights (e.g. security of the person, right to development, right to social security) and accountability and external engagement (e.g. supply chain management, ongoing monitoring mechanism, community consultations, and impact assessments). Studied methods of conveying these rights were company-based policies and practices, collective initiatives and socially responsible investment indices.<sup>212</sup> I would like to raise two key points of company policies and practices. First of all, it was mentioned that emerging markets lag behind compared with North America and Europe. In addition, Asia and the Pacific region is closer to Latin America than North America and Europe. European companies are also referring to the UDHR and ILO guidelines much more than companies in other regions. Secondly, company reporting with regard to human rights commitments varies greatly.<sup>213</sup> These results support earlier comments about regional inequalities with regard to developed and developing countries. Also it can be noted that critique for insufficient accountability is not without relevant standpoint, or better yet, the problem of free riders that may be benefiting financially from others contributions without placing such efforts themselves, is remaining.

What is positive about collective initiatives is that they seem to be more specific what comes to actions needed for effective implementation to provide models for companies for implementing CSR measures. Another characteristic feature of collective initiatives is that they recognize more labor rights than civil, political, economic, social and cultural rights. The last element, socially responsible investment indices, seems to follow the same format than the two previous ones, but with bigger emphasis on indigenous people and development.<sup>214</sup> Also, there is some variation between the initiatives studied. Most certainly indigenous people should be specially addressed due to the historical background and possible problems in social integration. Although it must be balanced on the extremes of patronizing and laissez-faire, it is certain that the life style of at least most indigenous people has been forced to change in the past. With this regard, it should be in the agenda of each actor to foster whatever is left of the originality of indigenous people.

Variation by industry and geographical sectors is emerging, though; in addition to that, reporting seems to be in a better shape than assessment for human rights impacts. This can be demonstrated by the statement that some interpretations are so elastic that it becomes difficult for the public and also for the company itself to measure performance against commitments.<sup>215</sup> This can be seen as at least partly intentional. On the other hand, while lacking a

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<sup>212</sup> A/HRC/4/35, 20, A/HRC/4/35/Add.4. 2–29.

<sup>213</sup> A/HRC/4/35/Add.4, 32–33.

<sup>214</sup> A/HRC/4/35/Add4., 46, 57.

<sup>215</sup> A/HRC/4/35, 22.

common, global approach it is understandable that business enterprises are not too willing to tie themselves to some “extra” commitments too strictly.

In addition to difficulties in interpretations, according to the report there are some evident gaps of conducted self-regulation studies. The coverage of self-regulation is not even, since it is noted that many of the tools are for large companies. Also, firms in developing countries are in a different state than firms in developed countries; emerging economies may have state-owned enterprises that are not associating themselves with self-regulation, nor has the state embraced responsibilities for human rights performance. It is therefore a familiar phenomenon from other self-regulation areas that determined laggards try to avoid scrutiny.<sup>216</sup> As long as there is no global scale scrutiny in place, it is not realistic to expect leading companies to sacrifice too much competitive advantage to benefit laggard companies. Or, it can also be that differences in geographical and industry sectors just keep on widening, leading to even bigger inequalities.

The official main report submitted in 2008 forms the framework for the whole mandate. The report says that it anchors the business and human rights debate by presenting a conceptual and policy framework for the issue. There are three pillars on which the framework rests: state duty to protect against human rights abuses, corporate responsibility to respect human rights and elaborating the need for more access to remedies (protect, respect, remedy).<sup>217</sup> The report notices governance gaps that result from globalization, consequently, it states that especially transnational corporations have expanded their legal rights to the point that corporations may sue host states for international arbitration if domestic legislation has been changed in favor of social and environmental standards. Nonetheless, the obligations for corporations have not changed accordingly, and the report notices that transnational corporations operate under similar framework of legal regulation than they did before the recent flash of globalization. Though transnational corporations are seen as the main actors here, national firms are not scoped from this approach, either.<sup>218</sup> Although it was mentioned that states bare the main responsibility when it comes to human rights protection, it must be noted that at least transnational corporations are regarded as powerful actors, whose behavior should be changed.

It seems in many ways that states are more or less balancing between exemptions for firms to allure investments and protection by existing institutions and standards. Also, it seems that states are voluntarily leaving the civil regulation to be idle, making it more the business of consumers and civil society organizations to struggle in order to create civil regulation. On the other hand, like it was mentioned in the company policy formulation; many external stakeholders are involved in formulizing human rights principles for corporations, leading

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<sup>216</sup> A/HRC/4/35, 24.

<sup>217</sup> A/HRC/8/5, 1–2.

<sup>218</sup> A/HRC/8/5, 5–6, 27.

to more emphasized role of civil society in business and human rights. In this sense there seems to be a common understanding between the framework and as it was mentioned in the section of civil regulation for global corporate conduct to offer civil regulation as one tool for governments to increase their declining power.

The main function of the official main report submitted in 2009, is to summarize the main features of the official main report “Protect, Respect and Remedy” submitted in 2008 and to indicate the strategy for operationalizing the selected and approved framework.<sup>219</sup> The report submitted in 2009 notices the economic crisis as a factor that lays settings also for human rights issues. In addition, it is being stated that elements of human rights and business should be more aligned with the world’s overall economic policy.<sup>220</sup> Framing the issue seems to be strongly claimed to be based on the theory of embedded liberalism, as stated previously in chapter 4.1. Though the economic crisis is seen as a threat, it has been pointed out that the SRSG sees operationalization of the “Protect, Respect and Remedy” framework as an opportunity to identify and act on issues and misalignment of business and human rights<sup>221</sup>.

The official main report submitted in 2010 has more or less the same function as the report submitted a year earlier; but the emphasis is on operationalizing and stating the current status of the activities.<sup>222</sup> Hence, it is more of a progress report and does not provide any new strategy concepts. Nonetheless, the report revisited principled pragmatism that was briefly introduced already in the first official main report submitted in 2006. The concept of principled pragmatism will be elaborated more on chapter 4.5, but it is the actual steps taken that are presented in the official main report submitted in 2010. The conducted stakeholder consultations with NGOs, business representatives and states, linkages to existing guidelines, and researches made are recapitulated to give an exhaustive summary of made activities that reflect the selected principled pragmatism. In addition, some practical actions are presented in a brief way to elaborate the progress. For example, it is noted that several states have referenced the “Protect, Respect and Remedy” framework in conducting their policy assessments.<sup>223</sup>

Also, the framework of the SRSG’s work is now being fitted into a bigger concept, since the conceptual and policy framework was accepted in 2008 by the HRC. It is mentioned that the SRSG has been cooperating with the OECD’s Guidelines for Multinational Enterprises, with the International Finance Corporation for updating Performance Standards, identifying Global Compact’s best practices by the Human Rights Working Group, and also the European Commission in order to find ways to increase responsibility of European

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<sup>219</sup> A/HRC/11/13, 1, A/HRC/11/13, 3.

<sup>220</sup> A/HRC/11/13, 5–6.

<sup>221</sup> A/HRC/11/13, 6.

<sup>222</sup> A/HRC/11/13, 2.

<sup>223</sup> A/HRC/14/27, 3–5.

companies operating overseas. Also, International Organization of Standardization (ISO 26000) has been approached and the framework has been offered as an input for the human rights section of the social responsibility standard.<sup>224</sup> There are also some proactive initiatives, as several countries have relied on the framework when conducting their policy assessments and some civil society actors have included the framework in their work. Lastly, the UN's Commission of Trade Law has accepted to increase transparency in its investor-state arbitration proceedings.<sup>225</sup>

The last and final submitted report is, as has been mentioned previously, a report to summarize the conducted work during the entire mandate and, maybe even more importantly, guiding principles for the implementation of the policy framework, which was submitted in 2008. As stated by the report itself, it is the end of the beginning<sup>226</sup>. It can be said that the entire work has laid out a common global platform to start building on. By defining these common, global frames and more detailed instructions for implementation, the final report offers the most practical guidance so far to be applied in different companies and states. It is being stated that the final report (Guiding Principles) is universally applicable, practical guideline for an effective prevention of and also remedy for business-related human rights harm<sup>227</sup>. Though the Guiding Principles are still just a part of the entire human rights narrative, or just one narrative among many human rights narratives – depending on the viewpoint – it seems to be the most coherent work so far. Whether it is more a practice than intertextualizing; there are notes of implementation and testing of Guiding Principles by both states and companies<sup>228</sup>. The continuation of the “bigger context” of human rights and business is presented in more detail in chapter 4.6.

#### 4.3.2 Roles

What comes to the author, narrator and receiver roles, although it is the SRSG who is both the author and narrator in the official reports, there are many actors in the roles of receivers. In addition, since the work is being conducted for the UN and the reports are submitted to the Human Rights Council (HRC), it can be said that both of these are also authors in this case. Based on the involvement of social actors in the work building on the mandate, it may be interpreted that social actors have been contributing to the reports. Nonetheless, the primary producer of narratives based on the reports is the narrator, the SRSG. It is notable, though, that there has been dialogue between the author and receivers<sup>229</sup>.

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<sup>224</sup> A/HRC/14/27, 4.

<sup>225</sup> A/HRC/14/27, 4–5.

<sup>226</sup> A/HRC/17/31, 5.

<sup>227</sup> A/HRC/17/31, 5.

<sup>228</sup> A/HRC/17/31, 4.

<sup>229</sup> See for example A/HRC/8/5/Add.1.

Also, this dialogue can be further expanded to a bigger scale, shaping the whole entity of the work, by the comments of many stakeholders regarding the official reports. This can hardly be taken into the extent of global governance, but it can well be said to establish and support grounds for a more transparent global public domain. In addition, while individuals – through CSOs – are given a voice, the main actors from the policy framework until the Guiding Principles remain states and companies. However, this concept is elaborated further in the chapter presenting pragmatism in the primary material and in the chapter that presents locus-space, where narratives take place in this case.

It was mentioned when presenting the selected methodology that intertextuality and roles are somewhat linked together. Consequently, the interpretation of how roles are presented in the primary material was briefly introduced in the past chapters as interlinked with intertextualizing. The following chapters will continue to present the roles further. Although there is an introduction of various roles already in the 2006 report, the report is linked to the existence of various standards, institutions and guides. However, the importance of states' role in relation to human rights is already noted and emphasized.<sup>230</sup> Also, roles are becoming more apparent already in the next official main report, which indicates the duty of states to protect their citizens in human rights issues.

Nonetheless, the role of corporations' is still unclear, though it has been noted that corporations bear responsibility and accountability, but what has been noted is that existing international human rights instruments do not pose direct legal responsibilities to corporations.<sup>231</sup> It is the addendums submitted in the same year that give a more detailed view on the roles of states and corporations but still those do not give a straightforward description of the defined roles. State responsibilities are elaborated more in the first addendum, which notes states responsibilities to regulate and adjudicate corporate activities based on the United Nations core human right treaties<sup>232</sup>. The addendum refers to core human right treaties created by the UN and notices also treaty body commentaries. The selected treaties that are referred to as core human right treaties are mentioned in the footnote, since the purpose is not to research the human right treaties created by the UN, nor are the representativeness or validity of the core treaties studied in this research.

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<sup>230</sup> E/CN.4/2006/97, 18–20.

<sup>231</sup> A/HRC/4/35, 5–15.

<sup>232</sup> A/HRC/4/35/Add.1, 1, 7. Core treaties selected and included to the research by the SRSG are the following; the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Civil and Political Rights (CCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW); and the International Convention on the Rights of Persons with Disabilities (ICRPD).

First of all, referrals to business enterprises – both by treaties and also by treaty body commentaries – are studied by the first addendum. Also, it has been stated what kind of measures – monitoring, regulative, adjudication and promotional ones – are expected to be performed by states. Further on, the issue of extraterritorial responsibility is introduced. It is clear that according to the addendum, states possess a duty to protect. This is claimed to be based on the treaty bodies' description of states to have positive obligations to prevent and also to punish third party interference in the enjoyment of rights. In addition, it has been stated that, based on the study on treaties and also treaty bodies' commentary and jurisprudence, it is clear that the duty to protect covers also corporations' possible human right violations.<sup>233</sup> What is apparent is a clear indication that indeed states are expected to improve their performance with regard to this issue.

The issue of extraterritoriality was also mentioned in the official main report, when it was noted that states are not required to exercise extraterritorial jurisdiction according to human right treaties created by the UN. However, the UN human rights treaty bodies view state obligations applying to areas that are within their power of control.<sup>234</sup> In this sense, states should exercise their jurisdiction beyond their national territory. Extraterritoriality was also examined in the second addendum submitted in 2007, in which the focus was narrowed to a prescriptive extraterritorial jurisdiction involving state regulating persons or activities outside its territory. Although it seems that extraterritorial jurisdiction is just a small piece of the whole human rights issue, it was supported by the SRSG by stating that he sees extraterritorial responsibility as an emerging trend to overcome weaknesses in corporate accountability.<sup>235</sup>

However, extraterritorial jurisdiction still remains on states' responsibilities and it is not yet clear how it could be executed in a manner that is not infringing sovereignty. Workshop participants agreed that it could be permissible according to international law for states to exercise extraterritorial jurisdiction if the non-intervention principle remains intact<sup>236</sup>. However, what remained as an open question is whether states are required to exercise extraterritorial jurisdiction. Even in the official main report submitted in the 2010, it is noted that the SRSG will continue to consult how to resolve the broad and also highly politicized issue of extraterritorial jurisdiction<sup>237</sup>.

Preliminary observations based on the examination indicate that there is an increasing focus on treaty bodies regarding state protection against corporate abuse. Furthermore, it is suggested that treaty bodies could consider issuing specific recommendations with regard to the issue and also systematically request states to include information about progress for

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<sup>233</sup> A/HRC/4/35/Add.1, 9.

<sup>234</sup> A/HRC/4/35, 5–6.

<sup>235</sup> A/HRC/4/35, 13–14.

<sup>236</sup> A/HRC/4/35, 14.

<sup>237</sup> A/HRC/14/27, 11.

regulating and adjudicating corporate abuse in their periodic reports. Also, it is suggested that the treaty body sessions on discussing the periodic reports would need to be participated also by states representatives that are in charge of relations with business, or alternatively have knowledge of state activities within the field of human rights and corporate activities.<sup>238</sup> The duty of states is clearly indicated, though, and stated to be based on the UN core human right treaties and also treaty body commentaries. This can be seen as a background for the final role descriptions, which are presented in the main official report submitted in 2008. Before that, it is needed to explore how the corporate role is being researched and defined by the SRSG.

Addendum 2, which was also submitted in 2007, approaches the role definition for corporations and describes corporate responsibility under international law and issues related to extraterritorial regulation. Data was collected in four international workshops that addressed the issue from four different viewpoints: government regulation to corporations, corporate complicity, role of extraterritorial jurisdiction and human right responsibilities to transnational corporations under international law, though the second addendum only summarizes the results of the two workshops; corporate responsibility under international law and extraterritorial jurisdiction. Participants were invited from different regions in an attempt to create broad regional representation and the participants included academic experts, legal practitioners and NGO representatives.<sup>239</sup> Based on the addendum, there is already an assumption that the role of corporations with regard to human rights is extending to respect, which can be seen as a continuation from the first official main report submitted in 2006, which directly notes that the selected strategy will not continue the Norms' approach.

However, the second addendum submitted in 2007 clarifies if there is any potential grounding under international law to attach direct obligations to human rights to corporations in the absence of states performance<sup>240</sup>. Though the posed question is extremely wide, there were some concluding remarks that indicated first of all that more government leadership was expected and also that there is an acute need for private and public sectors to pressure governments for a change to happen<sup>241</sup>. It seems that governments, or states, are discovered more and more as key players to make a change in the human rights issues. Nonetheless, it was also noted as a conclusion that practices are developing rapidly from a legal perspective while doctrine is lagging behind; legal focus has been on worst cases, yet it should not hinder development of a more comprehensive approach<sup>242</sup>. This is more or less detecting governance gaps in this area, as well. Defining commonly agreed norms and, more importantly, commonly agreed responsibilities for more "small scale" abuse seems challenging. As a final remark on the international law workshop, the SRSG suggested a concept of

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<sup>238</sup> A/HRC/4/35/Add.1, 36–37.

<sup>239</sup> A/HRC/4/35/Add.2, 1–2.

<sup>240</sup> A/HRC/4/35/Add.2, 7.

<sup>241</sup> A/HRC/4/35/Add.2, 12.

<sup>242</sup> A/HRC/4/35/Add.2, 12.

“shared responsibility”, which requires realigning the relationships among states, corporations and civil society for closing governance gaps and governance failures. What is then requested by the SRSG, according to the addendum, is a systemic and dynamic framework to respond adequately to human rights challenges.<sup>243</sup> Naturally, this is then provided in the form of the policy framework and later in the form of the Guiding Principles as a more practical guidance of the selected approach.

The second part of the second addendum submitted in 2007 approaches the issue of extra-territorial regulation, as the state role in this matter has already been covered; TNCs accountability under extraterritorial jurisdiction is next in line. It seems that according to the workshop participants there are two issues that are holding TNCs accountable: determining company’s nationality and widening the scope from corporation’s formal legal structure to attach accountability, which indicates that legal entities could be separated from a multinational group<sup>244</sup>. It can be noted that corporations are regarded here again more as a subject of activities rather than as active human rights contributors. Although there is also a number of sanctions and remedies examined through liability definitions under criminal, civil or administrative, the approach remains that states are the main duty bearers and should take more actions in order to control globalized corporations more.

The final roles are being described in detail in 2008’s official main report, where state remains as the main duty bearer of human rights protection for its citizens and corporations are described to have a responsibility to respect. This responsibility is further defined as due diligence, sphere of influence and complicity concepts. The state duty to protect is stated to be supported well among human right experts. However, the policy domains through which this duty should be fulfilled seem not to be so well internalized.<sup>245</sup> This supports the viewpoint which has been indicated in the official reports that states are not executing their duties as they should be.

It is guided in the main official report submitted in 2008 that states should aim to drive human rights -favorable corporate culture both by strengthening market pressure and deciding on corporate criminal accountability. Secondly, states should make policy alignments both to increase incoherence in human right commitments and implementation (vertical) and including different departments at cross purposes to work for implementing human rights obligations (horizontal). Lastly, states are guided to share information and challenges at the international level, including putting more effort on conflict sensitive practices if operating in a conflict zone for promoting more consistent approaches in human rights protection. All in all, it is stated that the human rights regime bases itself on the bedrock of states.<sup>246</sup> The

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<sup>243</sup> A/HRC/4/35/Add.2, 13.

<sup>244</sup> A/HRC/4/35/Add.2, 16–17.

<sup>245</sup> A/HRC/8/5, 9.

<sup>246</sup> A/HRC/8/5, 10–14.

message is very clear and requires more cooperation from states but also a much firmer approach regards to acknowledging the duty and acting upon it.

Corporate responsibility is being defined in the official main report submitted in 2008 in the following way. First of all, it is stated that the approach of trying to indicate a set of rights that corporations would be directly responsible for is not encouraged. On the contrary, it has been taken as a standpoint that companies have responsibilities with regard to all human rights; it is a matter of defining specific responsibilities.<sup>247</sup> Consequently, instead of defining a set of human rights that companies should respect, the guidance is to define the responsibilities companies should comply with. Hence, the guidance for corporations to fulfill their responsibility includes, besides obeying national laws, also respecting human rights. The baseline for respect is defined by the public opinion that can be expanded to a certain social license to operate, i.e. operating according to social expectations.<sup>248</sup> Once again shared values are needed and those should be actively promoted by civil society, since governments are failing to do that. On the other hand, if taking embedded liberalism as a standing point, states should combine social needs with concessions to markets in order to support both; capitalistic forces and safety nets for citizens when needed.

Second element of corporate responsibility is due diligence, which describes a process a company must follow to “became aware of, prevent and address adverse human rights impacts”. The process concerns three factors; country context, context of the company’s own activities and whether a connection to abuse through the relationships connected to their activities (e.g. supply chain) is possible. It is suggested that the due diligence would consist of policies and integration of those throughout company, impact assessments, and performance tracking. Practical guidance for due diligence policy evaluation can be received via the international bill of human rights and the core conventions of the ILO.<sup>249</sup> It seems that this is a holistic approach and respects also business primary targets or making profit. In addition, there seems to be a raise of human rights respect into company management systems. This is a much needed alignment to get human rights principles as a standard element for strategic management. It might be that some corporations are already implementing these procedures. However, to make it as a norm would separate possible free riders and give the field of business and human rights more transparency.

The third element of corporate responsibility is a concept of the sphere of influence. It is being defined as consisting of two distinctive influences; where company’s activities or relationships are causing harm and whatever leverage a company may have over actors that are causing harm.<sup>250</sup> This aims to tackle the viewpoint in which more power requires more responsibility. On the other hand, it also indicates that companies cannot be held responsi-

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<sup>247</sup> A/HRC/8/5, 14–15.

<sup>248</sup> A/HRC/8/5, 16–17.

<sup>249</sup> A/HRC/8/5, 17–18.

<sup>250</sup> A/HRC/8/5, 19.

ble for human right impacts on which they just might have some influence<sup>251</sup>. The two influence concepts balance each other out and also help to define the concepts of respect and due diligence in a more detailed manner. In addition, it might balance the scale between the biggest transnational corporations and smaller enterprises. It seems only logical that responsibilities must be adjusted to possessed power.

Complicity is the fourth and last element of corporate responsibility. Naturally, complicity means avoiding complicity. If a company is found to be complicit in human rights violation, it quite simply means that it has been involved – indirectly or directly – in human rights abuses. Companies should conduct and be compliant with due diligence in order to avoid complicity.<sup>252</sup> Although complicity is difficult to define in a more practical manner, a clear relationship between complicity and due diligence aims to support it. According to the SRSG, the relationship between complicity and due diligence is compelling; complicity can be avoided by conducting the due diligence process both in their own activities and also in relationships connected with them<sup>253</sup>. Since the following main official reports submitted in 2009, 2010 and 2011 concentrate on operationalizing the 2008's official main reports, the roles of states and corporations remain the same.

There are just a few referrals to the role of the UN in the main official reports; it has been stated in the 2008's official main report that the UN should be leading an example in this issue. Although the ways are different since the UN does not have its own will, so to speak, because its will is donated by its member states, it must be lead intellectually and also by setting expectations and aspirations<sup>254</sup>. It is more of an appeal to the UN to give more pressure for the member states by keeping the issue on the agenda. Also the Human Right Council is being addressed by a request to support the framework submitted in 2008 and also to invite its further work with all relevant social actors, in order to continue the work to close governance gaps in business and human rights<sup>255</sup>. The same appeal for continuation of the SRSG's work for the HRC is being represented in the official main report that has been submitted in 2010<sup>256</sup>.

#### 4.4 Locus

The locus concept – narratives in the global public domain – was presented in chapter 2.2.3 and the definition of global public domain was presented and elaborated further in chapter 3.3.2. Locus can be said to represent the collection of elements that can be related to narratives in a global public domain. Global public domain is instead a sphere where, according

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<sup>251</sup> Ibid.

<sup>252</sup> A/HRC/8/5, 20–21.

<sup>253</sup> A/HRC/8/5, 21.

<sup>254</sup> A/HRC/8/5, 28.

<sup>255</sup> A/HRC/8/5, 28.

<sup>256</sup> A/HRC/14/27, 23–24.

to Ruggie, legitimate social purposes are being generated and then transformed to social facts<sup>257</sup>. Nonetheless, it is not clear how this process goes. Locus can be dissected into elements like issue driven testimonies, representation, interpretation, dissemination and control over voice.

However, due to the constantly changing environment – global public domain – it is hard to study any patterns of narratives. Additionally, as previously mentioned, the question of public authority or authority of any kind in the global public domain remains. Nonetheless, it can be noted that locus is an important factor and more and more CSOs and even individuals are getting their voices through via new information technology, which enables affordable worldwide broadcasting via new social media channels.

If we think about the emerging trend of social media as a broadcasting vehicle for individuals, it is certain that it has created new opportunities for civil society behavior and even ingredients for global citizenship. Nevertheless, it is questionable if there is enough momentum for transformation of global institutions in order to respond to global democracy initiatives. On the other hand, this is not in the scope of this research, so this branch of global democracy initiatives shaping global public domain will not be analyzed further. On the contrary, the global public domain definition and applicability for this particular research is being based on Ruggie's definition of the global public domain as presented in chapter 3.3.2 as an arena for global rule-making that permits pursuit of human interests directly, not only mediated by states. Additionally, narrative elements that become valid when entering this global sphere, like how voices of different stakeholders may be represented, are a part of this research.

As said, the question remains of who is acting as an authority in a global public domain. When operating with global issues, which have ethical values, it becomes vital to understand the whole picture or how certain voices are getting through and who is behind those. This question will be linked to analysis of the changing environment and ownership and control of voices within that. However, we need to start recapitulating the starting points of the primary material. First of all, the mandate was given by the UN and quite clearly the scope of the mission is global. As indicated already on previous chapters related to temporality and intertextuality and roles, there are indeed several stakeholders that have been involved in the work. Additionally, the framework has been approved by the HRC. Therefore it is self-evident to note that the environment of the work has been a global one.

Since it was not included in this research to investigate the methods how the work has been conducted, it cannot be evaluated how new information technology has been utilized. It can be interpreted that stakeholder consultations have been face to face ones, except for the one

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<sup>257</sup> Ruggie 2004, 504–505.

online session held in 2009<sup>258</sup>. Also, just a brief note that new information technology has been utilized when inviting discussion via launched BASESwiki, which is an online global, interactive tool that is focused on the non-judicial mechanisms. In this forum anyone can share, access and discuss information about these mechanisms and the resources and experts that can support their use. Another online tool was launched in 2009 to serve as an online forum open to all stakeholders for dialogue and engagement in the corporate responsibility to respect human rights, the second pillar of the framework the SRSG proposed, and using Business and Human Rights Resource Centre's website as a portal to all documentation created by and for the mandate.<sup>259</sup>

Turning to the element of control over representation, interpretation and dissemination in a changing environment that was also briefly presented in chapter 3.2.3, there is only limited way of analyzing how different voices are being heard and represented based on the official documents submitted to the SRSG. Actually, one can only note that a range of stakeholders are being invited to consultations held by the SRSG. To be fair, it must be noted that the consultation documents are publicly available as separate documents. Also, it can be argued that it is not in the scope of official reports to give detailed descriptions of the participants.

Additionally, a summary of five multi-stakeholder consultations was attached to the official main report submitted in 2008<sup>260</sup>. Nonetheless, there is a balance of transparency and confidentiality present in the issue of human rights and business, especially what comes to questionnaire surveys, in which certain discretion must be in place in order to receive honest responses. What can be seen then with the survey is that states may have more of a priority issue what comes to Human Rights / CSR evidenced by the very low (15%) response rate<sup>261</sup>. On the other hand, both questionnaire survey results may be biased, since results can be more positive than the actual overall situation is, as it might be that those who have prepared better for these issues and already have a positive standpoint to manage the issue might be more willing also to answer a survey.

Alleged corporate-related human rights abuses were researched by analyzing a sample of 320 cases that were posted on the Business and Human Rights Resource Centre's webpage<sup>262</sup>. In that respect, civil society was included widely in the work. Naturally, one cannot evaluate from the final summary how the voices were interpreted and represented. The same applies to the questionnaire surveys for states and companies, too. All in all, the amount of official reporting is large, and the total amount of documents, analyses, briefings and submissions, consultation documents and correspondence is impressive. In addition,

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<sup>258</sup> A/HRC/14/27, 2.

<sup>259</sup> A/HRC/8/5, 3, List of documents prepared by and submitted to the SRSG on Business and Human Rights as of 10 AUGUST 2010, 1.

<sup>260</sup> A/HRC/8/5/Add.1.

<sup>261</sup> A/HRC/4/35/Add.3, 7.

<sup>262</sup> A/HRC/8/5/Add.2, 2.

commentaries issued by various stakeholders after the framework endorsement are available on the webpage that has been selected as a portal to the material SRSG's work. In fact, the total amount of collected data available and produced either by the SRSG and his team or various stakeholders is staggering. Hence, dissemination of voices can be noted to be wide, since also comments by civil society and academics, business community and law firms, governments and also correspondence with NGOs is available alongside the official reports<sup>263</sup>.

What comes to existing documents and guidelines, it was already mentioned that there is a selection of core human rights by the UN, which were investigated for statements of regulating adjudicate corporate activities. In that sense, the UN has been defining a baseline for the work. However, it needs to be kept in mind that the work and voice by the SRSG, in addition to the guidelines constructed and endorsed by the HRC, must also survive and "make it" to the international agenda. It is not self-evident that the importance of the issue will remain and guidelines keep their value in the international sphere. Since the framework was endorsed by the HRC, it can be stated that the voice of the SRSG has been heard by the HRC, but it is another matter how the framework will be implemented. Surely, like in most cases, it is the practice what poses the most difficult problems rather than drafting the guidelines. Also, it is up to states to really take actions and prioritize human rights protection in order to get the framework operationalized. After all, like it was mentioned in official reports, too, there is a serious doubt whether states have reconciled social needs in a balance with regulating companies. In fact, there seems to be rather an urgent need for policy priority for governments.<sup>264</sup>

Economic crises can be seen as a possible threat of "not making it" as a topic on the international agenda. This concern is pointed out by the SRSG, although it is stressed more heavily that elements of business and human rights should become more integrated with the world economic policy general agenda than they have previously been. It is yet again also stressed that both states and companies must meet halfway; states should pay more attention to the realization of social safety nets and social rights and companies, on the other hand, should integrate better social concerns in their long term strategy.<sup>265</sup> Underlying here is a change in values; there must be shift in values for implementing the framework and its operationalization. In addition, the HRC, the UN and the SRSG must push the commonly agreed setup first of all to the member states, but also to other stakeholders – business and civil society organizations – to gain more common ground for the importance of the operationalization and foremost to get commitment and, finally, to involve stakeholders in the practical work.

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<sup>263</sup> List of documents prepared by and submitted to SRSG on Business and Human Rights As of 10 August 2010, 1–33.

<sup>264</sup> A/HRC/8/5, 8–9.

<sup>265</sup> A/HRC/11/13, 5–6.

Also, some practical solutions are needed to keep the framework and operationalization work ongoing. As stated previously, framework promotion has begun. The framework is being connected to updated guidelines of the following stakeholders; OECDs, the International Finance Corporation, the Human Rights Working Group of Global Compact and the European Commission. In addition, certain CSOs have stated to work together with legal practitioners and both a selection of states and companies are also involved. Five companies have started testing company-based grievance mechanisms presented in the framework and a group of 13 states have been convened by the SRSR to brainstorm how home, host and neighboring states could mitigate possible human right abuses in conflicted areas. It is also noted that several states have referenced the framework when conducting their policy assessments.<sup>266</sup> By this, the framework is in a way taken to a bigger context and gaining more stepping stones. The most efficient solution would be to create commonly agreed norms and practices into use. Institutionalization of created norms and practices would then further strengthen this selected business and human rights approach.

Turning to possible issues, issue-driven testimonies are taken to the international sphere by the SRSR's report of alleged corporate-related human rights abuse. These testimonies were posted to the Human Rights Resource Center's webpage. The findings are manifold but, however, it can be noted that the scope of corporate-related abuse covers the full range of human rights and alleged impacts were equal on workers and communities. In addition, the impacts on end users were also reported.<sup>267</sup> Needless to point out, interpretation and analysis of this kind of data must be done in an ethical and respectful manner. Continuation with the ethical approach, summaries from multi-stakeholder consultations, also possesses a pitfall for possible bias in interpretation. On the other hand, transparency and material availability diminish possible faulty interpretations.

All in all, transparency in material creation, availability of the published material and technical methods for dialogue give a solid base for fruitful debate and more control on individual or organizational voices. According to references and liaisons for existing procedures of CSOs, states and business, it seems that the framework is commonly agreed to be a starting point for more operational procedures. Also, it can be that feedback from these above mentioned stakeholders will further shape the framework operationalization, or even the framework itself. This would be a process related to pragmatism, a topic that we will cover in the next chapter.

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<sup>266</sup> A/HRC/14/27, 4–5. Companies testing the framework's principles: Carbones del Cerrejon with neighboring indigenous communities in Colombia, Esquel Group, a garment manufacturer based in Hong Kong, China, in its Vietnamese factory, Sakhalin Energy Investment Corporation in Russia, Tesco in its South-African fruit supply chain, Hewlett-Packards with two suppliers in China. Participating states: Belgium, Brazil, Canada, China, Colombia, Ghana, Guatemala, Nigeria, Norway, Sierra Leone, Switzerland, the United Kingdom, the United States of America. States, which referred the framework in their policy assessments: France, Norway, South-Africa, and the United Kingdom.

<sup>267</sup> A/HRC/8/5/Add.2, 1–5.

#### 4.5 Principled pragmatism

The SRSB states in the first official report that the strategic direction is based on principled pragmatism. What is then meant by this concept is ...“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.”....<sup>268</sup> Principled pragmatism is revisited in 2010 as it is recapped which steps are being taken to complete the mandate, how different stakeholders are being included in the work and implementing the framework principles in practice and also, how the framework is being promoted in the international sphere<sup>269</sup>.

I will dissect this approach a bit further in connection with the concept of pragmatism defined previously in this research. As it was represented previously in chapter 3.1 on how pragmatism is contributing in this research, we can first of all note some personal attributes that most certainly have had effects on the interpretation of the primary material used in this study, but also the personal attributes standpoints and history that have constructed the creator of the primary material. In this sense, there are already two personal interpretations that have shaped the “objective truth” of the matter of business and human rights.

Another element of pragmatism was to define truth as a successful practice. It can be argued whether this element is also directly emerging from the SRSB’s statement, which was mentioned above, but, nonetheless, it has become clear that practical methods for grievance mechanisms are embedded in the official reports as solutions for the issues stated in the mandate<sup>270</sup>. Actually, it is the third pillar of the framework that aims to respond to a more practical way in human rights abuse corrections. Although, it must be noted that even though the framework for grievance mechanisms has been manifested, the patchwork of those remains incomplete and flawed<sup>271</sup>. One can state that pragmatism – at least in some form – is present throughout the main official reports. Pragmatism as argued by the author<sup>272</sup> is being realized in the form of testing and reshaping the framework’s principles, as elaborated in the previous chapter. The formed principles are taken into practice but also redefined as the brainstorm group of a set of states proves. In this sense, the cycle of pragmatism as a successful practice is realized.

Nevertheless, as pointed out in the beginning when defining pragmatism, justification and necessity of the work itself can be measured by a practical viewpoint. Bearing that in mind, the work done by the SRSB can be measured to be justified and necessary according to

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<sup>268</sup> E/CN.4/2006/97, 18–20.

<sup>269</sup> A/HRC/14/27, 3–5.

<sup>270</sup> A/HRC/8/5, 22–27, A/HRC/11/13, 21–26, A/HRC/14/27, 19–22.

<sup>271</sup> A/HRC/8/5, 22.

<sup>272</sup> Author in this context refers to the author of this particular research, not to the primary material’s author.

how well it will be implemented in practice. Although it is too early to analyze any final implementations and results based on those, it can be noted that pragmatism is strongly present in the official reports submitted to the HRC. Continuing with a more philosophical standpoint, since it was mentioned in the beginning of the work that the pragmatic target state can be stated to be stories, which will initiate something good, and so are good, and that stories, which will initiate something bad, are bad. This links to an utilitarian approach, which – at least according to the author – is perfectly suited for the issue of business and human rights. Based on the utilitarian approach, if the framework and its operationalization will initiate good, narrative or multiple narratives it consists of are good.

#### **4.6 Way forward**

As mentioned previously, what is needed here is a change in values, and above all accountability and transparency in actions compliant with these values. What is needed then are consistent, transparent, accountable and practical methods implemented and reported continuously and globally. There must be a shift in values toward implementing the framework and its operationalization. In addition, HRC, the UN and SRSG must push the commonly agreed setup first of all to the member states, but also to other stakeholders – business and civil society organizations – to gain more common ground for the importance of the operationalization and foremost to get commitment and, finally, to involve stakeholders in the practical work.

Now, although the final report has been submitted, business and human rights narrative still remains unclosed. The final report was submitted in March 2011 summarizing the SRSG’s work and presenting implementation of the framework, which was endorsed in 2008. As mentioned previously, the final report is called “Guiding Principles on Business and Human Rights”. The report recapitulates the principles of each of the three pillars; state’s duty to protect, corporate responsibility to respect, and access to remedy. It also lists some operational principles, which are bound to each pillar. Starting from state duty, it is divided into four areas; domestic policy coherence, support for business respect for human rights in conflict areas, special acknowledgement of human rights promotion in state-business nexus, and general regulatory and policy functions to guarantee law enforcement, guidance and communication requirements for business.<sup>273</sup>

There are similar operational recommendations for corporations. As a policy guideline, it is recommended that at a minimum the International Bill of Human Rights and ILO’s Declaration on Fundamental Principles and Rights at Work create a baseline for corporate responsibility to respect human rights, although it is noted that, depending on the circumstances, additional standards may be required to respect the rights of special groups, like

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<sup>273</sup> A/HRC/17/31, 9–12.

indigenous people, women, linguistic minorities, or other. It is referred that instruments for these kinds of additional responsibilities exist and are created by the UN.<sup>274</sup> The final report balances with TNCs and smaller enterprises, since, as it has been stated previously, responsibilities grow alongside power. It must be remembered that a similar kind of approach for all business enterprises is not going to work but, instead, different sized enterprises should apply the Guiding Principles accordingly. Here, too, transparency and certain common ground understanding for human rights protection are needed.

The report is not creating a new legal or normative approach, but it does guide and elaborate the existing standards and practices for business and states and create those into a single template with coherence and logic<sup>275</sup>. As it was referred already in previous reports, it is not the lack of guidance but the lack of coherency. On the other hand, it may seem that there are a lot of other international treaties, which were discarded since not taking those as policy baselines for companies but, on the other hand, it is necessary to make sure rights addressed in those selected treaties are respected before trying to cover any wider scope.

What is then mentioned as operational steps for companies? There are three elements that companies must embed in their operations; policy commitment, due diligence process and, in case of contribution or direct cause of adverse impacts, remediation through legitimate process<sup>276</sup>. Since it was selected already in the beginning of the process not to investigate and select only some human rights that companies should be responsible for and it was not a target either to create legal responsibilities for companies, legitimate process for remediation seems an optimal solution. It is then up to practical solutions and empirical data to evaluate how well this particular approach has succeeded.

Nonetheless, it seems that the operational steps are leaning on a reputational deterrence, meaning that companies in general are concerned with their reputation and are more willing to comply with different policy commitments and other processes when there can be seen clear evidence of profiting from that or, alternatively, a clear threat to suffer reputational losses. Naturally, there are exceptions on this, but in order to create global guidelines, certain realism must be kept. Policies, on the other hand, can be created by states but civil society has proven to be an important actor and can pressure states to form different kinds of policies for human rights protection.

The third pillar, access to remedy, presents state-based judicial and non-judicial grievance mechanisms and non-state based grievance mechanism that are supported either by business or by industry, multi-stakeholder and other collaborative initiatives. It is stated, though, that companies should either establish or participate in a grievance mechanism. Nonetheless,

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<sup>274</sup> A/HRC/17/31, 13–14.

<sup>275</sup> A/HRC/17/31, 5.

<sup>276</sup> A/HRC/17/31, 15–20.

these grievance mechanisms are very much based on reputational deterrence.<sup>277</sup> As mentioned previously, the effectiveness of civil regulation is only a relative one and, with that regard, non-judicial grievance mechanisms are ambiguous. Nonetheless, it is again a question of the reputation of a company or a whole industry whether necessary actions are not taken in case of adverse of human rights impacts. State-based judicial mechanism is based on domestic jurisprudence but, however, it is also stated that states should have adequate oversight to also meet their international human right obligations<sup>278</sup>. Nonetheless, there is no addition to the international law but the jurisdiction remains on a domestic level, excluding International Criminal Court.

The issue of extraterritoriality is brought up again as a guide for states to set expectations for all business domiciled in their territory or when jurisdiction should respect human rights. There are some different approaches adopted by states amounting to domestic measures with extraterritorial implications to direct extraterritorial legislation and enforcement.<sup>279</sup> It can be said, though, that there is some progress with regard to this issues. During the stakeholder consultations, it was agreed that extraterritorial jurisdiction remains the responsibility of states and that states could be permitted by international law to exercise extraterritorial jurisdiction, and this agreement has now been realized as a method. Also, the extraterritorial jurisdiction remains entirely on the states' responsibilities, as was concluded in the stakeholder consultations.

Since the last report has been submitted and the mandate of the SRSG turns into its end, it is necessary to note what is then the continuation with regard to the work of the SRSG and the whole issue of business and human rights? Are there any endings for narratives that can be applied in the work initiated by the UN's mandate, or does it remain unfinished? As has been mentioned, in 2008 the HRC welcomed the framework and expanded the SRSG's mandate until the end of 2011. In June 2011, the final report of the SRSG, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", was endorsed by the HRC. This concluded the mandate of the SRSG and for a continuation process the UN launched a new working group to continue the work in the issue of business and human rights. As it was remarked previously, the final work of the SRSG is stated to be only the end of a beginning, which means that continuation must be launched. However, the work should now be continued based on the Guiding Principles, which are in some aspects being tested already<sup>280</sup>.

What is then done is that based on the resolution issued in 16 June 2011, HRC expresses support and commends the final report of the SRGS. In addition, multi-stakeholder dialogue was credited and appreciated but there was a concern that weak national legislation

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<sup>277</sup> A/HRC/17/31, 23–26.

<sup>278</sup> A/HRC/17/31, 10.

<sup>279</sup> A/HRC/17/31, 7.

<sup>280</sup> A/HRC/17/31, 4.

and implementation shall not mitigate the negative impacts of globalization. Therefore, HRC decided to establish a working group to promote the Guiding Principles, and its implementation to provide support for the usage of the Guiding Principles, to develop dialogue with relevant stakeholders and to continue exploring options and to make recommendations on a national, regional and international level. The working group shall report annually to HRC and the General Assembly.<sup>281</sup> The Working Group, which held its first session in January 2012, consists of five individual members, who were pointed to their roles in November 2011. It remains to be seen how the new Working Group will progress and report on their achievements.

On the other hand, it is a bit discouraging that the final result of the mandate, which was originally initiated already in 2005, is “just” another working group. Also, it seems to fight against – if not pragmatism as defined in this research – but at least against something that could be called an efficiency principle. On the other hand, it would not be realistic to assume that the final conclusion of the issue of business and human rights would have been created within the mandate’s time period. As it was stated earlier, it is vital that there will be a fundamental change in values and, even more importantly, that also actions will be transparent and compliant with these new and commonly shared values. It is known that behavioral and value-related changes are not quickly adopted but there needs to be both time and some cooperation to create established operations based on the Guiding Principles. Since the work continues, it seems that the business and human rights narrative indeed remains unfinished, but one must hope that a middle and finally a closure can be achieved in cooperation with relevant stakeholders without compromising too much.

It must be emphasized that transparency is vital also for the Working Group’s actions. Another portal in the Business and Human Rights Resource Centre has been created to collect material created by the Working Group. Other channels, which enable two way communications, should be established too, alongside the portal. Civil society, states and business must remain as important and contributing actors. Though it has been a long mandate to achieve the end of the beginning, there are good causes to expect that common ground between stakeholders has now been established and that the work is ready to progress.

## 5. CONCLUSIONS

As it was mentioned previously, it seems that there are solid embedded liberalism grounds in the work of the SRSG. If we start by taking a look at framing (or context setting) done by the SRSG for his material, it can be noted that, for instance, there are several referrals to the changed environment, where globalization has stepped in with new requirements. The framing seems to be much based on noticing a change in the actors of the global

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<sup>281</sup> A/HRC/17L.17/Rev.1, 1–3.

sphere. There is also a referral to the historical approach, in which the wanted target state is tied and explained with the help of embedded liberalism history timeline, starting from the Victorian era. This clearly indicates that the primary material is being set into context with the help of embedded liberalism.

Further on, there are implications that the current set up does not enable societies to protect proper social values, since there are several referrals in the primary material to inadequate capability of societies to protect and promote the core values of social community. Besides referring to a lack in states' – and in general civil society's – capabilities in the current global sphere, it is being indicated that rules, customs and institutions are needed for markets to sustain but also for a society to manage any adverse effects of market dynamics. Additionally, it is stated that this kind of institutional support in place would also enable to embed markets in broader values of a social community.

Nonetheless, these institutional frames do not appear out of nowhere, as it is noted that governments need to join public interests created by other social actors, meaning that states must pay much more attention to other actors in the civil society and take those into consideration when managing social institutions. Also, governance by social institutions needs to balance the market mechanism, as well, because as noted in the primary material, markets may become socially unsustainable without efficient institutional underpinnings in place. It is apparent in the primary material that social expectations and norms should be tied to economic ideas for gaining long-term equitable and also profitable solutions. Therefore, linkage to the theory of embedded theory is obvious.

All in all, clear referrals to the theory of embedded liberalism are being stated throughout the primary material that was produced during 2006-2009. The last two main official reports (submitted in 2010 and 2011) have a different focus as posing a more pragmatic approach. Therefore, theoretical investigation is not relevant for those; instead, they were analyzed by using pragmatism as a methodological approach. If evaluating the whole primary material from a theoretical point of view, it can be said that it is a holistic, consistent work that bases itself on embedded liberalism. In addition, the tone of voice in the report is a cooperative one, but it is made clear that it is still the duty of states to hear and execute social expectations with the help of social institutions – of which market mechanism is a part of.

Starting with pragmatism of the methodological elements, it can be said that the last two main official reports of the primary material have a different focus; the main official report submitted in 2010 is a progress report of the progress of the work with some pragmatic guidance, whereas the main official report submitted in 2011 focuses on pragmatism and operationalization of the work that has been done. First of all, although it is being noted that the principled pragmatism forms the core of the SRSG's work, it is also notable that it is underpinned by embedded liberalism, though the format of principled pragmatism is more a

latent one. It is mentioned directly by the SRSG that the primary material is based on principled pragmatism; by creating change in the daily work of people.

If we combine how pragmatism was defined in chapter 3.1 to the statement made by the SRSG, it can be noted that truth can be defined as a successful practice and that stories, which will initiate something good, are good, and vice versa. Bearing that in mind, the primary material can justify its existence from a practical viewpoint only in the future. This is because there are no valid methods to measure the work of the SRSG in practice yet. Nevertheless, pragmatism is emerging from the primary material as definitions of grievance mechanisms, which are embedded throughout the primary material. Additionally, the third pillar of the Framework is aiming to respond in a more practical way to the human right abuses.

It is then time to turn to the results received by using the methodology and selected narrative attributes. Starting with temporality, it can be noted that the primary material has both linear and process-based narratives in place. So, although it was doubted whether there would be a direct linear temporality in the material, in fact it seems that a linear approach can be applied quite well to the primary material. Nonetheless, this does not mean that the primary material would be narrowed down as one metanarrative; however, it seems that there is a clear message in the form of role setting and consistent linear approach if the primary material is studied as one big entity. On the other hand, it might also be one proof of my westerner approach. After all, a linear concept of time is quite deeply rooted in the western culture; we have based our time concept to be a linear and maybe also progressive.

Nonetheless, the big picture events of the primary material can be mapped to be linear; the primary material has a beginning (mandate by the Commission of Human Rights and framing of the issue by the SRSG), a middle point (the Framework and progress reports) and an end (the Guiding Principles), although the end is left open. This is because the last main official report – the Guiding Principles – has been approved by the HRC, but in order to carry on the human rights - business issue, a working group has been established for further improvement and development of the issue. Therefore, although the mandate of the SRSG was concluded, the human rights - business issue continues its existence and so do the remedy measures, now in the form of the working group.

On the other hand, if continuing the temporary approach, the formation of the primary material seems to be a process, which is then refined into streamlined guidelines. It seems that the main official reports are well aligned but also support each other by some overlapping and repetition. This can be seen as a sign for more of a process way of forming the primary material. Also, several sessions for stakeholder involvement have been arranged, and all of these form a different key event on the timeline of the mandate. These all support the opinion of a processed approach in the actual primary material creation, but also in the primary material itself.

So, process approach can be applied since the each official main reports clearly build on each other and follow the selected strategy, which was declared in the Framework report. It can also be questioned whether categorization to either linear or a process way is really relevant. Nonetheless, the primary material clearly has both in place. For instance, it can be said that the work of the SRSG is already being fitted into a bigger timeline of business and human rights, as it is being stated in the primary material that it is just an end of a beginning, but whether this can be interpreted as clearly a linear or a process-based approach is debatable and may not bring much value.

It was mentioned that intertextuality can be seen as connecting and anchoring the primary material to the issue of human rights - business. The primary material is set in a global context by noting the most previous works done under the mandate of the UN, before the SRSG's mandate was released. Also, there is an impressive elucidation done by the SRSG in the primary material for mapping elements from the current international law, various soft law mechanisms, and models for self-regulation. Nonetheless, intertextuality and roles are overlapping even more; therefore, the primary material is also being set into context by defining clear cut roles for states and companies. Roles that are the most relevant in the primary material are the roles of states and corporations. The role of states as a human rights protector is declared to be based on duty, while the role of corporations is based on responsibility.

It is clearly indicated by the primary material that states are the main duty bearers of human rights protection, and it is notable that states should extend their operations to better guide corporate culture according to social expectations. The role of corporations is based on a concept of responsibility to respect, since it was acknowledged that it was not feasible to try to define a selected set of human rights that corporations would be directly responsible for. Hence, corporations have responsibilities with regard to all human rights. The baseline for respect is defined by public opinion that can be extended to a certain social license to operate. This means that a company should operate according to social expectations.

Surroundings – the locus – where narratives take place is the global public domain. It can be noted that there are several narratives (not just human rights - business narratives) coexisting in the constantly changing global public domain. Since it is not clear what kind of public authorities exist – if there are any kind of, it is difficult to study any hierarchical or other structures of narratives in the global public domain. Additionally, it is not a target of this research, either, and would be a topic for a different research. However, it can be noted that the new information technology has enabled more vast participation in the construction of global narratives. Therefore, some elements that are derived from locus can be used in this research.

The concept of locus can be broken down into elements of issue-driven testimonies, representation, interpretation, dissemination and control over voice. If we link the elements of issue-driven testimonies, interpretation, and representation together, it can be stated that stakeholder consultations have provided a way to give voice to stakeholders, especially, since all except for one consultation have been face to face ones. Also, stakeholder coverage has been wide; there are several civil society organizations (like Amnesty International, the Peacebuilding Centre and Fafo) and private business enterprises, especially law practitioners. Additionally, governmental institutes, like two Norwegian research institutes, have also been involved in the work of the SRSG. States have been also participating by being a target of a survey in order to provide information about the current situation. So, representation of the stakeholders has been extremely wide.

What can then be said about issue-driven testimonies and interpretation? First of all, the discussions were documented in a way that protects anonymity. This can have both pros and cons, depending on the viewpoint, since anonymity protects stakeholders so that negative and controversial issues can be brought into discussion without fear of negative impacts. Therefore, issue-driven testimonies can be enabled. On the other hand, we cannot be sure how interpretations have been done. Thus, interpretation cannot be analyzed much further. However, there are two online tools that can be used by stakeholders without interpretation in between. It seems that there is a balance between transparency and confidentiality; this applies also to the questionnaire survey, since without some assurance of confidentiality there might be limited ways to receive honest replies. Therefore, issue driven testimonies and representation are besides linked together but also they are somewhat adversary. Additionally, interpretation can be linked to the element of dissemination.

If we take a closer look at locus' element of dissemination, it can be said that all in all the dissemination has been wide, comments made by civil society and academics, business community and law firms, governments and also correspondence with NGOs are all publicly available. Additionally, the amount of documentation is vast, and consultation documents are also publicly available. Since the issue is a global one, the material is also globally available both on the webpages of the UN (the reports submitted to the UN) and also on the webpages of the Business and Human Rights Resource Centre (all produced material). All in all, dissemination of voices can be seen as wide, but any analysis of control over voice cannot be related to the scope of my research.

Finally, as it has been a wish of this research to have at least some pragmatism in place, and as it was stated in the starting point by the SRSG himself, it is principled pragmatism that must be present and lay grounding for the mission launched by the mandate. A common nominator can be found between pragmatism defined as a positioning researcher (the author of this research) and the principled pragmatism defined by the SRSG. For instance, if principled pragmatism is mentioned to apply in daily lives of people, the pragmatism defined in the beginning of this research was mentioned to be a succeeding practice. It is imperative

that human rights protection steps out of a conceptual level and into a pragmatic one. As guidelines are of no use if they are not applied or monitored properly, nor there is any need for constant creation of new approaches for the sake of generating new; the focus must now shift from conceptualization to implementation. Additionally, pragmatism can be added also to a philosophical mindset of the narrative methodology.

Also, as it has been stated, the basic philosophy of narratives used in this research is noticing stories as transmitting and creating reality and meanings. With regard to this, the work done by the SRSG can also be seen as transmitting and creating for its part the world as we understand it. Receivers of the narrative (i.e. readers of the primary material) will partly be using the material created by the SRSG to create and revise their approach to business and human rights. This is not an apparent function, but a subtle way for creation and recreation of outlooks, and also continuing to redefine elements that are needed for finalizing this outlook. In a way, this relates also to pragmatism as a (scientific) community is recreating new approaches based on the existing ones.

Naturally, there is no straightforward indicator how the work by the SRSG, which has now been concluded, will be affecting the future of business and human rights. Nonetheless, as the Working Group starts to deliver more detailed material, it can maybe be evaluated in a more detailed way how the previously concluded guidelines have been affecting that. In addition, the material created by the SRSG can also have an effect on various stakeholders as some elements of it have now already been implemented. Additionally, this can help to develop a common baseline for developing norms and further to be institutionalized as efficient policies and practices.

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Protection of human rights has changed due to change in the international arena. Today, the international arena consists of various actors and if some fifty years ago states were the primary actors, those have had to give in for a set of different civil society organizations (CSOs) and, foremost, different sized enterprises. This change is connected to the difficulty to define the concept of human rights. Additionally, it is not self-evident how human rights concept and practical obligations to protect human rights are being formed and understood. The very latest development in the area of human rights and business – that was initiated by the UN – is a research conducted by John Ruggie in the role of Special Representative of Secretary General (SRSG). The target of my research is to clarify what can be found from the research conducted by SRSG the by using narrative methodology and whether it is based on the theory of embedded liberalism.

The reports (primary material of this research) were produced by the SRSG during the mandate of the UN (2006-2011). Consequently, the attempt is to find out what exactly the primary material has to say in the light of the selected theory and methodology and how it fits into the existing context of human rights and business. The theory of embedded liberalism can be simplified as a joint institutional framework, which consists of state power and interests, prevailing social expectations, norms and economic ideas.

Narratives can be defined to be used as a common tool in communication and understanding the world. The “core” of narrative methodology is understood in this research as noticing stories as transmitters and creators of the reality and meanings. The narrative attributes used to dissect the primary material are *temporality* and *event sequencing*, *intertextuality*, and *roles*. In addition, connected to intertextuality and a change in the international sphere, *locus* of narratives is briefly presented. Paradoxically, by using this kind of reductionism with the help of narrative attributes, the primary material can be better set into the contexts of the “big picture” of human rights. For this purpose there are separate chapters for clarifying the concept of human rights and civil regulation, although these are covered jointly in the theory section. Therefore, it can be said that the selected theory and methodology are slightly overlapping.

The primary material seems to be based profoundly on the theory of embedded liberalism. The tone of the report is cooperative and there are several referrals of state activity to hear

and execute social expectations with the help of social institutions – of which market mechanism is a part. It can be said that the need to promote social expectations and norms in conjunction with state power and interests is quite visible in the primary material. The framing of the reports seems to be much based on noticing a change in the actors of the global sphere. There is also a referral to the historical approach, in which the wanted target state is tied and explained with the help of embedded liberalism history timeline. Further on, there are implications that the current set up does not enable societies to protect proper social values, since there are several referrals in the primary material to inadequate capability of societies to protect and promote the core values of social community. Besides referring to a lack in states' – and in general civil society's – capabilities in the current global sphere, it is being indicated that rules, customs and institutions are needed for markets to sustain but also for a society to manage any adverse effects of market dynamics. Additionally, it is stated that this kind of institutional support in place would also enable to embed markets in broader values of a social community.

The primary material has both linear and process-based narratives in place. The primary material is set in a global context by noting the most previous works done under the mandate of the UN, before the SRSG's mandate was released. Also, there is an impressive elucidation done by the SRSG in the primary material for mapping elements from the current international law, various soft law mechanisms, and models for self-regulation. Nonetheless, intertextuality and roles are overlapping even more; therefore, the primary material is also being set into context by defining clear cut roles for states and companies. Roles that are the most relevant in the primary material are the roles of states and corporations. The role of states as a human rights protector is declared to be based on duty, while the role of corporations is based on responsibility. Surroundings – the locus – where narratives take place is the global public domain. It can be noted that there are several narratives (not just human rights - business narratives) coexisting in the constantly changing global public domain. Since it is not clear what kind of public authorities exist – if there are any kind of, it is difficult to study any hierarchical or other structures of narratives in the global public domain.

The basic philosophy of narratives used in this research is noticing stories as transmitting and creating reality and meanings. With regard to this, the work done by the SRSG can also be seen as transmitting and creating for its part the world as we understand it. Receivers of the narrative (i.e. readers of the primary material) will partly be using the material created by the SRSG to create and revise their approach to business and human rights. This is not an apparent function, but a subtle way for creation and recreation of outlooks, and also continuing to redefine elements that are needed for finalizing this outlook. In a way, this relates also to pragmatism as a (scientific) community is recreating new approaches based on the existing ones.