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**Beyond ‘doing no harm’: An ‘extended UN Framework’ to Connect Political CSR with Business and  
Human Rights**

**Authors:<sup>1</sup>**

**Jonas Johnsson**

**Mette Fisker**

**Charlotte Bernstorff**

**Karin Buhmann**

**Comments for reviewer and readers:**

We are currently working on revising the article for submission in May. Here follows a short description of the most important changes we are working on:

Most importantly, we aim to further clarify the pragmatic nature of our approach - that is, we are not discussing optimal moral human rights situations, and we are not creating a checklist for companies to become morally legitimate by respecting and fulfilling human rights. Rather, we attempt to clarify what role we should expect and demand of corporations to take on in terms of human rights. To this end, we are moving away from the weak state/strong state terminology and amending the model (Fig. 2) to make it more clear and reflect more directly that MNCs should build on governmental capacities to fulfil human rights where possible, but will need to fulfil human rights more or less on their own, where impossible. Furthermore, we are removing the contingencies of the sphere of influence as outlined on p. 9 according to Wettstein and Wood. Instead, we introduce these in the discussion as useful ideas for consideration. These two changes reflect our pragmatic approach; it is impossible to outline universally valid guidelines, and therefore it must be the responsibility of the MNCs themselves to assess state capacity to fulfil the given human rights obligation and to assess their own capabilities and sphere of influence in this particular context.

We are also amending the cases in order to ensure greater coherence and to clarify the contribution of the cases to our framework. More specifically, we connect each of the four cases to the theoretical insights of the literature review by explaining how the different companies are (not) performing due diligence, (not) assessing their sphere of influence and (not) achieving moral

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<sup>1</sup> All Copenhagen Business School. Corresponding author: Karin Buhmann, Professor (MSO) of Business and Human Rights, Department of Intercultural Communication and Management, [kbu.ikl@cbs.dk](mailto:kbu.ikl@cbs.dk)

legitimacy through procedural and consequential legitimacy. Moreover, we are completely rewriting the Novo Nordisk case, cutting out irrelevant information and more accurately explaining how Novo Nordisk builds on governmental capacities to fulfil human rights (provide healthcare to diabetes patients) - rather than undermining governmental responsibility - resulting in the government expanding and improving healthcare for diabetics in China.

## **Beyond 'doing no harm': An 'extended UN Framework' to Connect Political CSR with Business and Human Rights**

### **1. Introduction**

One of the greatest injustices of today's world is the human rights deprivations suffered by a vast number of people, most of them in developing countries. Many human rights violations are – directly or indirectly – caused by Western Multi-National Corporations (MNCs) that operate in developing countries (Ruggie 2013, Zerk 2006). Furthermore, many people in the developing world are not sufficiently supplied with access to basic human rights such as education and health care. A key reason for these issues is the existence of 'governance gaps' or 'institutional voids', which refer to (1) the inability of many states to effectively implement and enforce regulation within their own territory and (2) the weakness and inability of transnational regulation to address transnational challenges (Habermas 2003). Considering the role of MNCs with regard to human rights violations, it is difficult to make the case that business has no social responsibility. Accordingly, civil society and governments have increasingly been pressuring companies to become more socially responsible and address a variety of social problems. Yet, despite a myriad of voluntary Corporate Social Responsibility (CSR) programs and initiatives particularly since the 1990s, MNCs have by and large failed to significantly improve the human rights situation in the world.

Acknowledging the necessity of involving MNCs in solutions to human rights problems, the United Nations (UN) – after a lengthy process marked by initial failures (Kinley, Nolan & Zerial 2007; Knox 2012, Buhmann 2012) – adopted the UN *Protect, Respect and Remedy* Framework on Business and Human Rights in 2008. However, the UN Framework limits the corporate responsibility to 'respect,' that is, to a passive or so-called negative responsibility to 'do no harm' (UN 2008 para 24), whereas the active or so-called positive responsibility to protect and fulfil human rights was attributed to nation-states only. This sharp separation of responsibilities might be appropriate for a well-functioning liberal democracy with effective regulatory capabilities, but in today's world and in particular when assessing the state capacity in many developing countries the exclusive reliance on nation-states to fulfil human rights is far

from promising. Recognising the enormous political influence of MNCs, the emerging literature on Political CSR seeks to move towards an understanding of MNCs as not just economic actors, but also political actors that play a role in filling institutional voids by self-regulating and providing public goods, thus transcending the UN Framework's separation of corporate responsibilities and state duties (Scherer & Palazzo 2007, 2008, 2011; Matten & Crane 2005, Matten & Moon 2008). Nevertheless, the Political CSR literature does not provide a satisfying solution to human rights issues either, as it does not suggest a strategy for how to assess specific responsibilities of corporations as political actors, making Political CSR difficult to operationalise for MNCs. Moreover, little CSR research deals explicitly with CSR interventions to respect and fulfil human rights. Thus, despite the wealth of research on Business & Human Rights and the wealth of research on the political role of business, academic literature has still not managed to come up with a promising strategy for attributing operational political responsibilities to MNCs that correspond to their tremendous political power and impact on human rights.

This article aspires to make a contribution towards filling this gap in the literature by combining the insights from the Political CSR literature with the more operational focus of the UN Framework on Business and Human Rights. Through an in-depth review of the literature and an analysis of the practical implications of the UN Framework and Political CSR using literature based examples of four cases in which MNCs have had negative or positive human rights impacts, we develop an 'Extended UN Framework'. The corporate responsibility to respect human rights remains intact in the Extended Framework, but positive duties for corporations to fulfil human rights are added based on (1) an assessment of the state's capacity to fulfil the human rights in question and (2) an assessment of the corporate sphere of influence.

The article is structured as follows. Section 2 reviews the literature first on corporations as political actors and second on Business & Human Rights. Section 3 explains the methodology. Sections 4 and 5 constitute the main analytical body and lead to the development of the extended UN Framework. Finally, section 6 concludes and outlines the future research and managerial implications of the article.

## **2. Literature review**

### ***2.1 Corporations as Political Actors***

Political CSR has evolved as a strand of CSR literature that focuses on what has come to be understood as the political role and responsibilities of corporations. This 'political' role occurs when corporations

actively contribute to the delivery of tasks or goods that are generally considered state obligations. The rise of Political CSR is linked to the inability of national governments to sufficiently address contemporary transnational challenges such as corruption, global warming and human rights implementation. The conventional state-centrist human rights regime established under the UN and the International Labour Organization has proven inadequate to ensure effective implementation (Scherer & Palazzo 2008, Lund-Thomsen & Lindgreen 2013, Ruggie 2013). Insufficient and weak transnational regulation creates institutional voids that allow MNCs to exploit weak governance and lax regulation, which in turn undermines political authorities (Habermas 2003, Scherer & Palazzo 2011, Ruggie 2013). However, due to their size and transnational nature, MNCs are also in a unique position to contribute solutions to these international challenges. With solidifying recognition in the Business Ethics literature of the role of governmental institutions in shaping CSR norms and firms' CSR activities (Matten & Moon 2008; Gond, Kang & Moon 2011; Gjørlberg 2010, Rasche 2012, Buhmann 2015), the debate is no longer mainly focused on voluntary business action and CSR as distinct from the law (Gjørlberg 2011; Buhmann 2006; Dentchev, van Balen & Haezendonck 2015). While scholars question the assumption that CSR can contribute to development in the Global South (Lund-Thomsen & Lindgreen 2013; Lund-Thomsen, Lindgreen & Vanhamme 2014), governments in several developed states are deploying CSR as a soft modality to regulate activities of firms beyond their own territories, in particular in order to promote public policy objectives on human rights in emerging economies and developing countries (Gjørlberg 2011, Buhmann 2013).

Political CSR literature theorizes on the role of MNCs assuming 'Corporate Citizenship' by filling institutional voids across strong and weak governance zones, (Scherer & Palazzo 2011, Matten & Crane 2005, Moon & Vogel 2008, Detomasi 2007, Horrigan 2010, Vogel 2008). Matten, Crane and Chapple (2003: 116) argue that Political CSR applies when governments fail to protect the rights of citizens, and corporations partly take over essentially governmental functions with regard to the protection, facilitation and enabling of citizens' rights. Consequently, national governments are no longer the sole guarantor of social, political and civil rights (Margolis & Walsh 2003, Matten & Crane 2005, Hertz 2001) as corporations increasingly provide schools and medical centres, improve working conditions or ensure participation in decision-making, all of which are conventionally government responsibilities. Thus, corporations taking action to provide public goods and administering human rights where there are institutional voids constitutes Political CSR.

As a consequence of the increasingly blurred lines between business and state responsibilities, Political CSR scholars have been moving away from the dichotomous view of CSR (Matten & Crane 2005, Scherer

& Palazzo 2011). The dichotomous view takes an instrumental approach, building on the conjecture that national governments work effectively and provide legal and moral guidance, and on the liberal assumption that the corporation is solely a private economic actor (Jones 1995, Mitchell et al. 1997, Sundaram & Inkpen 2004). As per Friedman (1970), in this view it is the responsibility of government to regulate corporations (Sundaram & Inkpen 2004), and CSR initiatives are mainly an instrument for MNCs to increase competitiveness. The literature on Political CSR, however, dismisses the assumption that governments hold a monopoly on political activity and points to the increasingly influential role of MNCs and NGOs in the public or 'political' sphere (Scherer & Palazzo 2011, Matten & Crane 2005, Moon & Vogel 2008, Detomasi 2007). As corporations expand from being merely economic actors to assuming political roles, they take part in public functions by self-regulating and providing public goods. The literature on Political CSR calls for an extension of the narrow, instrumentalist understanding of the corporate sphere of influence, as MNCs increasingly participate in the political sphere by responding to government failures and substituting governmental action.

Institutional theory explains how MNCs respond to institutional pressures, often divided into three varieties: coercive, normative and mimetic (DiMaggio & Powell 1991). Coercive institutional pressures are typically relatively strong in developed countries with strong states that can implement and enforce regulation, and thereby constitute major drivers of socially responsible behaviour. However, studies of developing countries with weak states have pointed to the substantial impact of normative institutional pressure by civil society, pressuring firms to behave responsibly in the absence of significant coercive pressure by the state (Nurunnabi 2015, Campbell 2007; Jamali, Safieddine & Rabbath 2008). Mimetic pressure is related to imitation of best practices and can entail a snowball effect of MNCs filling institutional voids, if similar MNCs are doing so. This can be especially significant in pressuring corporations that do not face considerable public exposure and might otherwise evade institutional pressure.

As companies in developing countries with weak coercive pressure face a surge in normative institutional pressure, the social acceptance of MNCs increasingly depends on moral legitimacy (Suchman 1995, Palazzo & Scherer 2006). Contrary to cognitive and pragmatic legitimacy resting on taken-for-grantedness and self-interested calculations, moral legitimacy rests on "judgments about whether the activity is 'the right thing to do' (...) [reflecting] beliefs about whether the activity effectively promotes societal welfare" (Suchman 1995: 579). Thus, the growing scrutiny of corporations by NGOs and civil society, which pressures MNCs to morally legitimise their procedures and actions, may help convert MNCs into the solution to institutional voids, rather than being the problem. Engagement with civil

society and other stakeholders is a significant modality for corporations to gain moral legitimacy (Suchman 1995, Palazzo & Scherer 2006, Swanson 1999, Habermas 1996, Ruggie 2013, Rasche & Gilbert 2012). Importantly, moral legitimacy in areas such as the human rights field comprises both consequential legitimacy (measured by concrete accomplishments like access to health services or education) and procedural legitimacy, central to which is participation in decision-making (Suchman 1995). By adopting a communicative multi-stakeholder approach, corporations can both improve their procedural legitimacy and their consequential legitimacy, as actions are based on a more comprehensive understanding of stakeholder interests. Moreover, sincere stakeholder communication and consultation, which has also been emphasised by the UN Framework, promotes the human right of popular participation in decision-making.

The increasing pressure on MNCs to morally legitimise their operations highlights the need for an improved understanding of the responsibilities of business in the political sphere. This is both in the interest of civil society and governments, who can apply normative and coercive pressure to corporations, and in the interest of MNCs that strive to be perceived as morally legitimate. Yet, the literature on Political CSR has paid little attention to the specific steps for corporations to honour the moral obligations that go hand in hand with the increased political power of MNCs. It does, however, offer a comprehensive account of the corporate presence in the political sphere and most importantly, it underpins the argument that MNCs can indeed be social and political actors as well as economic actors, and as such must be attributed social and political responsibilities that reflect their power and influence.

## ***2.2 Business and Human Rights***

### *International Human Rights theory*

While the operational element is relatively absent in the Political CSR literature, the Business and Human Rights regime developed by the UN with a point of departure in international human rights theory has made a targeted effort to construct a normative framework for assessing the human rights responsibilities of businesses. The point of departure is that the international human rights regime has primarily been concerned with the obligation of *governments* to respect human rights, protect human rights (against violations) and fulfil human rights (claims for health services, education etc.) (Tomuchat 2008). However, as the literature on Political CSR has revealed, vast governance gaps persist. While some corporations fill these institutional voids, governance gaps also enable businesses to violate human rights (Arnold 2010, Habermas 2003). Violations are often caused by MNCs located in developed states, but operating in or

together with business relations in developing states (Ruggie 2013, Zerk 2006). This is problematic for the legitimacy of Western MNCs that 'play by the rules' in developed countries with strong regulations and coercive pressure from the state, but exploit lax regulation in developing countries.

Concerns about the ability of firms to cause human rights abuse and evidence that this results from governance gaps played a strong part in the establishment of the UN Global Compact (UNGC) in 2000. The UNGC comprises ten principles to which businesses commit on a voluntary basis in four issue areas: human rights, labour rights, environment and corruption. Despite its many merits, the UNGC remains a voluntary instrument that encourages businesses to do good rather than attributing responsibility (Scherer & Palazzo 2011). The so-called UN Norms on Business and Human Rights, drafted 1998-2003 by a UN Expert Group but never formally adopted (Knox 2012), drew on the notion of 'Sphere of Influence', also applied by the UN Global Compact. The Norms stated that it was the *obligation* of MNCs to "promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law (...) within their respective spheres of activity and influence" (UN 2003 Art. 1). Thus, the Draft Norms not only acknowledged that businesses are political actors, but also attributed legal responsibility to MNCs to actively improve the human rights situation. The Draft Norms, however, were criticized on a number of accounts, including for not clearly delineating corporate responsibility in relation to state duties. It was considered a radical step to legally impose obligations upon companies under international law to not only respect human rights, but also protect and fulfil human rights within an ill-defined sphere of influence (Horrigan 2010). The UN Commission on Human Rights rejected the Draft Norms, but noted that they contained "useful elements and ideas for consideration" (UN 2004).

The Commission decided instead to launch a major study, which in 2005 was commissioned to Professor John Ruggie, a Harvard academic who undertook this UN mandate as Special Representative of the Secretary-General ('SRSG'). Following a logic of 'principled pragmatism', Ruggie in his role as SRSG was determined to create political results. The three-year study led to the UN Framework (UN 2008) that was unanimously accepted by the UN Human Rights Council. The UN Framework is based on three basic 'Pillars': The state duty to protect against human rights abuses by third parties, the corporate responsibility to respect human rights and effective remedy mechanisms (UN Human Rights Council 2008 (a))

Launched as a policy document, the Framework abstains from imposing legal obligations, relying instead on soft law. Under a second mandate as UN SRSG Ruggie was asked to "operationalise" the UN Framework. This resulted in the UN Guiding Principles on Business and Human Rights (UNGPs, UN 2011), which offer detailed guidance for firms and states to implement the UN Framework. The development of the UN Framework and UNGPs involved a broad range of stakeholders, including

businesses, ensuring a high degree of legitimacy and support (Knox 2012, Buhmann 2012). While the UN Framework and the UNGPs do recognize that firms may contribute to human rights in positive ways, they limited their focus to the negative corporate responsibility to *respect* human rights, i.e. to “do no harm” (UN 2011). That decision reflected a pragmatic assessment of what was deemed feasible for political support for the outcome of the mandate process, the legal difficulties in delineating corporate human rights fulfilment against state duties and the risk that including such positive steps for companies might be abused by states to reduce their own fulfilment of human rights, and a need above all to secure victims against business related abuse (Ruggie 2013).

As guidance to respect human rights or ‘do no harm’ (UN Human Rights Council 2008 (a)), the Framework introduced the concept of human rights due diligence. The due diligence approach is well known from corporate law as a process to identify and limit (typically financial or legal liability) risks to the firm. The UN Framework shifts the focus to social risk, that is, risks caused by the firm to society. The human rights due diligence process serves to reduce business-related human rights abuses by helping firms become aware of, prevent and address adverse human rights impacts of the company (UN Human Rights Council 2008 (a)). Due diligence is guided by three factors: firstly, the context of the country in which the business activities take place in order to find specific human rights issues; secondly, the human rights impacts that the activities of the company itself may have in the country; thirdly, the company’s indirect contribution to human rights abuses through their relationships to other actors, for example in their supply chain. The due diligence principle essentially replaces the concept of sphere of influence in line with the Framework’s delimitation from dealing with a corporate responsibility to *fulfil* human rights. Instead, the UN Framework strives to work around the very problems that led to the abandonment of the Draft Norms, by clearly demarcating the corporate responsibilities and state duties, and by clearly defining the corporate responsibility to ‘respect’, rather than applying an imprecise sphere of influence concept (UN Human Rights Council 2008 (a)).

### *Business Ethics approaches to human rights fulfilment*

The UN Framework has been criticized particularly by Business Ethics scholars for limiting the responsibility of corporations to avoid doing harm and considering corporations “specialized economic organs, not democratic public interest institutions” (UN 2008: 16), thus overlooking the political and social power of corporations (Kolstad 2012, Cragg 2012, Wettstein 2013, 2015; Bilchitz 2013, Cernic 2010). The Framework’s instrumentalist view of firms has further been criticized for “stripping corporate

responsibility to its bare minimum” (Wettstein 2015: 165) by assigning only negative duties that from a philosophical perspective are already universal and apply to all agents in society. This literature rejects the rationale that assigning positive duties to corporations entails a risk of external stakeholders becoming dependent on MNCs to provide human rights fulfilment where the government fails to do so, or of governments leaving it to MNCs to ‘do the work’ (UN 2008). Indeed, scholars of international development do warn that non-state actors taking over functions normally considered governmental responsibilities may undermine state capacity and legitimacy, leading to an unsustainable dependence on MNCs to fulfil human rights (Kolk & Lenfant 2013, Idemudia & Ite 2006, Matten & Crane 2005).

Addressing this concern, some critics of the UN Framework have argued that there is a need for additional duty bearers that have back-up duties in case the primary duty bearer (i.e. the government) fails to deliver. According to Kolstad (2012), assigning duties only to primary duty bearers (states) presupposes an ‘optimal division of moral labour’ where the state always discharges its obligations in fully and therefore optimal way, and where business actors are purely economic actors. Since reality rarely reflects such an optimal division of moral labour, he argues that without entities such as corporations having a back-up role, human rights will not be fulfilled to the optimal extent (Kolstad 2012: 280). However, the responsibilities of corporations should only substitute governmental responsibilities insofar as the government is not *able* to live up to its obligations. In line with the UN Framework’s call for firms to exercise their leverage when governments fail in their duty to protect, Kolstad (2012) argues that when the government does have the means to fulfil and protect human rights but fails to do so, corporations should seek to influence and pressure the government to fulfil its obligations. Thus, positive duties for corporations differ based on state capacity regarding the given human rights issue. This differentiation mirrors the distinction between weak and strong states, which in the current context refers to the state’s capacity to live up to its human rights obligations.

Based on the idea of moral legitimacy, scholars also argue that companies that take on governmental responsibilities or pressure the primary duty bearer should adopt a multi-stakeholder approach, ideally involving both civil society and government. This would not only secure the company’s moral legitimacy and the best human rights outcome, but also empower weak governments or pressure strong governments, thus building state capacity (Kolk & Lenfant 2013, Kolstad 2012, Scherer & Palazzo 2011, Matten & Crane 2005). That way, corporate back-up duties are argued to enhance rather than undermine the accountability of the state and increase the likelihood that it will perform its duties (Kolstad 2012: 280).

Finally, critics disapprove of the UN Framework’s dismissal of the concept of the sphere of influence. While the sphere of influence was rejected by the UN Framework for being unclear and imprecise, the

decision to do so and exchange it in favour of due diligence was partly a result of political pragmatism to clear the table after the heated debate on the UN Norms (Ruggie 2013). The continued relevance of the sphere of influence is accentuated by the fact that it remains a core component of the UN Global Compact principles, and that the term is used in the Political CSR literature. Scholars increasingly move towards a leverage-based approach to human rights responsibility (where responsibility is derived from the corporation's ability to exert influence) rather than an impact-based approach (where companies can only be held responsible for what they themselves have caused). According to Wettstein (2013), fulfilling human rights should be considered within the sphere of influence when a corporation possesses the power to influence the situation, when doing so does not constitute an unreasonable burden for the corporation and when there is a morally significant connection between the corporation and the human rights issue. Thus, rather than applying to all agents equally, positive duties are argued to apply to specific agents in specific contexts and to varying degrees and extents (Wettstein 2013: 254). Wood (2012) emphasises the importance of urgency as an additional criterion, arguing that the degree of responsibility also depends on the severity of the human rights issue. In this way, conditioning and qualifying positive duties to fulfil human rights can resolve concerns about the lack of clarity of the sphere of influence.

### *Summing up*

The literature review shows that there is a knowledge gap in theory on how firms may explicitly contribute to fulfilling human rights as part of Political CSR. The two strands of literature – Political CSR and Business & Human Rights theory – differ markedly. While the literature on Political CSR provides a comprehensive account of corporations as political actors, it has not suggested operational guidelines for the moral obligations of businesses. The Business and Human Rights theory provides such an operational framework through the UN Framework on Business and Human Rights. The Framework, however, remains set in an instrumentalist perception of the firm and disregards its political role. The Business Ethics literature's critique of this instrumentalism argues that it does not optimise the human rights outcome. Nevertheless, the UN Framework remains a ground-breaking step in the evolution of human rights guidance for corporations and is an important and positive addition to the emergent Business & Human Rights regime. Thus, rather than rejecting the UN Framework due to its alleged weaknesses we approach it as a theory based point of departure for further refinement and evolution and as a solid basic framework that can be extended to suit even more ambitious purposes.

## **3. Methodology**

To fill the knowledge gap highlighted in the literature review we combine the literatures on Political CSR and Business & Human Rights by extending the UN Framework in order to help determine the political role of corporations. Acknowledging the benefits of ‘principled pragmatism’ (UN 2008, Ruggie 2013) for creating results we take point of departure in an ambitious version of such pragmatism. This translates into a broader interpretation of corporate responsibilities that includes positive duties as well as negative, while also reaffirming the collaborative multi-stakeholder approach to governance and soft law argued by the Business Ethics literature. To help inform the construction of the extended UN Framework, we consider how businesses can improve the respect and fulfilment of human rights in their sphere of influence by drawing on existing literature's coverage of four specific situations in which MNCs that have had positive or negative human rights impacts. Importantly, we do not intend to evaluate the CSR policies of the companies in question – rather, these literature based examples function to illustrate both the value and the shortcomings of the UN Framework and to feed into guidance for corporate activities in the political sphere to fulfil human rights. For practical purposes we refer to them as cases.

Cases were selected on the basis of three criteria: (1) the representation of both negative and positive human rights impact, (2) identification of a political human rights problem (where the state does not fully protect/fulfil human rights) and (3) the representation of both weak and strong states in the two cases of positive human rights impact. Table 1 provides a summarizing overview of the four cases. We first turn to the cases of Vestas and Nike which are examples of negative human rights impacts and which stress the importance of performing due diligence and engaging in multi-stakeholder collaboration. We next turn to the cases of Novo Nordisk and WesternZagros, which show how positive human rights duties differ in strong states (China) and in weak states (Iraq/Kurdistan), in accordance with the argumentation by Kolstad (2012). On this basis we develop an extension of the UN Framework to incorporate a more nuanced outline of the corporate responsibility towards human rights, responding to Political CSR and the Business Ethics critique. In the Extended UN Framework the human rights responsibilities of business go beyond negative duties and explicitly encompass positive duties requiring companies to adapt their practices to the institutional capabilities of specific countries to fulfil human rights.

*[Insert Table 1 around here]*

#### **4. Exploring practical implications of the UN Framework and Political CSR**

#### ***4.1. How do companies respect human rights?***

While we criticize the narrow scope of the UN Framework (Figure 1), that is, its confinement to negative corporate responsibilities to respect human rights, we also acknowledge its ability to deal with human rights issues within this scope. Performing due diligence is a useful way for a company to assess (1) the country context, (2) the human rights impact of the company's activities and (3) the indirect human rights impact of the company through suppliers or business partners, that is, the risk of complicity in human rights abuses (Ruggie 2008). Companies that do business in developing countries

*[insert figure 1 around here]*

without performing due diligence often cause human rights violations directly or indirectly, since business decisions are based on instrumental calculations of benefits to the firm rather than an assessment of external impacts. The example of the Danish company Vestas Wind Systems, which in 2012 signed a contract with the Mexican company Mareña Renovables to deliver wind turbines for a wind-farming project in the Oaxaca region of Mexico, illustrates such a situation. The project was subject to extreme critique and protest from local communities in the region, as it was to be located in one of the most important multicultural areas of Mexico, home to a variety of indigenous peoples and ancient cultures. The wind project would not only infringe upon the territory of the indigenous peoples, but might also have a significant harmful environmental impact on the area. Local communities felt that they had been misinformed and that their opinions had been disregarded in violation of the human rights to consultation and participation in decision-making. A report by the Inter-American Development Bank (IDB) noted that communities were not fully informed about the construction program or project-related impacts that might affect them, and that the consultation process suffered from the absence of a systematic process to register issues, concerns and feedback of affected people (Ramirez 2013).

Arguably, the project violated the human rights of the indigenous inhabitants, as specified by ILO Convention 169 (International Labour Organization 1989) in two major ways. Firstly, the wind project violated provisions to safeguard natural resources as well as the access of indigenous peoples to their land (articles 14 and 15). Secondly, the rights of the indigenous peoples to consultation and participation in matters that affect them do not appear to have been sufficiently respected (article 6). After a series of delays, public outrage finally forced the company to resort to a costly withdrawal (Ramirez 2013). Thus,

the lack of awareness of the local cultural context not only entailed a negative human rights impact, but also caused significant moral and financial difficulties for Vestas.

However, while performing due diligence is necessary in order for companies to respect human rights, it is not always sufficient. As the case of Nike shows, companies also need to engage in multi-stakeholder participation and collaboration. In the 1990's Nike was heavily criticized for labour rights abuses in the supply chain in Asia and Latin America including forced overtime, below-minimum wages and child labour (Spar & LaMure 2003). To meet societal expectations Nike began to formulate codes of conduct, which obligated the suppliers to commit to ensuring basic labour, environmental and safety standards (Spar & LaMure 2003, Locke & Romis 2007, Waddock & Rasche 2012). Nonetheless, working conditions did not change significantly, which illustrates that solely relying on codes of conduct often fails due to forced compliance, top-down implementation of Western standards, weak auditing practices and inconsistent interpretation and application (Rasche 2010, Lund-Thomsen & Lindgreen 2013).

When Nike examined the sources of labour rights abuses they learned that the company's procurement practices were a major driver of excessive overtime among suppliers. The company's tight inventory management caused problems when demand was not correctly forecasted or changed on short notice. Such changes could cause suppliers to require overtime in the factories, leading to labour rights violations (Waddock & Rasche 2012). Large orders with short notice might also cause suppliers to subcontract to other suppliers, of which the buyer has no knowledge, in order to meet deadlines. Nike began to embrace multi-stakeholder dialogue and collaboration, which enabled them to better manage the human rights challenges in their supply chain. As Nike emphasised frequent supplier visits, joint problem solving and a closer relationship to their suppliers, the company was able to lower the prevalence and severity of human rights violations (Spar & La Mure 2003, Waddock & Rasche 2012). Reducing the negative human rights impact through multi-stakeholder collaboration also brought benefits to Nike, as both their procedural and their consequential legitimacy was strengthened.

#### ***4.2. How do companies fulfil human rights?***

While the previous section showed the importance of due diligence and multi-stakeholder participation for *respecting* human rights, this section is concerned with how companies can best contribute to *fulfilling* human rights. We concur with Kolstad (2012) and argue that MNCs operating in strong states should focus their efforts on pressuring the government to live up to its human rights responsibilities. One company that has done this is the Danish pharmaceutical company Novo Nordisk, which is a world leader

in diabetes treatment and operates in many countries including China. China has the highest number of diabetics in the world with a diabetes prevalence of 9.6% (International Diabetes Federation 2013), the majority of which do not have access to treatment. Diabetes problems are in large part related to poor health infrastructure and a lack of knowledge and awareness: more than 60% of the Chinese diabetes patients are not aware of their disease and do not seek medical attention before serious symptoms occur (Brown & Knudsen 2012). Furthermore, the provision of insulin is regulated by authorities at a local level where there is often little awareness of diabetes. To address governmental shortcomings, Novo Nordisk seeks to influence the political agenda by engaging in multi-stakeholder initiatives with the World Diabetes Foundation and the Chinese Ministry of Health to improve diabetes care, ensure enforcement of national health recommendations and diabetes treatment guidelines and improve training and health system integration. Furthermore, Novo Nordisk seeks to strengthen the rights of patients by engaging in dialogue with them and providing them with basic knowledge of diabetes. The company has trained more than 55,000 physicians, each treating on average 230 patients a year, and has offered education and support for 280,000 diabetes patients as part of their focus on community development and diabetes prevention (Novo Nordisk 2011).

The focus and extent of Novo Nordisk's CSR activities demonstrate how a company can effectively determine and delineate its sphere of influence. Novo Nordisk has a morally significant connection to diabetes patients, and the company exerts influence on numerous actors in order to improve access to diabetes treatment. Thereby, rather than merely taking over the responsibility of the Chinese government, Novo Nordisk acts in practice as a secondary duty bearer that collaborates with authorities at multiple levels of government, improves general awareness and holds the government accountable to its duties. In recent years, the Chinese government has gradually improved its exploitation of this capacity as it has dramatically increased health care coverage and established ambitious action plans to achieve universal access to health by 2020 (Yang et al. 2010, Brown & Knudsen 2012). While there might not be any significant link between Novo Nordisk's Political CSR efforts and the health care coverage offered by the government, the case shows how Novo Nordisk recognized the capacity of the Chinese state to fulfil human rights and they worked to hold the government accountable to its duties.

A different situation occurs when companies operating in weak states where the government lacks the necessary capacity to fulfil even the most basic human rights. In such circumstance the company should engage substantially in directly fulfilling human rights within their sphere of influence. The Canadian oil company WesternZagros, which entered the Kurdistan area in North-Eastern Iraq in 2003 shortly after the US-led invasion of Iraq, found itself in such a state. The area was extremely underdeveloped with

minimal government presence and a poor population that had limited access to human rights due to long periods of conflict. Furthermore, WesternZagros was one of very few companies in this remote area. Their important role in the lives of the local population arguably entails a morally significant connection between the company and the human rights issues of the community. As part of its CSR strategy, the company has implemented various measures to compensate for governmental absence and contribute to community development in their sphere of influence. Their projects included building physical infrastructure, such as wells and irrigation systems, providing health care and establishing educational facilities. Moreover, as they chose to “conduct business in a way that optimised the benefits for the citizens of the Kurdistan region” (van Duren & Dhalla 2012: 286-287), the company also trained and employed people from the local population in order to improve standards of living and upgrade technical skills and human resources in the area. Most of the projects have been carried out in partnerships with a variety of NGOs and local partners. The company intends to work with the Education Ministry in order to expand governmental capacity to ensure access to education (van Duren & Dhalla 2012; Jamali, Karam & Blowfield 2015). This reaffirms the role of the state as the primary duty bearer, although the primary concern of WesternZagros is the direct fulfilment of human rights.

## **5. Extending the UN Framework**

The Vestas and Nike cases demonstrate the qualities of the UN Framework as they confirm the value of performing due diligence and engaging in multi-stakeholder dialogue and collaboration. The studies show the two concepts to be highly complementary and interdependent. Due diligence proved useful in revealing risks of complicity in human rights abuses in the case of Nike, while the case of Vestas exemplifies the economic risk to the company of not performing social risk due diligence. However, the cases also demonstrate that in order to solve human rights problems, a multi-stakeholder approach that involves relevant stakeholders in decision-making is necessary. Such a collaborative approach, which entails positive steps to consult and ensure participation, allowed Nike to drastically reduce human rights violations in their supply chain and gain moral legitimacy, while Vestas’ neglect to collaborate with local stakeholders resulted in public condemnation forcing the company to withdraw from the project.

The cases of Novo Nordisk and WesternZagros illustrate how corporations are committed to assuming positive duties to fulfil human rights, and how they are capable of making substantial contributions to communities where governments lack the capacity or inclination to fulfil human rights. Moreover, the cases suggest that corporations can successfully collaborate with and apply pressure to state agencies, and

in this way reaffirm the state as the primary duty bearer rather than simply substituting government action. Thus, seen from a human rights perspective the optimal outcome would be to assign positive duties to corporations as secondary duty bearers. Notwithstanding the shortcomings that some scholars claim the UN Framework suffers from in terms of encompassing all aspects of business impact on human rights perspective (positive as well as negative), the cases of Vestas and Nike demonstrate the significance of the respect dimension of the UN Framework and how it is able to capture the issue of complicity in human rights violations in the extended supply chain. This shows that the UN Framework constitutes a strong foundation for defining the corporate responsibility in a human rights context, but also indicates the need for more solid advice for firms fulfilling human rights.

Based on insights from the analysis, we extend the UN Framework to offer guidance for Political CSR by adding a positive corporate responsibility to fulfil human rights in the company's sphere of influence, where the government fails to do so. The Extended UN Framework, graphically illustrated in Figure 2, preserves the elements of the original UN Framework in those cases where the state fulfils human rights to a satisfactory extent (blue area). The extension (green area) captures those cases where the government fails to address its positive duties to fulfil human rights, and divides them into cases of strong states lacking the inclination to live up to their duties and cases of weak states lacking the capacity to live up to their duties. The Framework suggests that in strong states MNCs should concentrate on pressuring the state into living up to its responsibility and involve state agencies in Political CSR activities. In weaker states MNCs should concentrate on fulfilling human rights, since weak states cannot reasonably be expected to discharge their duty in the short term. Ideally, however, MNCs should attempt to include state institutions in Political CSR activities and should consider opportunities for capacity building, which has the potential of supporting the ability of the state to discharge its duties in the long term.

*[Insert figure 2 around here]*

The Extended UN Framework serves two main purposes. *First*, it closes the gap in the literature on Political CSR and Business & Human Rights and clarifies the role of corporations operating in the political sphere. As corporations are increasingly exposed to societal expectations and must make political decisions, the UN Framework's singular focus on negative corporate duties neglects the influential political role of corporations and does not offer them help to navigate this political sphere. On the other hand, the literature on Political CSR offers no suggestions for operationalising Political CSR and does not

clarify the responsibilities of MNCs in the political sphere. The Extended UN Framework combines the qualities of the two strands of literature by proposing an operational guideline for companies to manage their human rights responsibilities as they move into the political sphere.

*Second*, the Extended UN Framework acknowledges that MNCs operate in a world with both weak and strong states that for various reasons do not always fulfil human rights. From a human rights perspective, assigning exclusive duties to single actors in society, as is the case in the UN Framework, is problematic. While the UN Framework is based on recognition of governance gaps it does not take state failure or institutional incapacities to fulfil human rights much into account. In such situations the UN Framework does not offer any solutions to companies. Furthermore, when considering the abundance of state failures and the number of weak states of the world today, the exclusive reliance on states to ensure the fulfilment of human rights is hardly promising. Therefore, we elaborate the UN Framework to offer guidance for firms on how to understand and engage with positive responsibilities depending on the institutional context of the specific countries (Figure 2). This does not alter the fact that the state is the primary bearer of positive duties, and that in an optimal situation of total state benevolence and capacity, corporations need only consider their negative duties. The UN Framework can be seen as a perfectly appropriate framework in such optimal situations. However, the reality is strikingly different from the optimal situation in many developing countries in particular, and human rights fulfilment is neglected by numerous states around the world. For this reason, we offer the Extended UN Framework to provide more comprehensive guidance, especially for MNCs operating in the Global South. The Extended UN Framework goes beyond the original UN Framework's 'do no harm' focus by taking point of departure in the human rights reality of the country and sector in question with regard to positive and negative human rights needs.

The Extended UN Framework (Figure 2) is a simplified depiction based on three fundamental concepts: *Moral legitimacy*, *Due diligence* and *Sphere of influence*. *Moral legitimacy* has been a central feature in all of the demonstrated cases. The concept of moral legitimacy highlights the corporate dependence on gaining moral legitimacy and a social license to operate. Moreover, the concept is essential in the operationalisation of the framework as it requires multi-stakeholder collaboration, which increases the likelihood of sustainable outcomes and contributes to knowledge spill-over in local communities. The pressure on MNCs to morally legitimise themselves varies greatly and is not always sufficient, but it is a powerful supplement to soft law regulation. *Due diligence* is carried over from the UN Framework and serves an essential purpose when corporations need to respect human rights, as shown in the cases of Vestas and Nike. *Sphere of influence* is introduced to demarcate the corporate responsibility to fulfil

human rights where states fail in their duty. As noted, the term is applied by the UN Global Compact, indicating its continued relevance in contexts going beyond social risk due diligence. In combination with the practice of social risk due diligence, applying the notion of the sphere of influence prevents corporations from being held responsible for human rights failures outside that sphere and assists them in identifying governmental human rights failures within the company's reach, calling for corporations to engage in Political CSR to fulfil human rights, as shown in the cases of Novo Nordisk and WesternZagros.

## **6. Conclusion**

Globalization and the emergence of transnational challenges have led to MNCs exploiting weak governance and institutional voids, particularly in developing countries with weak states. In the absence of substantial coercive institutional pressure in developing countries, normative pressure has been growing from civil society. Recently, threats of coercive pressure from home countries have been growing as well. Thus, due to institutional pressure, MNCs can turn into being the solution rather than the problem, as they increasingly fill institutional voids. This tendency has been captured in the literature on political CSR and the literature on Business and Human Rights, which both advocate a multi-stakeholder approach (to include governments, NGOs and businesses) – as the solution to institutional voids and human rights challenges. However, the two strands of literature differ inherently and barely take account of each other: while the literature on Political CSR describes MNCs as political actors with positive duties, the literature on Business and Human Rights restricts the responsibility of MNCs to 'do no harm'.

This article has combined the two strands of literature to develop the Extended UN Framework to offer theory-informed guidance to firms in relation to undertaking Political CSR. This contributes to the Political CSR literature by introducing a normative operational framework for assessing political corporate responsibilities in relation to human rights, and to the Business & Human Rights literature by extending the UN Framework's guidance to encompass positive duties. The prevalence of human rights violations caused by Western MNCs in developing countries underscores the need for more ambitious solutions to institutional voids resulting from governance gaps and leading to persisting human rights challenges, particularly in developing countries. In light of such challenges and state failures, we contend that Political CSR initiatives can sometimes function as a complement to state action in developing countries. The proposed Extended UN Framework optimises Political CSR by offering guidance for firms that wish to go beyond doing no harm by contributing solutions to the persisting failures of states in fulfilling human rights. Further research in order to develop the framework must conduct in-depth

empirical research, analysing the viability and usefulness of the framework for corporations and governmental entities. Such empirical research can also indicate how the Framework can be improved and elaborated on. For the time being, however, the Extended UN Framework is a significant contribution towards a better understanding of the human rights responsibilities of MNCs domiciled in developed countries but operating in developing countries, which allows them to exploit institutional voids and abuse human rights.

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<b>Company</b>	<b>Sector</b>	<b>Country</b>	<b>Human Rights Issue</b>	<b>Company response to human rights issue</b>	<b>Negative/ Positive Human Rights Impact</b>
<b>Vestas Wind Systems</b>	Wind Energy	Mexico	Violation of the rights of indigenous people through wind-farming project in Oaxaca	Withdrawal from the area and relocation of the project	Negative
<b>Nike</b>	Clothing/ Apparel	Several countries in Asia and Latin America	Labor rights violations in the supply chain	Performing due diligence and employing the collaborative approach to ensure the respect for labor rights in the supply chain	Negative
<b>Novo Nordisk</b>	Pharmaceuticals (mainly diabetes care)	China	Lack of access to health care in large parts of the population - particularly in rural areas	Engages in public-private partnerships with civil society and governmental institutions to improve diabetes care and enforce national health recommendations	Positive
<b>WesternZagros</b>	Oil and gas	Iraq (Kurdistan area)	Lack of access to basic human rights due to weak and fragile government	Engages in various forms of community development and fulfilment of human rights through partnerships with local partners and NGOs	Positive

*Table 1*