

**The Social and Environmental Responsibilities of EU
Multinational Corporations in Saudi Arabia: A Critique of
the Saudi National Law and a Proposal for a New
Legislative Framework**

Mohammed Alyazidi

A thesis submitted for the degree of Doctor of Philosophy in Law

School of Law
University of Essex
May 2016

i. Abstract

This thesis examines the social and environmental responsibilities of EU multinational corporations (MNCs) in Saudi Arabia. It found that such corporations do not have enough social and environmental responsibilities when they operate in Saudi Arabia. It argues that as Saudi Arabia seeks economic growth, the Saudi government should ensure that strict regulations are adopted in order protect the environment and the people. The development needed by Saudi Arabia through foreign investment needs to be subject to environmental and social considerations. Therefore, the thesis argues that the Saudi government should introduce reforms to its company law and corporate governance regulations. Moreover, this thesis introduces a proposal for a new corporate responsibility law in Saudi Arabia.

Table of Contents

i. Abstract	2
ii. Acknowledgment	5
iii. List of Abbreviations	6
Chapter 1	8
Introduction	8
Chapter 2:	17
Benefits that MNCs Bring with them and Challenges from their Function	17
Defining Multinational Corporations	18
The Presence of MNCs in Saudi Arabia:	21
The Significance of MNCs in Host States	26
The classical theory on foreign investment and its implications on Saudi Arabia	26
The theory of dependence and its influences on Saudi Arabia.....	44
A Middle Approach towards Foreign Investment is Indispensable.....	54
Controlling and Regulating MNCs is the Sensible Approach in Saudi Arabia: A Proposed Framework	56
Summary	61
Chapter 3	64
The debate over corporate governance: a theoretical analysis	64
Agency Theory	66
Separation of Ownership and Control	67
Nexus of Contract Theory	73
Stakeholder theory	76
The debate over “social responsibility”	80
Concession Theory	86
A New Proposal for Social and Environmental Duties of Directors in Saudi Arabia	88
Summary	90
Chapter 4	91
Environmental responsibility of MNCs	91
The History behind the Emergence of Sustainable Development	92
The Main Themes within Conservation	95
Sustainable development in Recent Times	98
International Political Dialogue on Sustainable Development and Environmental Protection	101
Analysis of the Approaches towards Defining Sustainable Development and Environmental Protection	118
A Proposed Definition of the Concept of Sustainable Development	123
Sustainable Development and Environmental Protection in the Context of Saudi Arabia	126
Sustainable Development and Environmental Protection in Islamic Law:	127
Islamic Economic Development Theory	132
Sustainable Development and Environmental Protection: Saudi Arabian Standpoint ..	135
Summary	144
Chapter 5	146
The Responsibility of MNCs Towards Human Rights and Labour Rights	146

Can Corporate Social Responsibility be Defined?	147
How does a business owe social and environmental responsibility?	148
Corporate Social Responsibility: A Legal Perspective	156
Constitutionalist Theory of Corporate Law and its Reflections on the concept of Corporate Social responsibility:	158
The State’s Obligations to Protect Human Rights	161
Indirect Human Rights Legal Obligations on MNCs via Regulation by the Host State	173
Developments Since UDHR:	182
International, Regional, and Domestic Perspectives of Fundamental Freedoms of Human Beings	185
Why Should MNCs Involve in Respecting, Upholding, and Protecting Human Freedoms?	186
Saudi’s Lack of Regulations for Human Rights and Freedoms	Error! Bookmark not defined.
Saudi Arabian Involvement in Regional Instruments for Human Rights	187
European Union's Perspective on Fundamental Human Rights and Freedoms.....	190
The Responsibilities of MNCs Towards Labour Rights	192
The Need for a New Corporate Responsibility Law in Saudi Arabia	198
A Proposal for a New Saudi Corporate Responsibility Law.....	202
Summary	206
Chapter 6:.....	207
The Significance of Transparency and Disclosure	207
The Main Driving Forces behind Transparency and Disclosure	209
Good Practices in Corporate Governance Disclosure	212
Transparency and Disclosure Requirements For Corporations in Saudi Arabia	217
TIMING AND MEANS OF DISCLOSURE	219
GOOD PRACTICES FOR COMPLIANCE	220
The Need for National Reporting by MNCs.....	222
The Need for Environmental Reporting by MNCs.....	227
Transparency and Disclosure within the EU	232
The Inadequacy of Regulations for Transparency and Disclosure of EU MNCs in Saudi Arabia	240
How Do EU MNCs Report on Social and Environmental Issues?	243
The Urgent Need for More Responsible Reporting By EU MNCs.....	253
A Proposed Template for Corporate Reporting on Non-financial information.....	255
Summary	260
Chapter 7:.....	261
Conclusion	261
8 Bibliography	266
Appendix A.....	288

ii. Acknowledgment

This thesis becomes a reality with the kind support, help, and encouragement of many individuals. I would like to extend my sincere thanks and to all of them. Foremost, I want to offer this endeavor to Allah for the wisdom he bestowed upon me, the strength, peace of my mind and recovery from illness in order to finish this research. I would like to express my special gratitude and thanks to my supervisor Dr Marios Koutsias, for imparting his knowledge and expertise in this study as well as supporting me throughout this process. I would like also to express my gratitude towards my family for the encouragement which helped me in the completion of this thesis. My beloved and supportive wife, Maha who was always by my side when times I needed her most, and my lovable children, Saeed and Yara who served as my inspiration to pursue this undertaking. I am highly indebted to the Law School at the University of Essex for their guidance and constant supervision as well as for providing necessary information regarding this research and also for their support in completing this endeavor. My thanks and appreciations also go to Dr Youseph Farah who chaired many of my supervisory board meetings and provided me with helpful feedbacks and comments.

iii. List of Abbreviations

CACG Guidelines	Commonwealth Association for Corporate Governance Guidelines
CIS	Commonwealth of Independent States
CJV	Contractual Joint Ventures
CSR	Corporate social responsibility
EASD	European Association of Securities Dealers
ECOSOC	United Nations Economic and Social Council
EEA	European Economic Area
EJV	Equity Joint Ventures
EP	European Parliament
EPS	Environmental Protection Standards
ESG	Social, environmental and governance
EU	European Union
EU MNCs	European Union Multinational Corporations
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
GNI	Gross National Income
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICGN	International Corporate Governance Network
ILC	International Law Commission
ILO	International Labour Organisation
ISAR	International Standards of Accounting and Reporting
IUCN	International Union for Conservation of Nature
JPOI	Johannesburg Plan of Implementation
MAI	Multilateral Agreement on Investments
MNCs	Multinational Corporations
MNEs	Multinational Enterprises
NGOs	Non-governmental Organisations
NSDS	National Sustainable Development Strategies
OECD	Organization for Economic Cooperation and Development
OECD Principles	OECD Principles of Corporate Governance
SAGIA	Saudi Arabia General Investment Authority
SCGR	Saudi Corporate Governance Regulations
SFIL	Saudi Foreign Investment Law

TNCs	Transnational Corporations
TRIMS	Agreement on Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
WSSD	World Summit for Sustainable Development
WTO	World Trade Organisation

Chapter 1

Introduction

Multinational corporations (MNCs) retain vast and increasing levels of state-like power in the national and global political economies of the present world order.¹ Driven by the ideological dominance of neo-liberalism, MNCs dominate virtually the entire international legal order, influencing key international institutions and gaining excessive structural control.² It is acknowledged that the power of some MNCs has, for some time, surpassed the power of many states, and that such power comprises “a complex interaction with the neo-liberal state, particularly in the Global North”, and which in any case is profoundly involved in the creation of such extensive degrees of MNC control.³ The power of any particular state is indispensable to the conditions of accumulation for capital and that it is the state itself that has provided the “conditions enabling global capital to survive and navigate the world”.⁴ However, the activities of MNCs have had serious impacts on human and the environment as the haunting tragedy of the 1984 Bhopal disaster in India where the recklessness of a US company, Union Carbide, resulted in the deaths of thousands of people, the injury of hundreds of thousands of people and animals, and extensive environmental damage.⁵

¹ Grear, Anna, and Burns H. Weston. "The betrayal of human rights and the urgency of universal corporate accountability: reflections on a post-Kiobel lawscape." *Human Rights Law Review* 15.1 (2015): 21-44.

² Shamir, Ronen. "Corporate social responsibility: A case of hegemony and counter-hegemony." *Law and globalization from below* (2005): 92-117.

³ Grear and Weston, 2015.

⁴ Wood, Ellen Meiksins. *Empire of capital*. Verso, 2005, p 139.

⁵ Baxi, Upendra. "Writing about impunity and environment: the ‘silver jubilee’ of the Bhopal catastrophe." *Journal of Human Rights and the Environment* 1.1 (2010): 23-44.

Human rights violations, environmental exploitations, and ecological imperialism cut across national jurisdictions.⁶ The fact that resource exploitation, degradation, contamination, and undue imposition of associated risks on developing countries are global in scope has been well documented.⁷ The provisions of human rights, will be seen in chapter five, are intended to protect individuals and collectivity against potential risks and abuses. Several studies now advocate that MNCs should assume direct human rights and environmental duties—that is, “they should have responsibilities towards the planet and to stakeholders other than shareholders”.⁸ This has to be the case in Saudi Arabia where MNCs have been operating for decades. Such MNCs should respect, promote, and uphold internationally recognized principles of human rights, labour rights, and environmental protection.

Nonetheless, this thesis argues that European Union (EU) MNCs do not bear enough social and environmental responsibilities when operating in Saudi Arabia. The PhD argues that this is due to five reasons. First, Saudi Arabia has been supportive of economic liberalism and its economic plans adhere to the classical theory on foreign investment—where such investment is perceived as beneficial and advantageous to the country’s economy. Secondly, this liberal economic view has influenced the Saudi company law which upholds the contractual theory of the company where shareholders are the only members of the company and the only actors whose

⁶ Adeola, Francis O. "Cross-national environmental injustice and human rights issues a review of evidence in the developing world." *American Behavioral Scientist* 43.4 (2000): 686-706.

⁷ Neff, Alan. "Not in their backyards, either: A proposal for a Foreign Environmental Practices Act." *Ecology LQ* 17 (1990): 477; Bunker, Stephen G. *Underdeveloping the Amazon: Extraction, unequal exchange, and the failure of the modern state*. University of Chicago Press, 1985; Hiltz, Christoph. *International toxic waste trade*. Van Nostrand Reinhold, 1992; Greenpeace. 1994. *The Database of Known Hazardous Waste Exports from OECD to Non-OECD Countries, 1989-1994*. Washington, DC: Greenpeace.

⁸ Dine, Janet. "Jurisdictional arbitrage by multinational companies: a national law solution?." *Journal of Human Rights and the Environment* 1 (2012): 44-69.

interests are to be served, and thus social and environmental issues do not form part of the company's concerns. Thirdly, EU MNCs, as foreign investors, enter into joint ventures with local businesses in Saudi Arabia and are being incorporated as limited liability companies. This in reality means Saudi Corporate Governance Code does not apply to them since it only applies to public companies listed on the Saudi stock exchange. Fourthly, this code also does not bring about great efforts towards social and environmental matters, and there is absence of adequate reference to transparency and disclosure of companies' non-financial information. Finally, while EU MNCs, arguably, transfer know-how, technology, skills, and capital to Saudi Arabia, they are reluctant to transfer social and environmental principles to the country and they do not abide to any principles/rules of that nature. In essence, they are partnering with local businesses but not with the local community.

Therefore, I argue that there are four steps which need to be taken so as to rectify the current situation as well as to improve the future outlook of Saudi Arabian economy and business in which social and environmental responsibilities are shouldered. First, Saudi Arabia should rethink its attitude to foreign investment by moving away from the classical theory on foreign investment. It needs to take another approach towards achieving benefits from foreign investments while avoiding risks associated with such investments. Hence, it is argued that foreign investment in Saudi Arabia should be harnessed to the objective of sustainable economic development and must be carefully regulated to reach this end taking social and environmental aspects into consideration. Secondly, it is argued that EU MNCs must not be allowed to exploit the joint venture type of foreign investment; this was the only option that was available to foreign investors intending to enter the country. Effective corporate

governance mechanisms should be imposed not only on public companies but on limited liability companies as well, especially if there are joint venture agreements in place with foreign investors. Thirdly, Saudi Arabia has to examine its corporate model which is based on the agency and contractual theories of the company in which shareholders are the only constituent. This is because other stakeholders, such as, labour, the environment, and the community at large, have interests in the company too. Therefore, I argue that a stakeholder corporate model that involve all stakeholders of the company will be most beneficial for Saudi Arabia's both short-term and long-term development plans. Fourthly, Saudi Arabia should improve its corporate governance and company law in relation to transparency and disclosure of non-financial information of companies including limited liability companies. Finally, I believe that the Saudi government needs to consider a new corporate responsibility law.

Operating within and across jurisdictions, MNCs, arguably, have great responsibilities towards societies. Such responsibilities embrace both social and environmental aspects. The former is related to many human rights and labour rights issues. The later, however, is concerned with environment protection. Since MNCs come from different jurisdictions that have divergent cultural, legal, ideological, historical, political, economic backgrounds, their understanding and running of business differ accordingly. The question which is going to be answered in this thesis, therefore, is whether MNCs operate overseas in the same fashion they do in their home jurisdictions. To provide an answer to such a question various aspects will need to be examined throughout the chapters of the thesis.

Methodology and Structure of the Thesis

The methodology was used in this thesis comprises theoretical, analytical, and critical approaches; and library-based research was conducted. In this respect, Chapter 2 seeks to provide an understanding of how MNCs are defined and functioned. There are many conflicting economic ideologies that have shaped the debate around MNCs' effects on home and host states. These ideologies have been formed into a number of economic theories, which are discussed at the present chapter, and also have had an impact on shaping the legal attitudes to foreign investment, in this case MNCs. Such theories range, at one extreme, from the position that MNCs are wholly beneficial to the host country's economy to another extreme theory, at the other end of the spectrum, maintaining the view that MNCs will not bring about meaningful economic development. This chapter, however, argues that the truth is highly likely to lie somewhere between these extreme views, i.e. unlike the classical theory, which encourages economic liberalisation and the freedom of movement for MNCs on the supposition that this stimulates development, MNCs should be contained by recognising the right of the host state to regulate them effectively. The focus of chapter 2 has been on Saudi Arabia as a developing country where foreign investment has gone through different phases, as it will be explained.

Chapter 3 looks at how such control of corporations can be perceived by different corporate theories. As MNCs operate in developing countries they tend to enjoy favourable economic conditions as well as other benefits which are fully discussed in chapter 2. However, MNCs' presence in host countries has come under great scrutiny in terms of the way they operate in such countries. Since MNCs come from different countries that do not necessarily apply the same corporate theory, this chapter will

consider the main corporate theories. The debate over corporate governance has been shaped by many corporate theories. These theories have resulted in many corporate governance models which are being practiced worldwide. It is widely acknowledged that corporate governance systems vary because of divergent ideologies, histories, political beliefs, and social, economic and other influences. Thus, this chapter will examine four corporate theories which have influenced the discourse around corporate governance. These theories include the agency theory, the nexus of contracts theory, the stakeholder theory, and the concession theory. The first two theories are related to each other and their reflections can be seen from the United States and the United Kingdom corporate governance systems. French and German corporate governance systems are influenced, respectively, by the stakeholder theory, and the concession theory. The reason behind introducing the four theories in this chapter is because this thesis examines how MNCs especially from the United Kingdom and Germany operate in host states, being Saudi Arabia in this case. Therefore, this chapter will lay the theoretical foundations of corporate governance in some developed countries and how they differ from each other. The significance of this chapter is that it will provide an international perspective of corporate governance practices and which one has influenced Saudi Arabian corporate governance system. The implications of such theoretical frameworks on the activities of MNCs representing their home countries are also going to be considered in following chapters.

Chapter four endeavors to make the case why it is indispensable to focus not only on the influx of foreign investment into the host country, in this case EU MNCs in Saudi Arabia, but rather to try and address the issues foreign investment could bring about. Since the argument of this thesis advocate that MNCs should be regulated so as to

achieve sustainable development which is not harmful of neither the environment nor the society as a whole. It is, therefore, crucial that this thesis discusses the concept of sustainable development. In this respect, Saudi Arabia, whilst seeking economic growth, it has to ensure that no harm occurs to the environment and the people. The development needed by Saudi Arabia through foreign investment has to be subjected to environmental and societal considerations and therefore regulations of corporate activities. Such regulations should require MNCs to comply with international laws, international standards, initiatives, and guidelines all in relation to environmental and social matters but also as this thesis argues to national law.

This chapter, therefore, will show how the concept of sustainable development and environmental protection has evolved and changed over time. Historically, the concept emerged from concerns about natural resources and how they can be rationalised so as to ensure the survival of future generations. Over the time, there have been many changes in the discourse about sustainable development. These changes advocate one of two main approaches: the preservationist and the conservationist. The former's primary focus was on nature and how it can be preserved, i.e. to keep nature save from any interference by human. The latter approach was less intense in the way that it considered human entitlement to live on nature. However, themes under this approach varied in terms of their dealing with what is acceptable and what is not from human. This chapter will then examine these approaches and themes as to what effects they have had on the international political dialogue on sustainable development. Moreover, this chapter will argue for a new definition of the concept of sustainable development in Saudi Arabia which is compatible with the local cultural norms.

Chapter five seeks to explore the concept of social responsibility of business and in particular MNCs. Along with what have been examined in chapter three especially the analysis about the stakeholder theory of the company, this chapter will look at the development of the concept through arguing that the relationship between companies and society is central to the emergence of the concept. Thus, theories of social responsibility of business will be examined. Moreover, the subject of human rights is an integral part to the analysis of the social responsibility of MNCs. Therefore, this chapter will look at international and regional instruments regarding social responsibilities of MNCs. Such instruments will be used as a parameter against which Saudi Arabia's approach towards internationally recognised human rights and freedoms will be assessed. In addition, the parameter will also be used to evaluate EU MNCs' social activities in Saudi Arabia. This chapter argues that enshrining stakeholder consideration and protection in both the Saudi company law and home states corporate laws, is crucial to ensure that EU MNCs are legally accountable for their actions not only in their home states but also in Saudi Arabia. Thus, I propose, in chapter 5, that a new law titled 'Corporate Responsibility Law' is to be introduced in Saudi Arabia. The objects of the proposed law are to impose human rights, employment, and health and safety standards on the conduct of companies and to provide for the enforcement of those standards.

Chapter Six examines reporting by corporations which has become an important trend at the heart of effective corporate social responsibility where there is growth in demands by stakeholders, including shareholders, for companies to demonstrate greater accountability and transparency – measuring and publicly reporting not only

on their financial performance, but also on their wider social, environmental and governance performance. This trend is being driven by a combination of low trust in large companies, easier access to information via the Internet, more open societies and press freedom, greater public awareness of global issues, increased consumer choice and sophistication, the war for talent, and higher public expectations of the private sector. As a result there is a growing demand for companies particularly MNCs to issue social and environmental responsibility or sustainability reports and/or to include information on these issues in their regular annual report. Thus, this chapter is going to examine the social and environmental reporting and disclosure procedures as well as the main driving forces behind this trend, and it will explain why those procedures do not exist in Saudi Arabia. Moreover, this chapter will consider some of the regulatory initiatives motivating social and environmental reporting in a selection of representative jurisdictions, namely; the United Kingdom, Germany, and Saudi Arabia. Further, the social and environmental reporting practices of four EU MNCs will be analysed. Finally, this chapter will shed light on the need for reforming the internal governance structure of MNCs as well as reforming Saudi laws in relation to social and environmental reporting. Chapter 7 is a conclusion.

Chapter 2:

Benefits that MNCs Bring with them and Challenges from their Function

MNCs are invited by both industrialized and developing nations seeking further economic growth and development.⁹ MNCs are the main vehicle through which foreign direct investment (FDI) is channelled through a certain country; that makes the task of attracting MNCs into Saudi Arabia an important task.¹⁰ More than 50 countries of which 24 are developing countries have gained an inward FDI stock of more than \$10 billion, compared with only 17 countries of which 7 are developing countries in 1985.¹¹ The high costs of production and labour in developed countries, together with the global competitiveness of nations to achieve economic growth, and the constant need to explore new markets, all have led MNCs to look for alternative jurisdictions which are financially viable and cost-effective to their businesses.¹² Thus, developing countries are more likely to be the new destinations that MNCs would favour and explore.

This chapter seeks to provide an understanding of how MNCs are defined and of how they operate. There are many conflicting economic ideologies that have shaped the debate around MNCs' effects on home and host states. These ideologies have been formed into a number of economic theories, which are examined at the present

⁹Shannon Lindsey Blanton*, Robert G. Blanton* What Attracts Foreign Investors? An Examination of Human Rights and Foreign Direct Investment at p 153

¹⁰Luo, Yadong. *Multinational enterprises in emerging markets*. Copenhagen Business School Press DK, 2002, p 1.

¹¹Ibid.

¹²Wouters, Jan, and Leen Chanet. "Corporate Human Rights Responsibility: A European Perspective." *Nw. UJ Int'l Hum. Rts.* 6 (2007): 262.

chapter, and also have had an impact on shaping the legal attitudes to foreign investment, in this case MNCs. Such theories range, at one hand, from the position that MNCs are only beneficial to the host country's economy to the other hand that MNCs will not bring any meaningful economic development. This chapter, however, argues that the truth is highly likely to lie somewhere between these two views. Unlike the classical theory, which encourages economic liberalisation and the freedom of movement for MNCs on the premise that this stimulates development, MNCs should be subject to the right of the host state to regulate them effectively. The focus of this chapter is on Saudi Arabia as a developing country where foreign investment has gone through different phases, as it is to be explained.

Defining Multinational Corporations

Before defining MNCs, it is crucial first to indicate that, in practice, the expression MNCs is used as a synonym for “transnational corporations” (TNCs) and “multinational enterprises” (MNEs).¹³ Throughout this thesis, the term MNCs will be used for ease of reference. The term "transnational corporations" means “an enterprise, comprising entities in two or more countries, regardless of the legal form and fields of activity of these entities, which operates under a system of decision-making, permitting coherent policies and a common strategy through one or more decision-making centres, in which the entities are so linked, by ownership or otherwise, that one or more of them may be able to exercise a significant influence over the activities of others, and, in particular, to share knowledge, resources and

¹³ Beisinghoff, Niels. *Corporations and human rights: an analysis of ATCA litigation against corporations*. Vol. 81. Peter Lang, 2009; O. Amao, 'The Foundation for a Global Company Law for Multinational Corporations', *International Company and Commercial Law Review*, 21/8 (2010) at 276. For more analyses on the terminologies see, P. Muchlinski, *Multinational Enterprises and the Law* (Oxford University Press, 2007).

responsibilities with the others”.¹⁴ However, the actual concern is to distinguish between “uninational” corporations (what are commonly referred to as companies or corporations) and MNCs.¹⁵ Despite the fact that both types of corporations have some similarities, including operating in “more than one location” and enjoying “the competitive advantages of a larger economic unit,” “uninational” corporations operate within the national borders of one country, whereas MNCs operate (within and) across jurisdiction.¹⁶ “Multinational and transnational companies do not exist as an entity defined or recognised by law. They are made up of complex structures of individual companies with an enormous variety of interrelationships”.¹⁷ Although there are many definitions of MNCs,¹⁸ it may not be possible to precisely define MNCs to avoid any possible ambiguity.¹⁹ However, an MNC can be described as “an aggregate of corporate entities, each having its own juridical identity, [which operates both overseas and within the national borders of the home state,] and national origin, but each is in some way interconnected by a system of centralised management and control, normally exercised from the seat of primary ownership”.²⁰ Such a definition can, to some extent, identify the main legal features of MNCs.

There are three characteristics of MNCs.²¹ First, and most significantly, an MNC confines itself to international investment but not to international sales of goods and

¹⁴ Commission on Transnational Corporations, Report on the Special Session (7-18 March and 9-21 May 1983) Official Records of the Economic and Social Council, 1983, Supplement No. 7 (E/1983/17/Rev. 1), Annex II. This text of the Code was also reproduced in United Nations Centre on Transnational Corporations (1986). The United Nations Code of Conduct on Transnational Corporations, Current Studies, Series A (New York: United Nations) United Nations publication sales No. E.86.II.A.15, (ST/CTC/SER.A/4), Annex I, pp.28-45.

¹⁵P. Muchlinski, *Multinational Enterprises and the Law* (Oxford University Press, 2007) at 7.

¹⁶Ibid.

¹⁷J. Dine, *Companies, International Trade and Human Rights* (Cambridge: Cambridge University Press, 2005), p.48.

¹⁸ For further details on the definition of MNCs see *ibid.*, at 5-7.; Amao, 'The Foundation for a Global Company Law for Multinational Corporations', (at 276.

¹⁹Muchlinski, *Multinational Enterprises and the Law* at 7.

²⁰C.D. Wallace, *The Multinational Enterprise and Legal Control: Host State Sovereignty in an Era of Economic Globalization* (Martinus Nijhoff, 2002) at 9.

²¹Ibid.

services.²² One example can be seen from the operation of Unilever in Saudi Arabia which does not involve importing ready-to-use goods into that country from abroad.²³ Rather, an MNC such as Unilever invests in the host country by making its products in that country. For that reason, Unilever's products are made locally in Saudi Arabia through Unilever's factory there. Here, the technology and the knowhow required for the production of the goods in Saudi Arabia is transferred by the MNC. The “international investment” philosophy provides that an MNC establishes its production factories both within and across national borders.²⁴ International sale of goods and services, on the other hand, are carried out by international corporations.²⁵ An international corporation is basically “an international trader, an exporter of goods and services across state lines who fits within the traditional framework of international trade theory”.²⁶

The second feature is that a MNC is a group of companies; each company has its legal entity that operates both within and across the national jurisdiction. This indicates that MNCs operate in more than one country including the home country. “The term ‘transnational corporation’ refers to an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries- -whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.”²⁷ Thirdly, centralisation of management

²²A.S. Golbert and J.J. Wilson, 'Centralizing the International Operations of Multinationals', *San Diego L. Rev.*, 11 (1973), 70 at 71.

²³ See Unilever press releases, 'Binzagr and Unilever celebrate 75 year partnership in Saudi Arabia' [2007] available at: <http://www.unileverme.com/aboutus/newsandmedia/presreleases/2007/binzagr-and-unilever-celebrate-75-year-partnership.aspx>

²⁴A.S. Golbert and J.J. Wilson, 'Centralizing the International Operations of Multinationals', *San Diego L. Rev.*, 11 (1973), 70 at 71.

²⁵Ibid.

²⁶Ibid.

²⁷ Commission on Human Rights, Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2002/13 at 15-21 (2002).

and control exists with MNCs. Such control and management are usually exercised by the company based in the home state. MNCs want to ensure that their operations are stable, safe, and perform effectively. Furthermore, these corporations have considerable experience in managing and controlling their operations in foreign countries. In addition, MNCs have precise goals that are more able to be achieved by the centralisation of management.²⁸

The Presence of MNCs in Saudi Arabia:

MNCs employ six different types of legal structures: legal structures based on contractual agreements (i.e., distribution agreements, production agreements, and public private partnerships); equity-based corporate groups; joint ventures between independent firms; informal alliances; publicly owned MNCs; and supranational forms of international business.²⁹ Apart from joint ventures, the analysis of these MNC types of legal structures is beyond the scope of this thesis. This is because, as will be seen later in this chapter, MNCs are incorporated as limited liability companies forming joint ventures with local businesses because it was the only form available for foreign investors seeking business in the Saudi Arabia.³⁰ Of course, there is an urgent need for socially and environmentally business even in the form of the joint venture's model as will be discussed throughout this thesis. It has been illustrated that the terminology of "joint venture" has no exact legal meaning.³¹ As

²⁸ A.S. Golbert and J.J. Wilson.

²⁹ Muchlinski, *Multinational Enterprises and the Law* at 52.

³⁰ F.R.A. El Sheikh, *The Legal Regime of Foreign Private Investment in Sudan and Saudi Arabia* (Cambridge Univ Pr, 2003) at 23.; Wilson et al., *Economic Development in Saudi Arabia* at 34.

³¹ Muchlinski, *Multinational Enterprises and the Law* at 66.

such, any agreement between two independent companies can be referred to as a joint venture if certain requirements are fulfilled.³² These requirements include, first, the objective of a joint venture must be to increase the output that contains a new productive capacity by means of integrating the operations of two firms. Secondly, it also must be a distinct business entity that is not linked to its parents in a manner that involves mergers and contractual arrangements. Thirdly, a joint control must be exercised by the parent firms upon the joint enterprise. Finally, a substantial contribution must be made by each parent to the new firm.

Joint Venture: a Favourite Form of Incorporating MNCs

It has been argued that joint ventures are the dominant form of business organization for MNCs in the developing countries³³, and are commonly being used by Fortune 500 corporations in the developed states. MNCs frequently favour joint ventures over wholly owned subsidiaries irrespective of whether or not they are demanded by a host country as a condition of entry.³⁴ The attractiveness of joint ventures, as argued by Beamish and Banks, “is a function of both the revenue-enhancing and cost-reducing opportunities they provide” MNCs with.³⁵ Moreover, MNCs may be encouraged to seek out joint ventures as a result of the economic environment that can be unfamiliar to them and, thus, they may find it advantageous to take on host country firms as

³²J.F. Brodley, 'Joint Ventures and Antitrust Policy', *Harvard Law Review*, (1982), 1521-90 at 1526.

³³ Vaupel, James W. & Joan P. Curhan. *The world's multinational enterprises*. Boston: Harvard University Press, 1973.

³⁴Janger, Allen R. *Organization of international joint ventures*. New York: The Conference Board, 1980; Harrigan, K.R. *Strategies for joint ventures*. Lexington, MA: D.C. Heath, 1985.

³⁵Beamish, Paul W. and John C. Banks. “Equity Joint Ventures and the Theory of the Multinational Enterprise.” *Journal of International Business Studies* 18.2 (1987): 1-16.

business partners.³⁶ Local firms may offer the joint ventures some “intangible assets, such as knowledge of local marketing and production conditions”.³⁷ In addition, many projects in the host developing countries are undoubtedly risky, thus, MNCs may be eager to “shift some of the risk to firms in the host country, or to other multinationals”.³⁸ The same argument applies when the project is large in relation to the investing corporation, something which is predominantly common in extractive industries.³⁹ A MNC may find it difficult to enter a large foreign market on its own, if such an investment demands “a lot of resources for local sales networks, after sales services, and so forth”.⁴⁰ These aforementioned issues can all be reasons why MNCs choose to form joint ventures with local businesses in Saudi Arabia.

However, given the relative significance of joint ventures in developing countries, it is extraordinary to find a small amount of research into ways of improving their performance.⁴¹ This is significant since the limited literature on joint ventures indicates that performance issues are more serious in developing rather than developed countries.⁴² In my view, this is especially true when it comes to the existence of MNCs in Saudi Arabia due to the lack of regulations and oversight for social and environmental concerns, as will be seen throughout this thesis. According to one Saudi scholar, there are three forms of FDI shaping the presence of MNCs in Saudi Arabia.⁴³ The first form is joint ventures, which used to be the leading form of FDI in the country prior the new investment law in 2000. The second form is

³⁶Blomstrom, Magnus and Mario Zejan. “Why do Multinational Firms seek out Joint Ventures?” *National Bureau of Economic Research Working Paper No. 2987*. (1989).

³⁷Ibid.

³⁸Ibid.

³⁹Ibid

⁴⁰Ibid

⁴¹Beamish, Paul W. *Multinational Joint Ventures in Developing Countries*. London: Routledge, 2013.

⁴²Janger, 1980.

⁴³A-M. M. Abdel-Rahman, 'The Determinants of Foreign Direct Investment in the Kingdom of Saudi Arabia', (Economic Research Forum for the Arab Countries, Iran & Turkey, 2002).

greenfield investment, which involves the creation of a subsidiary from scratch by one or more non-resident investors. Thus, greenfield investments imply the creation of new subsidiaries (new direct investment enterprises) in the host economies.⁴⁴ Such investment is used more often in cases where the company's host country is experiencing high growth rates and higher inflation rates.⁴⁵ Moreover, greenfield investment is the only entry mode that has no access to an existing customer base—in alliances and joint ventures, the globalizer may be able to rely on the local partner's relationships; in acquisitions the globalizer buys customers; greenfield investment offers neither.⁴⁶

This form is relatively new; however, it is preferable because it will lead to the creation of new productive capacity. The third form is investments related to Offset programmes, which can be both direct and indirect. However, for the purpose of this research, the discussion will focus on joint ventures as one type of FDI in Saudi Arabia. This is because joint ventures were once the only method available for foreign investors intending to conduct business in Saudi Arabia and thus, most MNCs take this form. I think this was due to the fact that Saudi Arabia went through a period of suspicion about FDI and thus sought to ensure control over such FDI as can be seen from the discussion about the theory of dependence later in this chapter. Nevertheless, I believe that MNCs must not be allowed to exploit this form of investment in Saudi Arabia where they can hide from their social and environmental

⁴⁴ IMF, Definition Of Foreign Direct Investment (FDI) Terms, IMF Committee On Balance Of Payments Statistics And OECD Workshop On International Investment Statistics direct Investment Technical Expert Group, 2004

⁴⁵ Mudambi, Ram, and Susan M. Mudambi. "Diversification and market entry choices in the context of foreign direct investment." *International Business Review* 11.1 (2002): 35-55.

⁴⁶ Hubbard, Nancy. *Conquering global markets: secrets from the world's most successful multinationals*. Springer, 2013.

responsibilities. Their operations through joint ventures with local business in Saudi Arabia must be subjected to strict regulations imposed by the government regarding human rights, labour rights and environmental protection. This is important because Saudi Arabia has to make sure that it only seeks to achieve economic development that is sustainable.

Joint venture form of investment in Saudi Arabia was the predominant form for MNCs until the new investment law was introduced in 2000.⁴⁷ This form of investment “could theoretically be either Equity Joint Ventures (EJV) or Contractual Joint Ventures (CJV).”⁴⁸ The EJVs are mostly incorporated as limited liability companies that are funded and run by participants for the purpose of dividing whatever profit or loss may arise from such enterprise. CJVs, on the other hand, refer to the collaboration between two distinct business entities that reach agreement in a cooperative contract regarding “the investment or conditions for cooperation, the distribution of earnings or profits, the sharing of risks and losses, the manner of operation and management and the ownership of the property upon termination of the venture”.⁴⁹ However, it seems that the form of EJVs has been becoming more dominant regarding FDI in Saudi Arabia. In EJVs, the contribution of the foreign investor is made through equipment, manufacturing property rights counting technology, and funds. The Saudi counterpart guarantees “land, plant, equipment and the local component of currency and funds.”⁵⁰

⁴⁷ Ibid, at p 33.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

The Significance of MNCs in Host States

The classical theory on foreign investment and its implications on Saudi Arabia

The classical theory on foreign investment holds the view that foreign investment is totally advantageous to the economy of any host state.⁵¹ This view is supported by several factors, including, the fact that domestic capital available for use could be allocated to serve other uses of public benefit since such capital can be substituted by foreign capital that is injected into the host country's economy.⁵² In addition, MNCs usually bring with them technology that is not available in the host state and thus such technology is diffused within the host economy.⁵³ New employment opportunities are created which without the presence of MNCs in the host state would not have been available.⁵⁴ The labour that is so employed will obtain new skills linked with the technology introduced by MNCs.⁵⁵ Management skills of large projects will also be transferred to domestic workers.⁵⁶ Either the foreign investor or the state will be involved in building infrastructure facilities which will also be generally beneficial to the economy.⁵⁷ Moreover, society as a whole will benefit from the upgrading of facilities such as transport, health or education for the benefit of the foreign investor.

⁵¹It is often the case that MNCs bring significant benefits to the states where they conduct business whereby tax revenues are generated, jobs are created, skills and technologies are transferred, high living standards are achieved, export markets are developed, and gross domestic product by exporting states is increased. Murphy, Sean D. "Taking multinational corporate codes of conduct to the next level." *Colum. J. Transnat'l L.* 43 (2004): 389; Gilpin, Robert, and Jean Millis Gilpin. *The challenge of global capitalism: The world economy in the 21st century*. Vol. 5. Princeton, NJ: Princeton University Press, 2000.

⁵²De Soysa, Indra, and John R. Oneal. "Boon or bane? Reassessing the productivity of foreign direct investment." *American Sociological Review* (1999): 766-782; Lall S. *Building Industrial Competitiveness in Developing Countries*, OECD Development Centre, (1990), Paris.

⁵³Blomström M., A. Kokko and M. Zejan *Foreign Direct Investment, Firm and country strategies*, MacMillan, (2000), Basingstoke.

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Murphy, 2004

⁵⁷ Ibid

Such benefits demonstrate the positive impacts brought by MNCs making them real contributors to the development of any country they operate in.⁵⁸ Further, MNCs' role in the modernisation of emerging economies, where they operate, can also be evident from the access they provide to export markets, intensification of competition they bring about, or by providing better and/or low-cost goods and services that local producers do not offer.⁵⁹ Given such positive aspects of foreign investment especially in the form of MNCs led to the progression of the policy-oriented argument that foreign investment must be protected by international law.⁶⁰ This is because such protection will assist the flow of foreign investment and bring about economic development of the less developed countries.⁶¹ "It provides a strong, seemingly altruistic policy justification for the protection of foreign investment through the principles of international law".⁶²

The view that foreign investment brings uniform benefits to developing countries has been given a great boost by events in the recent past.⁶³ The story of the 1990's was one of developing states realising the great advantages of attracting foreign investment and technology, so as to develop export economies of their own.⁶⁴ The same period witnessed the rise of economic liberalism, signifying the classical view on foreign investment.⁶⁵ International economic institutions such as the World Bank

⁵⁸Ibid.

⁵⁹De Mello, Luiz R. "Foreign direct investment-led growth: evidence from time series and panel data." *Oxford economic papers* 51.1 (1999): 133-151; UNCTAD, *World Investment Report: FDI and the Challenges of Development*, United Nations, (1999), New York; JBIC Institute 'Foreign Direct Investment and Development: Where Do we Stand?' JBIC Research Paper 15, (2002), Japan Bank for International Cooperation, Tokyo.

⁶⁰Suranjaha p 48.

⁶¹Ibid

⁶²Ibid

⁶³Ibid

⁶⁴Wallace, Cynthia Day, 2002, at 42-45.

⁶⁵Suranjaha 52

and the International Monetary Fund were advocates of economic liberalism⁶⁶ to attract foreign investment which would, it is presumed, contribute to development⁶⁷. Thus, as far as the classical theory is concerned, the activities of MNCs will potentially have a significant role in any country's economic development. Advocating that the presence of MNCs in a country will be advantageous both to its economy and people is highly questionable as will be shown later in this chapter. In Saudi Arabia, FDI pumped more than 39 billion US dollars into the country's economy in 2008 involving many sectors.⁶⁸ Yet, those who advocate the classical theory would argue that there is a potential rise in people's income in countries where FDI is present. To support their argument, they may use a similar approach to the following assertion. There was an increase in the average Gross National Income (GNI) per capita in many developing countries during the period from 2002 through 2011.⁶⁹ In Saudi Arabia for instance, GNI per capita significantly raised from 8,610 US dollars 17,820 US dollars; it doubled since 2002.⁷⁰ The theoretical foundation for empirical studies on FDI and growth derives from either neo-classical models of growth or endogenous growth models.⁷¹ In neoclassical models of growth, FDI rises the volume of investment and/or its efficiency, and leads to long-term level effects and medium-term, transitional increases in growth.⁷² After a decline of about 4 per cent each year during 1980 to 1985, the volume and share of FDI to developing

⁶⁶Joseph, Stieglitz. *Globalization and its Discontents*, Penguin Books, New Delhi (2002).

⁶⁷Suranjaha 52

⁶⁸ The World Bank, World Development Indicators at:

<http://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD/countries/CN-4E-XT-SA?display=graph>

⁶⁹ Ibid.

⁷⁰ Ibid

⁷¹ Nair-Reichert, Usha, and Diana Weinhold. "Causality Tests for Cross-Country Panels: a New Look at FDI and Economic Growth in Developing Countries." *Oxford bulletin of economics and statistics* 63.2 (2001): 153-171.

⁷² Ibid.

economies has increased considerably.⁷³ During the later part of the 1980s, FDI in developing economies boosted by 17 per cent each year.⁷⁴ In 1993, total FDI to developing countries was \$70 billion, and the value of inflows of FDI amplified by 125 per cent in the rest three years of the decade.⁷⁵

In my opinion, to suggest that positive changes occur to people's lives as their countries approach development in which MNCs take part is misleading given the issue of inequality; only the top few in society will benefit. Thus, it is questionable whether MNCs can at all impact the average national income to the extent seen in the aforementioned example. This is because surely there are many other factors which collectively can result in income increases in any given country. The finding of natural resources, research and development, and the activities of domestic businesses are all among many other reasons why income of citizens in any country may rise.

Like most countries, Saudi government's invitation for investment is directed to both national and foreign investors.⁷⁶ Thus, as part of this initiative, and as a form of FDI, MNCs are encouraged by Saudi Arabia to conduct their business within the country. Such MNCs are being given incentives by the Saudi government to make the country as attractive to businesses as possible.⁷⁷ These incentives include, inter alia, the assistance of the Saudi Arabia General Investment Authority (SAGIA) of foreign investors in the application process and the approval of such investors to operate in

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Lal, Deepak, and Hla Myint. *The political economy of poverty, equity and growth: A comparative study*. Oxford University Press, 1998.

⁷⁶ The focus of this research will be only on the latter.

⁷⁷ Saudi Arabia General Investment Authority, 'Investment Climate in Saudi Arabia', <<http://www.sagia.gov.sa/en/Investment-climate/Some-Things-You-Need-To-Know-/Investment-Incentives/>>, accessed 02/04/ 2015.

Saudi Arabia.⁷⁸ Moreover, Saudi Arabia has allocated a period of 30 days as the timeframe for the decision-making process from submitting the investment application to the SAGIA, including the registration of the company, the set-up procedure, and the final decision. In addition, foreign investors and national companies are treated equally by Saudi officials with respect to benefits, incentives, and guarantees. This will attract many foreign investors to participate in the business climate in the country. For the sake of a long-term economic development, Saudi Arabia has been encouraging the expansion of the private sector, which can provide input into the country's economy.⁷⁹ In this regard, investment by the private sector in Saudi Arabia is required. Such involvement of the private sector in shaping the Saudi economy represents a new era of Saudi economic policy. This turning point in the economic policy of Saudi Arabia shows the country's desire to pursue economic development through national and foreign investment in the country. However, I think it is fundamental that Saudi Arabia needs to rethink its way towards economic liberalism since attracting foreign investment might not contribute much to development and could lead to negative consequences. Such impacts could take the form of low wages, poor working conditions, and environmental damage. The government should ensure that strict regulations pertaining human rights, labour rights, and environmental protections are adopted so as to achieve sustainable economic development.

In light of the classical theory on foreign investment, Saudi Arabia's warm welcoming and encouragement of the private sector including MNCs is because of the fact that MNCs are providing considerable benefits to the country. As such, when

⁷⁸Ibid.

⁷⁹Authority, 'Investment Climate in Saudi Arabia', ;Agency, 'The World Factbook: Saudi Arabia',

MNCs come to invest in Saudi Arabia, they bring capital to the country. This capital investment leads to the creation of job opportunities for individuals with the MNCs.⁸⁰ Individuals who secure employment with MNCs will also be trained to work in the new environment of MNCs where high-level skills are required. As such, the Saudi government will obtain greater benefits from the involvement of MNCs in the country. It is assumed that these benefits can, to some extent, assist in solving some serious challenges that Saudi Arabia faces. High level of unemployment is one challenge. The unemployment rate of Saudi Arabia for the age range of up to 24 is said to be 28.2%, which reflects 23.6% and 45.8% of unemployed males and females respectively in 2008.⁸¹ Hence, the assumption is that Saudi Arabian government will have an opportunity to cut unemployment levels amongst its own local people.⁸²

Another challenge is that the Saudi Arabian economy is heavily dependent on petroleum revenues.⁸³ It has about 20% of the world's proven total oil reserves⁸⁴ and therefore is considered to be the world's largest exporter of oil.⁸⁵ The annual growth rate was at 4.1% in 2010, and has been consistent since 2003.⁸⁶ Eighty per cent of the country's budget revenues are generated through the oil sector, which represents 45% of gross domestic product (GDP) and 90% of export incomes.⁸⁷ Thus, the government noted as early as the 1970s that it is risky and insufficient for the country

⁸⁰Central Intelligence Agency, 'The World Factbook: Saudi Arabia', <<https://www.cia.gov/library/publications/the-world-factbook/geos/sa.html>>, accessed 23/04/ 2015.

⁸¹Ibid.

⁸²Ibid.

⁸³Datamonitor, 'Country Analysis Report: Saudi Arabia. (Cover Story)', (September edn., London: Datamonitor, 2011) at 16.

⁸⁴Foreign and Commonwealth Office, 'Country Information: Saudi Arabia', <<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/middle-east-north-africa/saudi-arabia?profile=all>>, accessed 21/04/ 2012.

⁸⁵Ibid.

⁸⁶Datamonitor, 'Country Analysis Report: Saudi Arabia. (Cover Story)', at 16.

⁸⁷Agency, 'The World Factbook: Saudi Arabia',

to depend mainly on oil revenues.⁸⁸ In this regard, it has included among its long-term objectives that the economy should be diversified, and the reliance on petroleum incomes will be reduced.⁸⁹ Excessive dependence on oil revenues is not sufficient for the economy of Saudi Arabia in the long-term journey of the country. The reality is that such a source of energy is not renewable and consequently cannot be trusted on its own as an exclusive means for economic growth. With its population of over 26 million people, Saudi Arabia needs to find ways of enhancing sustainable economy. One way can be by diversifying the economy of Saudi Arabia might be through inviting MNCs to operate in the country. The question remains to be answered is: But at what cost? When making its economic policies, the government should take into account that such policies do not neglect the importance of upholding, protecting, and promoting human rights, labour rights, and the environment.

Sornarajah argued that the dominance of the classical theory was furthered by practical considerations namely espousing free market ideologies and courting foreign investment since it was the only capital made available by MNCs.⁹⁰ The adoption of the classical theory became necessary so as to illustrate that the states attracting MNCs were receptive to their needs for protection of their capital flows.⁹¹ This resulted in the sudden surge of bilateral investment treaties in the 1990s and the favorable foreign investment laws providing guarantees and incentives to MNCs.⁹² The triumph of economic liberalism was echoed in the acceptance of the World Trade Organisation with new disciplines involving intellectual property: the Agreement on

⁸⁸R. Wilson et al., *Economic Development in Saudi Arabia* (Routledge/Curzon, 2004) at 20.; T. Niblock and M. Malik, *The Political Economy of Saudi Arabia* (Taylor & Francis, 2007) at 52.

⁸⁹Ministry of Economy And Planning, 'The First Development Plan 1390-1395 (A.H) 1970-1975 (A.D)', (Saudi Arabia, 1970).

⁹⁰Sornarajah, M. *The international law on foreign investment*. Cambridge University Press, 2010.

⁹¹ Ibid.

⁹² Ibid.

Trade-Related Aspects of Intellectual Property Rights (TRIPS), services: the General Agreement on Trade in Services (GATS) and investment: the Agreement on Trade-Related Investment Measures (TRIMS) attached to it.⁹³ In the context of Saudi Arabia, the following facts are in agreement with Sornarajah's argument. In this respect, it is believed that three reasons were behind introducing the new investment law in Saudi Arabia.⁹⁴ First, Saudi Arabia desperately sought to join the World Trade Organisation (WTO). The WTO required Saudi Arabia to take an open approach in liberalising its economy through which the investment law must be revised. Secondly, the government seemed unable to fund all the capital needed for a substantial expansion of the manufacturing and utility industries; this will add to its final debt bill. Thus, the government should find a means of providing capital through foreign investments. However, the government first must give reassurance to those potential foreign investors to attract their capital to the country. Thirdly, the Saudi Arabian government is aware of the massive benefits other Gulf Cooperation Council (GCC) states gained from the economic liberalisation of such countries. Therefore, the inward investments obtained in both Bahrain and United Arab Emirates are massive and attractive to Saudi Arabia.⁹⁵ I believe such move by the Saudi government should have been taken with a great caution because of the potential risks that FDI are fraught with.

Backing the classic theory on foreign investment is the 'neoclassical market perspective' which entails that the market, as the most efficient allocator of resources,

⁹³ Ibid.

⁹⁴ Wilson et al., *Economic Development in Saudi Arabia*, at 34-35.

⁹⁵ Ibid.

should be allowed to operate with as little regulatory interference as possible.⁹⁶ As a result, an open international economy with marginal state or international regulation is becoming more favourable.⁹⁷ The choice now is available for states to specialise in the production and sale of those commodities which they can make most efficiently, and to exchange them for other commodities made more cost-effectively by other states.⁹⁸ This should lead to an internationally efficient economy and to a rational global division of labour. In this process, MNCs are important “medium for integrating and organising resource utilisation on a global scale”.⁹⁹ It functions as a means by which various national economies, with different proportional advantages in skills, labour, raw material and know-how, can be combined through the international division of labour within the firm.¹⁰⁰ Essential to this is a global economy in which MNCs are free to set up affiliates whenever and wherever they desire, “to engage in uninhibited intrafirm trade, and trade with third parties”.¹⁰¹ Given such circumstances, the activities of MNCs are assumed to enhance international welfare.¹⁰² Neoclassical economists concentrated on the market to find a solution for the developing countries, where “policies of liberalization, stabilization and privatization” consequently become the principal factors of the national development agenda.¹⁰³ International trade, foreign investments and foreign aid flowing into the developing countries are predicted to quicken economic efficiency and economic growth of these countries.¹⁰⁴

⁹⁶ Muchlinski, Peter T. *Multinational Enterprises and the Law*. Oxford International Law Library. 2 ed. New York: Oxford University Press, USA, 2007, p. 90.

⁹⁷ Ibid

⁹⁸ Ibid.

⁹⁹ Ibid, at p 91.

¹⁰⁰ Ibid.

¹⁰¹ Ibid

¹⁰² Ibid

¹⁰³ Dang, Giang, and Low Sui Pheng. *Infrastructure Investments in Developing Economies*. Springer, 2015, at p 19.

¹⁰⁴ Ibid.

It can be argued that Saudi Arabia has adopted the classical theory on foreign investment and has also been a supportive of the neo-classical market perspective since the beginning of the twenty first century. The evidence of the Saudi Arabian new approach towards economic liberalism can be clearly seen from the fact that prior to 2000 the foreign interference through foreign investment was restricted.¹⁰⁵ The limitation of such foreign role took the shape of joint venture agreements in which Saudi Arabian ownership enjoys the majority.¹⁰⁶ However, in May 2000, it was obvious that this policy had to be changed; therefore, a new investment law was introduced, which is discussed in more details later in this chapter.¹⁰⁷ The change was significant. The new investment law allows foreign investors to have a full ownership of their business in most sectors.¹⁰⁸ In addition to the change, the new law introduced a new Saudi Arabian General Investment Authority (SAGIA) whose main responsibility is to encourage, attract, and remove the hindrances to foreign investments.¹⁰⁹ SAGIA is involved in tasks that were dealt with by the Consultative Council and the Ministry of Industry and Electricity.¹¹⁰ Yet, the supremacy of free market theories in the United States and Europe confirmed that the classical view on foreign investment dictated thinking on the subject around many nations including Saudi Arabia.¹¹¹ The process of globalisation was regarded as inevitable due to advances in technology which is greatly needed by Saudi Arabia.¹¹² This view fostered the idea of that MNCs, which were the forerunners of globalisation, should

¹⁰⁵Wilson et al., *Economic Development in Saudi Arabia* at 34.

¹⁰⁶Ibid.

¹⁰⁷ See for further details at p 57 of this chapter on 'Foreign Investment Law', *Royal Decree No M/1(2000)* (Saudi Arabia, 2000).

¹⁰⁸Ibid., Article 5.

¹⁰⁹Ibid., Article 1.

¹¹⁰Wilson et al., *Economic Development in Saudi Arabia* at 34.

¹¹¹ Ibid.

¹¹² Ibid

have unrestricted movement around the world and that their investment should be protected so as to ensure that the course of global integration could be advanced.¹¹³ Such shift by Saudi Arabia to embracing the neo-classical theory is, from my point of view, was not the right decision given the potential risks including the social and environmental negative impacts resulting from MNCs' activities in the country.

Notwithstanding the popularity of the classical theory on foreign investment, as seen earlier, the theory has been subjected to considerable criticism. The main weakness with this theory, according to Sornarajah, is that it has no evidence to prove it.¹¹⁴ To make this even worse, there is evidence that foreign investment's outflows by way of repatriation of profits are superior.¹¹⁵ It has been indicated that capital outflows linked with foreign investment may be double the initial inflows.¹¹⁶ It can be said, nonetheless, foreign investment means, at least to some high-income developing countries such as Saudi Arabia, more than capital inflows that are brought into by foreign investors, it could well be advanced technology and high skills that the country is seeking. Another criticism is that, MNCs, "who possessed capital badly needed by developing countries, demanded above-average profits and secure property rights before they would commit FDI to developing countries".¹¹⁷ This can be countered by the fact that in some developing countries where political stability is absent, it is inevitable that foreign investors will require protection for their

¹¹³ Muchlinski, 2007, p 91.

¹¹⁴ Sornarajah, 2010.

¹¹⁵ Ibid, Oneal, John R., and Frances H. Oneal. "Hegemony, imperialism, and the profitability of foreign investments." *International Organization* 42.02 (1988): 347-373; Li, Quan, and Adam Resnick. "Reversal of fortunes: Democratic institutions and foreign direct investment inflows to developing countries." *International organization* 57.01 (2003): 175-211.

¹¹⁶ Cunningham, S. M. "Multinationals and restructuring in Latin America." *Multinational Corporations and the Third World (RLE International Business)* 11 (2012): 39; Taylor, Michael, and Nigel Thrift. *Multinationals and the Restructuring of the World Economy (RLE International Business): The Geography of the Multinationals. Vol. 2.* Routledge, 2013.

¹¹⁷ Tuman, John Peter, and Craig F. Emmert. "The political economy of US foreign direct investment in Latin America: a reappraisal." *Latin American Research Review* 39.3 (2004): 9-28.

investment and the high profits they are gaining is intended to compensate for the instability and associated risks. But I believe MNCs, if they care at all, still have to persuade consumers in developing countries such as Saudi Arabia that such high profits are justifiable. It is also argued that the presumed advantage that new technology is transferred into developing countries by foreign investors may also be false because usually technology that has spent its cycle in its home state is then introduced in the developing countries where the product is assumed new.¹¹⁸ Such criticism could be valid but not in all cases because with globalization and the advancement of technology, communication, and transportation, some rich-developing countries will only seek cutting-edge technologies since they can afford them.

Moreover, there are many scholars who are challenging the predominant discourse on growth and development. Such development has even been blamed for causing serious impacts on the environment. For example, Klein argues that carbon is not the problem, but rather a symptom of the real problem: global capitalism.¹¹⁹ She suggests that a global economic order entrenched in extractive carbon-based mass-production and mass consumption that has led us to this situation.¹²⁰ She states that a political system in the US, the world's second largest carbon emitter, which seems not only unable to do anything about carbon pollution, but whose legislative branch is now run by a political party that overwhelmingly dismisses the science of climate change.¹²¹ All this leads her to an interesting and counter-intuitive conclusion: the climate-denying Right actually understands exactly what is needed: systemic change that

¹¹⁸Sornarajah

¹¹⁹ Klein, Naomi. *This changes everything: Capitalism vs. the climate*. Simon and Schuster, 2015.

¹²⁰ Ibid.

¹²¹ Ibid

overthrows global capitalism.¹²² To the Right this is precisely the reason to pretend that global warming is a hoax.¹²³ To Klein, though, equally wrong are many, if not most on the left who believe that global carbon emissions can be reduced to such a level so as to avoid catastrophic climate change without systemic change.¹²⁴ Indeed, the only times in recent history where we have witnessed the kind of large-scale reductions in carbon emissions necessary have been precisely when capitalism is failing—during economic collapses or deep recessions—which leads her to conclude that we are too late for any fix within a capitalist system: “our economic system and our planetary system are now at war”.¹²⁵ Gradual and incremental change is no longer an option. We have to leave behind the “fetish of centrism”, for only radical change will suffice.¹²⁶

Tim Jackson has criticised the notion of growth and that we have no alternative but to question growth.¹²⁷ He indicates the “the myth of growth has failed us. It has failed the 1 billion people who still attempt to live on half the price of a cup of coffee each day. It has failed the fragile ecological systems on which we depend for survival. It has failed, spectacularly, in its own terms, to provide economic stability and secure people’s livelihoods”.¹²⁸ He rightly states that:

If the current economic crisis really does indicate (as some predict) the end of an era of easy growth, at least for the advanced nations, then the concerns of this book are doubly relevant. Prosperity without growth is a very useful trick to have up your sleeve when the economy is faltering. The uncomfortable reality is that we find ourselves faced with the imminent end of the era of cheap oil, the prospect of steadily

¹²² Ibid

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ Ibid

¹²⁶ Ibid

¹²⁷ Jackson, Tim. *Prosperity without growth: Economics for a finite planet*. Routledge, 2011.

¹²⁸ Ibid.

rising commodity prices, the degradation of air, water and soil, conflicts over land use, resource use, water use, forestry and fishing rights, and the momentous challenge of stabilizing the global climate. And we face these tasks with an economy that is fundamentally broken, in desperate need of renewal.¹²⁹

In these situations, according to Jackson, a return to business as usual is not a choice.¹³⁰ He adds that “prosperity for the few founded on ecological destruction and persistent social injustice is no foundation for a civilized society. Economic recovery is vital. Protecting people’s jobs – and creating new ones – is absolutely essential. But we also stand in urgent need of a renewed sense of shared prosperity. A deeper commitment to justice in a finite world”.¹³¹

MNCs have also been blamed for the fact that they create customer desires for products of minimal social value such as breast-milk alternatives “and the creation of demand through advertising”.¹³² There has been some scepticism about the transfer of management skills “as higher positions requiring confidence are seldom within the reach of local personnel”.¹³³ In Saudi Arabia, the contrary is the case where national personnel obtain high management and technical skills which all were transferred by MNCs operating in the country.¹³⁴ Sornarajah has also challenged the claim that infrastructure facilities are built arguing that “health and educational facilities that are created are only accessible to the elite within the host state who could afford such

¹²⁹ Ibid

¹³⁰ Ibid

¹³¹ Ibid

¹³² Sornarajah, 2010.

¹³³ Ibid.

¹³⁴ Naimi, A. I. "[32] 3 Technology Transfer in the Oil Industry of Saudi Arabia." *12th World Petroleum Congress*. World Petroleum Congress, 1987; McPherson, Charles. "9 State participation in the natural resource sectors." *The taxation of petroleum and minerals: Principles, problems and practice* 24 (2010): 263.

facilities”.¹³⁵ He added that the relationship between the influential people in the host state and the personnel of MNCs has negative consequences on the political landscape of the state.¹³⁶ In Saudi Arabia, however, the effects of MNCs’ personal on the political arena is likely to be rare since illegitimate relationship between MNCs’ senior executives and the country’s officials will emanated mainly from the latter’s economic disadvantage which is highly unusual in the country. However, corruption can occur between government officials and MNCs’ personal in relation to the operations of such entities where the latter can be in breach of the law but are not adequately punished or not punished at all. Of course, MNCs’ activities can have negative impacts on society and the environment in Saudi Arabia as anywhere else, and thus there must be proper legal protection in place so that those irresponsible MNCs are held to account.

It is also argued that the lack of regulatory controls over the unexpected inflow of foreign investment, which seems to be a drawback of the classical theory, generates social and economic confusion within the country.¹³⁷ The absence of government supervisory capacity, and weak negotiating power vis-à-vis northern-based MNCs exerting vast resources of financial capital, technology, and employment, have all mitigated against the rise of suitable and effective regulatory establishments.¹³⁸ This

¹³⁵ Ibid.

¹³⁶ Ibid; Rothgeb, John M. "Investment dependence and political conflict in third world countries." *Journal of Peace Research* 27.3 (1990): 255-272; Richards, David L., Ronald D. Gelleny, and David H. Sacko. "Money with a mean streak? Foreign economic penetration and government respect for human rights in developing countries." *International Studies Quarterly* (2001): 219-239; Bayulgen, Oksan. *Foreign Investment and political regimes: The oil sector in Azerbaijan, Russia, and Norway*. Cambridge University Press, 2010.

¹³⁷ Sornarajah, 2010; Vernon, R. *Sovereignty at Bay*. London: Longman, 1971; Strange, Susan. *The retreat of the state: The diffusion of power in the world economy*. Cambridge university press, 1996.

¹³⁸ Stopford, John M., Susan Strange, and John S. Henley. *Rival states, rival firms: Competition for world market shares*. Vol. 18. Cambridge University Press, 1991; Wawryk, Alexandra S. "Adoption of international environmental standards by transnational oil companies: Reducing the impact of oil operations in emerging economies." *J. Energy & Nat. Resources L.* 20 (2002): 402; Wawryk,

can be apparent especially when MNCs are first introduced to the developing country. Nonetheless, when the economy of such developing country progresses, the country needs to update its legal and regulatory frameworks to effectively control MNCs operating within its borders so as to ensure that the social and economic confusion dissolve. This is because developing countries, including Saudi Arabia, must not sacrifice the well-being and dignity of their citizenry nor weaken the state's political standing within the international community in their pursuit of economic development. As such, certain provisions of a national law, as can be seen from the Albanian model, "might provide an effective route both for constructing the environmental responsibilities of MNCs and for holding them to account for the environmental damage and human rights infringements that they cause."¹³⁹ In this regard, Dine rightly suggested that it is evident that the Albanian law of groups includes "some robust and important provisions containing promising avenues for the control of MNC human rights and environmental violations".¹⁴⁰ Undoubtedly, these issues represent the legitimate aspirations and concerns of most states. Thus, some developing countries have adopted labour and environmental laws to protect local resources and working nationals.¹⁴¹ This is evident from the case of Saudi Arabia, where it has introduced the Saudi General Environmental Law¹⁴² and the Saudi Labour Law¹⁴³. Such regulations have impacted on issues like national labour and the protection of the environment in Saudi Arabia. However, I believe the government

Alexandra S. "International environmental standards in the oil industry: improving the operations of transnational oil companies in emerging economies." *Oil, Gas & Energy Law Intelligence* 1.1 (2003).

¹³⁹Dine, Janet. "Jurisdictional arbitration by multinational companies: a national law solution?." *Journal of Human Rights and the Environment* 1 (2012): 44-69.

¹⁴⁰ Ibid.

¹⁴¹ Murphy, 2004.

¹⁴² 'General Environmental Law', *Royal Decree No. M/34 (2001)* (Saudi Arabia, 2001).

¹⁴³ 'Labour Law', *Royal Decree No. M/51 (2005)* (Saudi Arabia, 2005).

should take further steps to ensure that human rights, labour rights, and environmental protection are all addressed and reflected into the national laws.

Nevertheless, the effectiveness and sufficiency of introducing policies amid at dealing with the rapid flow of MNCs in developing countries has been questioned. For instance, in countries like Argentina and Indonesia such policies were inadequate and ineffective, and there appears to have been a deteriorating of the economic situation.¹⁴⁴ Moreover, many African countries have passed legislation favourable to MNCs without experiencing any rise in foreign investment in real terms.¹⁴⁵ Various African countries concentrating on these issues attained an average growth rate of only 0.5 % annually.¹⁴⁶ Together with weak and insufficient legal and regulatory framework, not to mention the diverse institutional, cultural and historical background of the developing countries, free market in these states fails to enhance economic development.¹⁴⁷ In relation to Saudi Arabia, stimulation of economic development has not been expected merely from foreign investment because of the country's rich oil resources. Thus, the need for effective and adequate policies for foreign investment in Saudi Arabia was not as much needed for economic enhancement as in other developing countries. As mentioned earlier, countries such as Saudi Arabia has to swiftly reform its regulatory framework for foreign investment as its economy flourishes so as to achieve sustainable economic development. In my view, the reality is however different for two reasons. First, developing countries such as Saudi Arabia will prioritise their needs in a way that suits the country best by

¹⁴⁴Sornarajah, 2010.

¹⁴⁵Ibid

¹⁴⁶Dang, Giang, and Low Sui Pheng. "Theories of Economic Development." *Infrastructure Investments in Developing Economies*. Springer Singapore, 2015. 11-26.

¹⁴⁷Mundial, Banco. "Entering the 21st. Century. World Development Report 1999/2000." *Banco Mundial—Oxford University Press—Washington, DC—EUA* (2000); Dang, Giang, and Low Sui Pheng, 2015.

favouring economic compulsion to comprehensive regulatory tools for foreign investment. Secondly, legal and regulatory framework for foreign investment is an area that is relatively new to developing countries which by the time they involve in more economic development it becomes inevitable that such topics must be explored and considered. Therefore, Saudi Arabia has to take a different approach towards effectively controlling the flow of FDI into the county in order to ensure that MNCs' impacts on society and the environment are controlled. This is because as will be seen in the following discussion that there are many scepticisms about the real impact of foreign investment on host developing states.

The theory of dependence and its influences on Saudi Arabia

One of the central propositions of the dependency theory, which is considered an extension of Marxist theory, is that international capitalism, where foreign investment plays a key role, is uniformly bad for developing countries.¹⁴⁸ This is because MNCs take surplus wealth from such states leaving their economic performance suffers to the benefit of foreign capital.¹⁴⁹ The profits that accumulate from use of indigenous labour and resources are not reinvested in the host state, and this restrains development.¹⁵⁰ This flow of capital could be measured by the MNCs' net profits overseas.¹⁵¹ As a result developing nations will gradually lose power of their national economies or experience distorted development.¹⁵² If valid, the dependency implies that rates of economic growth are slower the higher the level of foreign capital penetration into the domestic economy.¹⁵³ Categorically opposing the classical theory, the dependency theory holds the view that foreign investment will not generate "meaningful development".¹⁵⁴ It was a theory advocated by Latin American economists and political philosophers, yet work based on it has been conducted in other parts of the world.¹⁵⁵ The proposition is that MNCs plan global policy in the interests of their parent company and their shareholders in home country.¹⁵⁶

¹⁴⁸Sornarajah; Hein, Simeon. "Trade strategy and the dependency hypothesis: A comparison of policy, foreign investment, and economic growth in Latin America and East Asia." *Economic Development and Cultural Change* (1992): 495-521.

¹⁴⁹Hein, Simeon, 1992.

¹⁵⁰ Ibid; Singh, Ram D. "The multinationals' economic penetration, growth, industrial output, and domestic savings in developing countries: Another look." *The Journal Of Development Studies* 25.1 (1988): 55-82.

¹⁵¹ Ibid; Lucas, Robert EB. "On the determinants of direct foreign investment: evidence from East and Southeast Asia." *World Development* 21.3 (1993): 391-406.

¹⁵² Ibid; Yang, Jonghoe, and Russell A. Stone. "Investment dependence, economic growth, and status in the world system: A test of "dependent development"." *Studies in Comparative International Development (SCID)* 20.1 (1985): 98-120.

¹⁵³ Ibid

¹⁵⁴Sornarajah, 2010.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

Consequently, MNCs will advantage the interests of developed countries in which their headquarters are based by shifting the profits to their home states.¹⁵⁷ The home states become the dominant economies of the world, and the host developing states become “subservient or peripheral economies serving the interests of the home states”.¹⁵⁸ Development becomes impossible in the peripheral economies unless they can break out of the situation in which they are tied to the central economies through foreign investment.¹⁵⁹ The resources which flow into the state as a result of foreign investment are seen as benefiting only the elite classes in the developing state, who readily form alliances with foreign capital.¹⁶⁰

The alliances between the elite classes and foreign investors, it is argued, results in human rights abuses as circumstances favourable to the operations of the MNCs will have to be maintained by legislation or force.¹⁶¹ Such situation has to be avoided in Saudi Arabia since the alliances between MNCs and local businesses through joint ventures can pose real risks to human rights, labour rights, and the environment. Indigenisation measures, which involve a progressive transfer of ownership from foreign interests into the hand of domestic shareholders, and efforts to exert control by permitting foreign investment through joint ventures have failed.¹⁶² To the advantage of foreign investors, the huge competition between states for inwards investment which can impose risks on labour and environmental standards both in host states and home states of MNCs, can be seen as another negative outcome of

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Sklair, Leslie. *The transnational capitalist class*. Vol. 306. Oxford: Blackwell, 2001; Ibid.

¹⁶² Sornarajah, 2010.

foreign investment; this is well-known as the “race to the bottom”.¹⁶³ In this respect, some developing countries will compete to attract MNCs by enacting/offering appealing investment terms through which working and environmental standards can be lowered so as to achieve low production costs.¹⁶⁴ Moreover, some developing countries will regard social and environmental responsibilities of MNCs as merely a hindrance to the economic development of the country since its economic needs come before the social and environmental concerns.¹⁶⁵ Such approach has gained judicial recognition in some countries.¹⁶⁶ Nigeria is one country that has followed a similar approach as evident from the case of *Allan Irou v. Shell BP*¹⁶⁷ where the judge refused to grant an injunction in favour of the claimant whose land, fish pond and creek had been contaminated by the activities of the defendant. In his judgement, nothing should be done to disturb the operation of trade (i.e. mineral oil), which is the main source of Nigeria’s income.¹⁶⁸ Several other cases, though not so intentionally decided, have inclined to follow the unwritten rule that economic deliberations should be prioritised over environmental concerns¹⁶⁹ and judges have often shown their unwillingness to grant injunctions against oil-companies even where oil operations have been discovered to have harmfully affected host communities and the environment.¹⁷⁰

¹⁶³ Von Braun, Joachim, and Ruth Suseela Meinzen-Dick. *Land grabbing" by foreign investors in developing countries: risks and opportunities*. Washington, DC: International Food Policy Research Institute, 2009.

¹⁶⁴Wouters, Jan, and Leen Chanet, 2007; Murphy, 2004.

¹⁶⁵Mujih, Edwin C. "Co-Deregulation of Multinational Companies Operating in Developing Countries: Partnering against Corporate Social Responsibility." *Afr. J. Int'l & Comp. L.* 16 (2008): 249.

¹⁶⁶Ibid

¹⁶⁷Allan Irou v. Shell BP, Suit No. W/89/91 Warri HC/26/11/73 (unreported)

¹⁶⁸Ako, Rhuks. *Environmental Justice in Developing Countries: Perspectives from Africa and Asia-Pacific*. Routledge, 2013; Temitope, Rhuks. "Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India, The." *NUJS L. Rev.* 3 (2010): 423.

¹⁶⁹Ekpu, Ambrose OO. "Environmental impact of oil on water: a comparative overview of the law and policy in the United States and Nigeria." *Denv. J. Int'l L. & Pol'y* 24 (1995): 55.

¹⁷⁰Frynas, Jędrzej George. *Oil in Nigeria: Conflict and litigation between oil companies and village communities*. Vol. 1. LIT Verlag Münster, 2000.

The dependency school of thought developed as a reaction to the traditional theories about modernisation that were popularised by Rostow and others in the 1950s.¹⁷¹ The modernization theory embraces that all countries experience a similar set of economic phases of growth which eventually culminate in a fully industrialised society.¹⁷² Capitalistic development is proposed as a completely positive economic process that drives industrialisation and the change of “Third World nations into modern societies”.¹⁷³ As well as Rostow, members of the Chicago school, such as Milton Friedman, asserted that free trade was fundamental to economic growth and that autonomous development was destructive to it.¹⁷⁴ Both views had advocates in Latin America who tried to apply these beliefs through policy.¹⁷⁵ Developed within the United Nations Economic Commission for Latin America, the dependency approach maintained that underdevelopment was a condition inflicted and promoted by the capitalist system.¹⁷⁶ Modernization would never happen in some regions because their underdevelopment furthered the interests of foreign capital.¹⁷⁷ Therefore host countries become more dependent on the developed countries for market and capital.¹⁷⁸ The imbalanced exchange, in terms of trade against host countries, made free trade a convenient medium of “exploitation” for the developed States.¹⁷⁹ The latter can exploit national resources of developing host states through receiving inexpensive supply of food and raw materials, while the former poor is being unable

¹⁷¹Hein, Simeon. (1992).

¹⁷²Ibid; Inglehart, Ronald, and Wayne E. Baker. "Modernization, cultural change, and the persistence of traditional values." *American sociological review* (2000): 19-51.

¹⁷³Ibid; Sit, Victor FS, and Chun Yang. "Foreign-investment-induced exo-urbanisation in the Pearl River Delta, China." *Urban Studies* 34.4 (1997): 647-677.

¹⁷⁴Pan-Long, Tsai. "Foreign direct investment and income inequality: further evidence." *World Development* 23.3 (1995): 469-483; Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Hein, Simeon. "Trade strategy and the dependency hypothesis: A comparison of policy, foreign investment, and economic growth in Latin America and East Asia." *Economic Development and Cultural Change* 40.3 (1992): 495-521.

¹⁷⁸ Ibid

¹⁷⁹ Ibid.

to control the distribution of the value added to the products traded between themselves and the developed countries.¹⁸⁰ The rise of international capitalism and MNCs is believed to cause host countries to be further exploited and more dependent on the developed countries.¹⁸¹ Thus, host countries could not assume prolonged growth from that dependence.¹⁸² It becomes inevitable, as far as the dependency theory is concerned, that for developing countries to prosper economically and socially, these countries should therefore end the dependence by breaking up their relationships with the developed world, as well as by closing their doors on the developed countries.¹⁸³

In light of the dependency theory, there were noticeable changes to the way foreign investment perceived by many developing countries, especially during the 1970's and 1980's.¹⁸⁴ The tendency seemed to be shifted towards independence or nationalism as a result of social and poetical influences.¹⁸⁵ Therefore, many developing states sought to nationalise or expropriate foreign investment as a means of stemming post-colonial economic "neo-colonization"¹⁸⁶ and capitalism. In Saudi Arabia and other oil states however, the process of nationalization of foreign investment started earlier. A royal decree of 22 November 1962 established Petromin, which became the main vehicle of

¹⁸⁰Cohen, Benjamin J. *International political economy: an intellectual history*. Princeton University Press, 2008; Dos Santos, Theotonio. "The crisis of development theory and the problem of dependence in Latin America." *Underdevelopment and development* (1973): 57-79; Dang, Giang, and Low Sui Pheng, 2015.

¹⁸¹Bandelj, Nina. "Embedded economies: Social relations as determinants of foreign direct investment in Central and Eastern Europe." *Social Forces* 81.2 (2002): 411-444; Ibid.

¹⁸²Ibid.

¹⁸³Elkan, Walter. *An introduction to development economics*. Penguin, 1973; Ghatak, Subrata. *Introduction to development economics*. Psychology Press, 2003; Ferraro, Vincent. "Dependency theory: An introduction." *The development economics reader* 12.2 (2008): 58-64; Dang, Giang, and Low Sui Pheng, 2015.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶Wallace, Cynthia Day. "The multinational enterprise and legal control." *The Hague: Martinus Nijhoff* (2002).

Saudi industrialisation efforts at the time.¹⁸⁷ Its activities included minerals projects, oil and gas exploration and distribution of gas and refined products within the kingdom, and oil shipping operations. This organisation was founded to become a governmental equivalent of Aramco which was US-controlled oil concessionaire – the implicit idea being that it could one day take its place.¹⁸⁸ Similar endeavours were also taken by other developing states: the Indonesian government had created national oil distribution and exploration companies in 1957 and 1961 respectively (later to be merged into national oil giant Pertamina);¹⁸⁹ Venezuela set up its Corporación Venezolana de Petróleos in 1962;¹⁹⁰ and the Algerian regime created Sonatrach in 1963.¹⁹¹ Notwithstanding the enormous efforts taken by many developing countries towards nationalization of foreign investments and taking strict measures to protect their people and the environment, it seems that some countries do not want to dismiss what positive impacts can be obtained through foreign investment as will be seen later in this chapter.

There has been a sudden reversal on this position in Latin America, with many Latin American states now supporting the trends towards liberalisation.¹⁹² This has moved to such an extent that not only have these states participated in the making of bilateral investment treaties but also preparations are being made to negotiate a Free Trade Agreement of the Americas which will contain investment provisions.¹⁹³ However, as

¹⁸⁷Hertog, Steffen. "Petromin: the slow death of statist oil development in Saudi Arabia." *Business History* 50.5 (2008): 645-667.

¹⁸⁸ Ibid

¹⁸⁹Barnes, Philip. *Indonesia, the Political Economy of Energy*. Vol. 3. Oxford University Press, 1995. 11-12.

¹⁹⁰Boue, Juan Carlos, *Venezuela: The Political Economy of Oil*. Oxford: Oxford University Press/Oxford Institute for Energy Studies, 1993, p 12.

¹⁹¹Aissaoui, Ali. *Algeria: The Political Economy of Oil and Gas*, Oxford University Press/Oxford Institute for Energy Studies, 2001, p 67.

¹⁹²Sornarajah, 2010.

¹⁹³Ibid.

Sornarajah argued, the theory did influence many nationalisations that had taken place on that continent.¹⁹⁴ Its significance, according to him, is that it provided a rationale for restructuring the economy excluding foreign investment. In the life of nations, there is a cyclical pattern in which theories lose and regain favour. The force of the theory of dependency, he added, within Latin America and outside that continent cannot be entirely written out. Thus, it cannot be clearly demonstrated that the adoption of liberalisation has led to progress in Latin America.¹⁹⁵ The current Argentinian economic crisis occurred despite liberalisation.¹⁹⁶ The likelihood of the reappearance of the theory of dependence should not be misjudged. As in the case of economic liberalism, there will be periods of dominance and diminishing for the dependency theory.¹⁹⁷

Lall and Streeten argued that certain views on economic development were held with the belief and clarity of “Victorian morals” in which:¹⁹⁸

development meant, or at least was measured by, the growth of national product per head; governments could adopt generally agreed-upon policies to provide such development, by planning (balanced or unbalanced) economic growth and by encouraging international aid, trade and investment; there was often the implicit assumption of a fundamental harmony of interests both between different classes or groups within the poor countries and between different nations; the transfer of the most advanced technology and knowledge from the rich to the poor countries as

¹⁹⁴ Ibid.

¹⁹⁵ Ibid

¹⁹⁶ López-Calva, Luis Felipe, and Nora Lustig, eds. *Declining Inequality in Latin America: A decade of progress?*. Brookings Institution Press, 2010; Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Lall, Sanjaya, and Paul Streeten. *Foreign investment, transnationals, and developing countries*. London: Macmillan, 1977.

considered desirable and necessary; and, more generally, there were purely economic answers to problems of underdevelopment.

According to them, such conceptions are almost past, denoting that “the role of international ‘co-operation’, including foreign investment, (which) was to supply missing components, in the form of extra savings, foreign exchange or skills”, in order to speed the government-organised effort towards development “take-off”.¹⁹⁹

Advocates of the dependency theory do not see economic development in terms of resources to the host state but as involving the meaningful allocation of wealth to the people of the state.²⁰⁰ The attractiveness of the theory in times when globalisation has brought about increasing inequalities in wealth should be taken seriously.²⁰¹ According to this view, development cannot be achieved unless the people as a whole are freed from poverty and exploitation, and when development becomes a right of the people rather than of the state.²⁰² The appeal of the theory to international lawyers attracted by the rights of the people over the rights of states is enormous.²⁰³ If a shift does happen towards the acknowledgment of the rights of people, the role of international law in investment protection will need radical reconsidering.²⁰⁴

The dissensions against globalisation and its impact on international law indicate a gap that is taking place.²⁰⁵ In this respect, the view that international law should arise

¹⁹⁹ Ibid.

²⁰⁰ Sornarajah, 2010; Amsden, Alice H. "Taiwan's economic history: a case of etatisme and a challenge to dependency theory." *Modern China* 5.3 (1979): 341-379.

²⁰¹ Smith, Tony. "The underdevelopment of development literature: the case of dependency theory." *World Politics* 31.02 (1979): 247-288; Ibid.

²⁰² Ibid

²⁰³ Ibid

²⁰⁴ Ibid

²⁰⁵ Ibid

from the will of people rather than the practice of states has influenced the writings of some international lawyers.²⁰⁶ The Multilateral Agreement on Investments (MAI) sponsored by the Organization for Economic Cooperation and Development (OECD) has sparked the call for reaching out of people effectively.²⁰⁷ The focus of such call has been placed upon the fact that the MAI offered protection to MNCs without addressing the environmental and human rights damages that these corporations cause.²⁰⁸ These protests, effectively interwoven through the new technology of the Internet, then steamrolled into the movement against globalisation.²⁰⁹ The dependency theory has significance in that movement in that it represents a way in which local interests could be protected against the interests of MNCs.²¹⁰ Thus, it is often presumed that the surge of social and environmental responsibility of MNCs can be traced directly back to globalization and an associated expectation that corporations “would fill gaps left behind by global governance failures, at the same time as it became easier for (non-governmental organisations) (NGOs) to expose corporate behaviour in far-flung corners of the planet”.²¹¹ Consequently, firms have been demanded to be responsible about matters relating to the environment, community development or global warming.²¹² In some circumstances the serious social engagement of a firm was triggered by a pressure group campaigning against it, a process exemplified by the impact of the 1995 Brent Spar and Nigeria crises on Shell’s conversion to socially responsible business.²¹³ Companies have been

²⁰⁶ Sornarajah, 2010.

²⁰⁷ Dixon, William J., and Terry Boswell. "Dependency, disarticulation, and denominator effects: Another look at foreign capital penetration." *American Journal of sociology* (1996): 543-562.; Ibid.

²⁰⁸ Firebaugh, Glenn. "Growth effects of foreign and domestic investment." *American Journal of Sociology* (1992): 105-130, Sornarajah, 2010; Ibid.

²⁰⁹ Ibid

²¹⁰ Ibid

²¹¹ Frynas, Jędrzej George. "The false developmental promise of Corporate Social Responsibility: evidence from multinational oil companies." *International affairs* 81.3 (2005): 581-598.

²¹² Ibid.

²¹³ Frynas, J. George. "Royal Dutch/Shell." *New Political Economy* 8.2 (2003): 275-285.

subjected to public pressure of varying force, which assists to explain why the reactions of companies to calls for greater social engagement have also differed, as demonstrated by the contrast between Exxon's and BP's responses to NGO pressures concerning global warming,²¹⁴ or the contrast between the approaches taken respectively by some western and Asian-based oil companies.²¹⁵

Merely economic-focused system is not enough when it comes to the concept of development. In this sense, ecology and economy are becoming ever more interlinked—locally, regionally, nationally and internationally.²¹⁶ This concept can only be achieved if the operations of MNCs are not in contradiction with environment protection nor with societal concerns in any given state.²¹⁷ Concerns involve respecting and promoting human and labour rights; and safeguarding the natural resources of their country.²¹⁸ As such, EU MNCs should improve the social and environmental consequences of their activities through taking a sustainable approach in the pursuit of profits.²¹⁹ Not only EU MNCs who should play a role in monitoring their operations' social and environmental outcomes overseas, home states should also have an interest in the social and environmental performance of EU MNCs

²¹⁴Rowlands, Ian H. "Beauty and the beast? BP's and Exxon's positions on global climate change." *Environment and Planning C* 18.3 (2000): 339-354.

²¹⁵Pegg, Scott. "World leaders and bottom feeders: divergent strategies toward social responsibility and resource extraction." *Global Corporate Power, Boulder, CO: Lynne Rienner* (2006): 249-269.

²¹⁶WCED (World Commission on Environment and Development). 1987. *Our Common Future*. Oxford University Press: Oxford; Stern, David I., Michael S. Common, and Edward B. Barbier. "Economic growth and environmental degradation: the environmental Kuznets curve and sustainable development." *World development* 24.7 (1996): 1151-1160; Pearce, David. "Economics, equity and sustainable development." *Futures* 20.6 (1988): 598-605.

²¹⁷Rondinelli, Dennis A., and Michael A. Berry. "Environmental citizenship in multinational corporations: social responsibility and sustainable development." *European Management Journal* 18.1 (2000): 70-84.

²¹⁸Baram, Michael S. "Multinational corporations, private codes, and technology transfer for sustainable development." *Envtl. L.* 24 (1994): 33.

²¹⁹Kolk, Ans, and Rob Van Tulder. "International business, corporate social responsibility and sustainable development." *International Business Review* 19.2 (2010): 119-125.

beyond home jurisdictions.²²⁰ Despite the originally thought of social and environmental standards of corporations as being matters for the host state, in which home state should not –as a general rule– interfere, there is a significant degree of public and NGOs support for the notion that home states should take much greater concern with regards to the social and environmental performance in developing states.²²¹

A Middle Approach towards Foreign Investment is Indispensable

I agree with the view of Sornarajah that once it is accepted that MNCs can produce both good and harm to economic development, it is easy to adopt the position that foreign investment should be harnessed to the objective of economic development and must be carefully regulated to reach this end.²²² The impact of this view, which strikes a middle course, has been significant.²²³ There is an indication that many developing countries, which are increasingly enacting regulatory frameworks within which MNCs are to function, have taken some leads from this theory.²²⁴ Many developing states have now passed legislation to set up screening bodies which permit entry to or give incentives to investments which are permitted by these bodies.²²⁵ Some have legislation designed to ensure that technology transfers are affected

²²⁰Graham, David, and Ngaire Woods. "Making corporate self-regulation effective in developing countries." *World Development* 34.5 (2006): 868-883.

²²¹Zerk, Jennifer A. *Multinationals and corporate social responsibility: limitations and opportunities in international law*. Vol. 48. Cambridge University Press, 2006.

²²² Sornarajah, 2010.

²²³ Ibid.

²²⁴ Ibid

²²⁵ Ibid.

without too many constraints on their use by the transferee.²²⁶ At international level, the theory has been the basis on which codes regulating the conduct of MNCs are sought to be formulated.²²⁷ The theory, which accepts that MNCs can engineer development, if properly harnessed, challenges many propositions relating to international law which have been stated on the basis of the classical theory.²²⁸ Unlike the classical theory, which favours liberalisation and the freedom of movement for multinational corporations on the assumption that this promotes development, the newer theory requires the recognition of the right of regulation of the foreign investment process by the host state.²²⁹ The classical theory mandated absolute rules of investment protection and their uniform application to all investments.²³⁰ The basis of this position has been shaken by the increasing acceptance of the view that foreign investment should be entitled to protection only on a selective basis.²³¹ Protection depends on the extent of the benefit it brings the host state and the extent to which it has conducted itself as a good corporate citizen in promoting the economic objectives of the host state.²³² There is an obligation to abide by the laws and regulations of the host state which are designed to capture the maximum benefits the foreign investment can bring to the host state's economic development.²³³

²²⁶ Greenberg, David F. "Law and Development in Light of Dependency Theory." *Research in Law and Sociology* 3 (1980): 129-159; Ibid.

²²⁷ Ibid

²²⁸ Mahler, Vincent. *Dependency approaches to international political economy*. Columbia University Press, 1980; Ibid.

²²⁹ Ibid

²³⁰ Sornarajah, 2010.

²³¹ Ibid

²³² Ibid

²³³ Ibid

Controlling and Regulating MNCs is the Sensible Approach in Saudi Arabia: A Proposed Framework

The pressure placed upon home states to productively engage in this area was not only coming from the public and NGOs, but also from the realisation of home states that they have political and economic self-interests.²³⁴ The former, on the one hand, can be apparent from the fact that MNCs may well pose some sort of political embarrassment to their home countries when negative impacts of the corporations in question occur.²³⁵ Weak social and environmental standards by MNCs can adversely affect not just their prospects, but future investors in that country as well as the international standing of the home states of such MNCs.²³⁶ Financial support, for example in the form of export-credit guarantees, to foreign projects which have potential social or environmental risks, can be even more damaging to the reputation of the home state provider.²³⁷

On the other hand, economic self-interest is also a key drive for home state to promote and support socially and environmentally responsible MNCs.²³⁸ According to this, corporations can benefit from being socially and environmentally responsible on their long-term productivity and sustainability.²³⁹ Therefore, the home state will have an economic self-interest in promoting, both domestically and internationally,

²³⁴Zerk, Jennifer, 2006. pp 151-155.

²³⁵Ibid; Newell, Peter. "Managing multinationals: the governance of investment for the environment." *Journal of International Development* 13.7 (2001): 907-919.

²³⁶Zerk, Jennifer, 2006. pp 151-155.

²³⁷Ibid; Leisinger, Klaus M. "On corporate responsibility for human rights." *Novartis Foundation for Sustainable Development, Basel* (2006).

²³⁸ Ibid; Kinley, David. *Civilising globalisation: human rights and the global economy*. Cambridge University Press, 2009.

²³⁹ Ibid.

the concept of social and environmental responsibilities of MNCs.²⁴⁰ In March 2000, the then 15 EU leaders decided at the Lisbon Spring Council that the EU should commit to raising the rate of growth and employment to strengthen social cohesion and environmental sustainability. This led the EU to set itself 'a strategic goal for the next decade, (that is) to become the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion, and respect for the environment'.²⁴¹

It is vital for any host country to ensure that it does not seek development for development's sake but rather a responsible and 'sustainable development'.²⁴² To many scholars, sustainable development challenges the increased integration of the world in a capitalist economy dominated by MNCs.²⁴³ This pattern of development takes into account the integration of economic, social and environmental aspects of a country.²⁴⁴ Thus, economic growth, societal concerns and environmental protection are all driven harmoniously and in tandem. This will inevitably lead to a period of national prosperity and sustainability. Furthermore, when acting responsibly, a State will avoid the unnecessary risks associated with a short-term development plan and its adverse effects such as the abuse of human rights and environmental degradation.²⁴⁵ This is particularly true when countries "race to the bottom" in terms

²⁴⁰ Ibid

²⁴¹De la Porte, Caroline, Philippe Pochet, and Belgium Graham Room. "Social benchmarking, policy making and new governance in the EU." *Journal of European Social Policy* 11.4 (2001): 291-307.

²⁴²Hopwood, Bill, Mary Mellor, and Geoff O'Brien. "Sustainable development: mapping different approaches." *Sustainable development* 13.1 (2005): 38-52.

²⁴³Middleton, Neil, Philip O'Keefe, and Sam Moyo. *The tears of the crocodile: from Rio to reality in the developing world*. Pluto Press, 1993; Christie, Ian, and Diane Warburton. "From here to sustainability: politics in the real world." *Journal of Environmental Planning and Management* 44.5 (2001): 757-760.

²⁴⁴R. Holme, P. Watts, and World Business Council for Sustainable Development, *Corporate Social Responsibility: Making Good Business Sense* (World Business Council for Sustainable Development, 2000) at 2.

²⁴⁵Hopwood, Bill, Mary Mellor, and Geoff O'Brien, 2005.

of their environmental and social standards in the competition for foreign investors as being analysed earlier in this chapter.²⁴⁶ This “race to the bottom” often compels these countries to further lower their human rights standards and regulatory rules to attract more foreign investment²⁴⁷. In searching for even more investment-driven development, host states are willing to barter their ‘power’ of regulation in return for short-term economic benefits.²⁴⁸ Such a short-term view will not only affect current generations, but also will come at the expense of future generations too.²⁴⁹ Since this is a vital subject to this thesis, chapter four will mainly be focused on the concept of sustainable development where it is fully examined.

Saudi Arabia has to play a key role in ensuring that it provides protection for both its people and environment. In this regard, private companies, in particular MNCs, are under the national control of the state according to the principle of national sovereignty.²⁵⁰ According to Sornarajah, such control is exercised through two stages. The first stage is prior the entry of the foreign investor into the host state where the latter “has an absolute right of control over the entry and establishment and the whole

²⁴⁶ J. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge Press, 2006), p154; Basinger, Scott J., and Mark Hallerberg. "Remodeling the competition for capital: How domestic politics erases the race to the bottom." *American Political Science Review* 98.02 (2004): 261-276.

²⁴⁷ Clare Duffield, ‘Multinational Corporations and Workers’ Rights’ in Stuart Rees and Shelley Wright (eds), *Human Rights, Corporate Responsibility: A Dialogue* (2000), 194; Mahmood Monshipouri, Claude Welch Jr and Evan Kennedy, ‘Multinational Corporations and the Ethics of Global Responsibility: Problems and Possibilities’ (2003) 25 *Human Rights Quarterly* 965, 973; Ariadne Sacharoff, ‘Multinationals in Host Countries: Can They Be Held Liable under the Alien Tort Claims Act for Human Rights Violations?’ (1998) 23 *Brooklyn Journal of International Law* 927,

²⁴⁸ Kwamena Acquah, *International Regulation of Transnational Corporations: The New Reality* (1986) 66; Steven Ratner, ‘Corporations and Human Rights: A Theory of Legal Responsibility’ [2001] *Yale LawJl* 32; (2001) 111 *Yale Law Journal* 443; Beth Stephens, ‘The Amorality of Profit: Transnational Corporations and Human Rights’ (2002) 20 *Berkeley Journal of International Law* 45.

²⁴⁹ B. Weiss, ‘In Fairness To Future Generations And Sustainable Development’, *U. J. Int'l L. & Pol'y* 19 (1992-1993) p 26.

²⁵⁰ M. Sornarajah *The International law of foreign investment* (Cambridge University Press, 2010), p 88.

of the process of foreign investment”.²⁵¹ This is generally regulated by the host state foreign investment laws.²⁵² However, the first stage of control by the host state is subject to any bilateral or regional treaties that contain “pre-establishment rights”, such as the right of entry to any investor from one of the contracting states.²⁵³

The second stage of control is after the establishment of the company in the host state. At this time the foreign investor and his property are subject to the host state’s laws and regulations.²⁵⁴ These laws and regulations are the most immediate legal sources for ensuring the environmentally²⁵⁵ and socially sound conduct of MNCs. Thus, the second stage can be considered as the main gate for imposing social and environmental obligations on MNCs by the host state. In the case of Saudi Arabia, Article 15 of the Saudi Foreign Investment Law (SFIL) states that “(t)he foreign investor shall comply with all laws, regulations and directives in force in the Kingdom of Saudi Arabia, as well as international agreements to which the Kingdom is party”.²⁵⁶ However, in my view, the SFIL is an attempt by the government to attract more foreign investment simply through incentives and fewer regulatory restrictions. For example, Article 6 of the SFIL provides that “(a) project licensed under this Law shall enjoy all the benefits, incentives and guarantees extended to a national project, according to laws and directives”.²⁵⁷ Moreover, Article 7 of the SFIL states that “(a) foreign investor may repatriate its share that is derived either from the sale of its

²⁵¹ Ibid.

²⁵² Muchlinski, ch 6.

²⁵³ Sornarajah, p88; Adair, David R. "Investors' Rights: The Evolutionary Process of Investment Treaties." *Tulsa J. Comp. & Int'l L.* 6 (1998): 195; Correa, Carlos M. "Investment Protection in Bilateral and Free Trade Agreements: Implications for the Granting of Compulsory Licenses." *Mich. J. Int'l L.* 26 (2004): 331; Simma, Bruno. "Foreign Investment Arbitration: A Place for Human Rights?." *International and Comparative Law Quarterly* 60.03 (2011): 573-596.

²⁵⁴ Sornarajah, p 88.

²⁵⁵ E. Morgera, *Corporate Accountability in International Environmental Law*, (Oxford University Press, 2009) p 25.

²⁵⁶ See for further details 'Foreign Investment Law', *Royal Decree No M/1(2000)* (Saudi Arabia, 2000).

²⁵⁷ Ibid.

equity, the liquidation surplus, or from profits generated by the firm, or to dispose of it in any other lawful manner. The foreign investor may also transfer the amounts required to settle any contractual obligations related to the project”.²⁵⁸ Nonetheless, there is a lack of reference in the SFIL to the need to ensure that foreign investors’ activities in Saudi Arabia are socially and environmentally responsible. This is crucial because Saudi Arabia needs to show its commitment towards pursuing economic development that is socially and environmentally sustainable. Thus, foreign investors in Saudi Arabia must be well informed that the country is determined about protecting the society and environment. Therefore, I think there is a need for a provision which clearly states that the government is committed to ensuring that foreign investors’ activities have to be socially and environmentally responsible through adhering to widely internationally recognised standards relating to human rights, labour rights and the environment. Of course, these standards needs also to be reflected in the Saudi Arabian laws in order to ensure compliance and enforceability. Furthermore, other legal instruments which are likely to have a bearing on regulations of the operation of MNCs in the country have to include provisions for human rights, labour rights, and environmental protection, as I argue throughout this thesis. These regulations include the SFIL²⁵⁹, Saudi Companies Regulation²⁶⁰, Corporate Governance Regulation²⁶¹, Saudi Labour Law²⁶², and Saudi General Environmental Law²⁶³. Complying with these laws must be made compulsory on foreign investors so as to make sure their activities do not involve abuses of human rights, labour rights, and the environment in Saudi Arabia. Although there is no reference to foreign investors in the Saudi labour

²⁵⁸ Ibid

²⁵⁹ Ibid

²⁶⁰ 'Companies Regulation', (Royal Decree No. M/6 (1965); Saudi Arabia, 1965).

²⁶¹ 'Corporate Governance Regulations', in The Board of Capital Market Authority (ed.), (1/212/2006; Saudi Arabia, 2006).

²⁶² 'Labour Law', *Royal Decree No. M/51 (2005)* (Saudi Arabia, 2005).

²⁶³ 'General Environmental Law', *Royal Decree No. M/34 (2001)* (Saudi Arabia, 2001).

and environmental laws, there is no indication of exempting those investors from such laws. Nevertheless, I think such a reference is fundamental because the Saudi government has to make it clear for foreign investors that no one is exempted from the national laws and regulations.

The significant shift in the trend towards more liberal economic choice is a relatively new era for the country's foreign investment experience. Therefore, it should reform a very concrete policy that can ensure dignity and prosperity for its people. Such policy would consider a balanced approach to development in which economic development does not come at the cost of the people and environment in Saudi Arabia. A reflection of such policy on Saudi laws is necessary if the country is to achieve best results in terms of social and environmental protection. I believe that the current legal context in Saudi Arabia needs to be reviewed in light of the new era the country is experiencing. As such, human rights, labour rights, and environmental concerns all must be taken into consideration by introducing provisions which cover these fundamental issues.

Summary

The present chapter has sought to offer a clear definition of MNCs, their characteristics, and their different types of legal structures in Saudi Arabia. The joint venture structure of MNCs has been proven to be the most preferred form MNCs in the country. Since MNCs are considered as foreign investors, theories on foreign investment have been discussed. Such discussion was offered to show how Saudi Arabia perceived foreign investment. Two main theories of foreign investment have been analysed, namely: the classical theory and the dependency theory. The former

embraces the view that foreign investment is totally beneficial to the economy of any host state. This chapter has also shown that the classic theory on foreign investment is supported by the 'neoclassical market perspective' which views the market, as the most efficient allocator of resources, should be allowed to operate with as little regulatory interference as possible. Hence, this chapter argued that Saudi Arabia has adopted the classical theory on foreign investment and has also been a supportive of the neo-classical market perspective since the beginning of the twenty first century. The chapter has also examined the dependency theory holds the view that foreign investment will not generate "meaningful development", categorically opposing the classical theory. This is because MNCs take surplus wealth from host developing states leaving their economic performance suffers to the benefit of foreign capital.

It was seen that the significant shift in the trend towards more liberal economic choice is a relatively new era for the Saudi Arabia's foreign investment experience. Therefore, it must reform a very concrete policy that can ensure dignity and prosperity for its people. Such policy must consider a balanced approach to development in which economic development does not come at the cost of the people or the environment in Saudi Arabia. A reflection of such policy on Saudi laws is necessary if the country is to achieve best results in terms of social and environmental protection. The legal instruments in Saudi Arabia must be reviewed in light of the new era the country is experiencing so as to ensure that sustainable economic development is achieved. The lack of reference in the SFIL to the need to ensure that foreign investors' operations in Saudi Arabia are socially and environmentally responsible must be addressed by the Saudi government. This is vital because Saudi

Arabia should demonstrate seriousness towards pursuing economic development that is socially and environmentally sustainable.

Chapter 3

The debate over corporate governance: a theoretical analysis

Chapter two examined the theories and ideologies which have shaped the debate over foreign investment. MNCs were the central focus of that chapter since there are dominating the discourse on foreign investment. The focus was, first, on providing a definition for MNCs and how they are incorporated in Saudi Arabia. I argued in chapter two that MNCs must be controlled and regulated at national level if they are to operate in Saudi Arabia so as to ensure that their operations do not have negative impacts on society or on the environment. Chapter three looks at how regulating corporations can be perceived by different corporate theories. As MNCs operate in developing countries they tend to enjoy favourable economic conditions as well as benefits which were fully examined in chapter two, such as low costs of production and labour in developed countries. MNCs' presence in host countries has come under great scrutiny especially in terms of their governance.¹ MNCs' home states do not necessarily apply the same corporate theory, therefore it is important to examine the corporate governance theories. These theories have resulted in different corporate governance models which are being practiced worldwide. It is widely acknowledged that corporate governance systems vary because of divergent ideologies, histories,

¹George Monbiot, *Captive State: The Corporate Takeover of Britain* (Macmillan, 2000); Korten, *When Corporations Rule*; N. Klein, *No Logo* (Picador, 1999); N. Klein, *Fences and Windows* (Picador, 2002); Hertz, *Silent Takeover*; N. Chomsky, *Profit over People* (Seven Stories Press, New York, 1999); G. Palast, *The Best Democracy Money Can Buy* (Pluto, 2002), B. Ehrenreich, *Nickel and Dimed* (Granta, London, 2002); E. Schlosser, *Fast Food Nation* (Penguin, London, 2002); M. P. Toynbee, *Hard Work* (Bloomsbury, London, 2003); W Hutton, *The World We're In* (Little Brown, London, 2002); M. Chossudovsky, *The Globalisation of Poverty* (Pluto, Halifax, Nova Scotia, 1998); P Harrison, *Inside the Third World* (3rd edn, Penguin, Harmondsworth, 1993); Hertsgaard, *Earth Odyssey*; Karliner, *Corporate Planet. Dine, Companies, International Trade and Human Rights* (Cambridge: Cambridge University Press, 2005),

political beliefs, and social, economic and other influences.² Thus, this chapter will examine four corporate theories which have influenced the discourse around corporate governance. These theories include the agency theory, the nexus of contracts theory, the stakeholder theory, and the concession theory. The first two theories are related to each other and their reflections can be seen from the United States and the United Kingdom corporate governance systems. French and German corporate governance systems are influenced by the stakeholder theory, and the concession theory. The reason behind examining the four theories in this chapter is because this thesis examines how MNCs especially from the United Kingdom and Germany operate in host developing states, particularly in Saudi Arabia. Hence, this chapter will lay the theoretical foundations of corporate governance in some developed countries and how they differ from each other. The significance of this chapter is that it will provide an international perspective of corporate governance. The implications of such theoretical frameworks on the activities of MNCs representing their home countries are also going to be considered in following chapters.

² Gourevitch, Peter. "Politics, institutions and society: Seeking better results." *World Bank legal review: Law equity and development* 2 (2006): 263-292; Sikavica, Katarina, and Toru Yoshikawa. "Globalization and Corporate Governance Convergence: The Multinational Corporation as a Neglected Agent of Convergence." *The Convergence of Corporate Governance*. Palgrave Macmillan UK, 2012. 212-233.

Agency Theory

At the very heart of this theory are the potential conflicts which arise between the shareholders of a public company and its directors.³ The former are considered to assume ownership of the company, whereas the latter's role is running the venture.⁴ The following often-quoted words of Adam Smith explain the reason behind the tension that could potentially happen between shareholders and directors. "The directors of companies, being managers of other people's money than their own, it cannot well be expected that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own".⁵ This view suggests the possibility of directors not being sensibly running the company in the best interest of the shareholders who are considered to be the owners of the company. Yet, the interests of other stakeholders are beyond the focus of this theory since their interests are considered to be external to the company. I believe this view is wrong because stakeholders are affected by any company's actions and therefore should be taken into account, as will be discussed later in this chapter. What makes this matter even more prominent is the fact that many countries' economies have shifted towards industrialisation and development, as seen in chapter two, which have reflected into their markets.⁶ Such shift also led to a significant phenomenon of the early years of the twentieth century which is the conversion of the firm from the joint stock company to the public company where shares were now listed on stock

³ Jensen, Michael C. "Eclipse of the public corporation." *Harvard Business Review* (Sept.-Oct. 1989), revised (1997).

⁴ Freeman, R. Edward, and David L. Reed. "Stockholders and stakeholders: A new perspective on corporate governance." *California management review* 25.3 (1983): 88-106; Ibid.

⁵ Smith, Adam. "The Wealth of Nations, Book 1." *London, Methuen & Co* (1776).

⁶ Mallin, Christine. *Corporate Governance: Second edition*. Oxford University Press, New York, 2010. p 15.

exchanges.⁷ Such rapid evolution of the corporation with a shareholding now held by millions led to a very significant issue commonly known as the separation of ownership and control.⁸

Separation of Ownership and Control

The 1932 pioneering work of Berle and Means in their book *The Modern Corporation and Private Property*, was at the forefront in highlighting the notion of separation of ownership and control.⁹ Analysing data of a number of US publicly listed companies, the authors found that as the respective companies became larger, they attain great power largely exercised by the directors, and their ownership tended to become dispersed.¹⁰ As a result it became progressively harder for the original owners to maintain their majority shareholdings, and shares became dispersed among a large number of small shareholders.¹¹ The implication of this dispersal, as suggested by Berle and Means, was the usurpation of power by the company's directors who ran the day-to-day affairs of the company. These directors were seen as having interests not necessarily corresponding to those of the shareholders. Berle and Means asserted that:

The rise of the modern corporation has brought a concentration of economic power which can compete on equal terms with the modern state . . . Where its own interests are concerned, it even attempts to dominate the state. The future may see the economic organism, now typified by the corporation, not only on an equal plane with

⁷Tricker,Bob., *Corporate Governance: Principles, Policies and Practices*, Oxford Univerisity Press, Oxford, 2009 p 9

⁸ Dine, Janet and Koutsias, Marios., *The Nature of Corporate Governance: The Significance of National Cultural Identity. Corporations, Globalisation and the Law* , Edward Elgar, 2013. p 94

⁹ Berle, Adolf Augustus, and Gardiner Gardiner Coit Means. *The modern corporation and private property*. Transaction Publishers, 1991. p 313.

¹⁰ Ibid

¹¹ Ibid

the state, but possibly even superseding it as the dominant form of social organization.¹²

To surmise Berle and Means's thesis of separation of ownership and control, Farrar suggests that their thesis based on three foundations: the dispersal of shareholdings so that no one shareholder typically owned a substantial segment of the shares; the minor holdings of management; and the divergence of interests of shareholders and managers.¹³ It has been argued that an equally important concern namely: the potential concentration of political power, which is a subject prominent in American political thought going back to Thomas Jefferson, was also embedded in Berle and Means' argument.¹⁴

Thus, as defined by Jensen and Mechling 1976, the agency theory recognises the agency relationship as a contract between two parties: on the one hand the principal who delegates work to the agent on the other hand.¹⁵ The former being the shareholders give decision-making authority to the latter being the directors who act on behalf of the principal.¹⁶ The basic agency problem occurs because of a separation between decision making carried out by the agent (the directors of the company) and the bearing of residual risk by the principal (the shareholders).¹⁷ Such problem can also be described as indicative to the difficulties experienced by financiers in guaranteeing that their funds are not expropriated or misused on unappealing

¹²Ibid.

¹³Farrar, John. Corporate governance: Theories, principles and practice. Oxford University Press, 2008, p 45.

¹⁴Mizruchi, Mark S. "Berle and Means revisited: The governance and power of large US corporations." *Theory and Society* 33.5 (2004): 579-617.

¹⁵ Jensen, M. "Mechling (1976),!" Theory of the Firm: Managerial Behavior, Agency Costs and Ownership.

¹⁶ Ibid.

¹⁷ Ibid.

projects.¹⁸ Therefore, the main objective of the shareholders is to obtain purely financial gains from ownership of their equity investments.¹⁹ As such, other stakeholders of the company such as labour, the environment, and society at large are not taken into account by shareholders or management since the only objective of the company is profit maximisation. Thus, the agency problems when arise cannot be resolved at a zero cost because of the unlikelihood of perfectly contracting for the actions of directors whose decisions impact on their own welfare as well as on the shareholders'.²⁰ Since complete contracts between the agent and the principal are unfeasible, the latter has to assign residual control rights for particular circumstances. Such rights are customarily retained by those who are best capable of using them—the company's directors.²¹

Since the company is controlled by management, private benefits of control are mainly known to the company's directors rather than shareholders.²² Jensen and Meckling maintain that such inefficiency is diminished with increase of managerial incentives to make value maximising decisions.²³ They argued that agency costs are incurred because of the appropriate incentives given to the directors so as to act in the best interest of the company shareholders who (the principals) ultimately pay such costs.²⁴ These costs arising from the agency relationship issues are recognised be

¹⁸Shleifer, Andrei, and Robert W. Vishny. "A survey of corporate governance." *The journal of finance* 52.2 (1997): 737-783.

¹⁹Ibid

²⁰Brennan, Michael J. "Corporate finance over the past 25 years." *Financial Management* (1995): 9-22.

²¹Shleifer and Vishny 1997

²²Clacher, Iain, David Hillier, and Patrick Mccolgan. "Agency Theory: Incomplete Contracting and Ownership Structure." *Corporate Governance: A Synthesis of Theory, Research, and Practice* (2010): 141-156. P 142.

²³Jensen, Michael C., and William H. Meckling. "Agency Costs and the Theory of the Firm." *Journal of Financial Economics* 3.4 (1976): 305-360.

²⁴ibid

financial markets and therefore reflected in the company's share price.²⁵ The value loss to shareholders resulting from the cost of reducing discrepancies of interest between the company's shareholders and directors has been labelled as "Type I agency costs".²⁶ This type of costs, according to Jensen and Meckling, include monitoring costs, bonding costs, and residual loss. The monitoring costs are expenses paid by the principal to measure, observe, and control the agent's performance. Such costs may cover audits, writing executive compensation contract, and the cost of employing and dismissing top directors. Although the principal will be paying these costs when required, the agent, it is argued, will ultimately bear these costs since his compensation is adjusted to cover them.²⁷ However, the idea that effective monitoring will be limited to certain groups or individuals is contended.²⁸ Three conditions have to be met by monitors before an effective mentoring is conducted; they must have the required expertise, the monetary incentives to monitor management of the company, and they must impose a credible threat to management's control over the company.²⁹ Nevertheless, some scholars have cautioned against excessive monitoring since it will not only confine managerial initiative and entrepreneurship, but also will be costly because a cutback in directors discretion will affect shareholders who do not have the human capital to exploit potential opportunities facing the company.³⁰ In my view, all stakeholders' interests have to be acknowledged and taken into account both by shareholders and directors of the company. Moreover, social and environmental

²⁵Clacher, Iain, David Hillier, and Patrick Mccolgan. "Agency Theory: Incomplete Contracting and Ownership Structure." *Corporate Governance: A Synthesis of Theory, Research, and Practice* (2010): 141-156. At 142.

²⁶Ibid.

²⁷Fama, Eugene F., and Michael C. Jensen. "Separation of ownership and control." *Journal of law and economics* (1983): 301-325.

²⁸Denis, David J., Diane K. Denis, and Atulya Sarin. "Agency problems, equity ownership, and corporate diversification." *The Journal of Finance* 52.1 (1997): 135-160.

²⁹Ibid

³⁰Burkart, Mike, Denis Gromb, and Fausto Panunzi. "Large shareholders, monitoring, and the value of the firm." *The Quarterly Journal of Economics* (1997): 693-728..

duties must be imposed on directors of companies so as to ensure that they will be made accountable for their decisions and actions which could have negative impacts on society and the environment.

Shleifer and Vishny argued that in principle, one could imagine a contract in which the shareholders give funds to the manager on the condition that they retain all the residual control rights.³¹ If something unanticipated happens, they are entitled to decide what is to be done.³² This, however, is not effective, for the simple reason that the shareholders are not competent or informed enough to decide what to do – the very reason they employed the manager in the first place.³³ Therefore, the manager ends up with significant residual control rights and consequently discretion to allocate funds as he decides.³⁴ There may be restrictions on this discretion indicated in the contract, which much of corporate governance deals with these limits, but the fact is that most of the residual control rights are retained by managers.³⁵

The situation is more problematic in practice for two reasons.³⁶ First, the contracts that the managers and investors sign cannot demand too much clarification if they are to be enforced by outside courts.³⁷ In the United States, the courts have more extensive role than anywhere else in the world, but even there the so-called business judgment rule keeps the courts out of the affairs of firms.³⁸ In much of the rest of the world, courts only interfere in immense violations by managers of shareholders' rights

³¹Shleifer and Vishny 1997. See also Prowse, Stephen David. Corporate governance in an international perspective: a survey of corporate control mechanisms among large firms in the United States, the United Kingdom, Japan and Germany. No. 41. Bank for International Settlements, 1994.

³²Shleifer and Vishny 1997.

³³Ibid; Porta, Rafael, Florencio Lopez-de-Silanes, and Andrei Shleifer. "Corporate ownership around the world." *The journal of finance* 54.2 (1999): 471-517.

³⁴Ibid.

³⁵Ibid

³⁶Ibid; Porta, Rafael La, et al. *Law and finance*. No. w5661. National bureau of economic research, 1996.

³⁷ Ibid

³⁸ Ibid

such as erasing shareholders' names from the register.³⁹ Second, in the cases where financing involves collection of funds from many investors, these investors themselves are often small and too inadequately informed to exercise even the control rights that they actually have.⁴⁰ The free rider problem faced by individual investors makes it indifferent for them to learn about the firms they have financed, or even to participate in the governance, just as it may not pay citizens to get informed about political candidates and vote.⁴¹ As a result, the effective control rights of the managers and hence the room they have for discretionary allocation of funds end up being much more extensive than they would have been if courts or providers of finance became actively involved in detailed contract enforcement.⁴²

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Downs, Anthony. *An Economic Theory Of Democracy*. Harper, New York , 1957, 260-276.

⁴² Shleifer and Vishny 1997; Demsetz, Harold, and Kenneth Lehn. "The structure of corporate ownership: Causes and consequences." *The Journal of Political Economy* (1985): 1155-1177.

Nexus of Contract Theory

The nexus of contracts theory is inherently linked to the agency theory; both have been examined either individually or collectively.⁴³ The company, according to this theory, can be conceptualised as a nexus of contracts – an overlapped network of explicit and implicit agreements (not essentially legally binding contracts) among those who constitute and interact with the company (i.e. internal and external company stakeholders).⁴⁴ The nexus of contracts theory is deeply rooted in the work of economist Ronald Coase on transaction cost theory.⁴⁵ The existence of the company is due to coordination of explicit and implicit contracts it delivers is more efficient than making the same goods or providing the same services by contracting for each of the needed components of the business in the market.⁴⁶ In Saudi Arabia, the company also falls within the nexus of contracts theory. Article 1 of the Saudi Companies law states that “A company is defined as a contract under which two or more persons undertake to participate in an enterprise for profit, by contributing a share in the form of money or work, with a view to dividing any profits (realized) or losses (incurred) as a result of such enterprise”. Jensen and Meckling argued that “contractual relations are the essence of the firm, not only with employees but with suppliers, customers, creditors, etc”. They believed that organisations, including firms, “are simply legal fictions which serve as a nexus for a set of contracting relationships among individuals”. By “legal fictions”, they meant “the artificial

⁴³ Dine and Koutsias, 2013, Dine, p 94.

⁴⁴ Jensen and Meckling 1976

⁴⁵ Heminway, Joan MacLeod. "Theoretical and Methodological Perspectives." *The SAGE Handbook of Corporate Governance* (2012): 96; Coase, Ronald H. "The nature of the firm." *economica* 4.16 (1937): 386-405; Williamson, Oliver E. "The economics of organization: The transaction cost approach." *American journal of sociology* (1981): 548-577.

⁴⁶ Williamson, Oliver E. "The modern corporation: origins, evolution, attributes." *Journal of economic literature* (1981): 1537-1568.

construct under the law which allows certain organizations to be treated as individuals". To them,

[t]he private corporation or firm is simply one form of legal fiction which serves as a nexus for contracting relationships and which is also characterized by the existence of divisible residual claims on the assets and cash flows of the organization which can generally be sold without permission of the other contracting individuals.

It has been suggested that understanding a business organisation requires one to observe the bargains reached by the company's various stakeholders over four important deal points: "risk of loss, return, control, and duration".⁴⁷ As observed by Oliver Hart, "contractual relations with employees, suppliers, customers, creditors, and others are essential aspect of the firm".⁴⁸ In this regard, Stephen Bainbridge argued that the problem with regarding the company as either a person or a real entity is that it disregards the basic fact that companies act only through individuals.⁴⁹ The nexus of contracts theory among other contractual theories of the company "reject reification of the corporation except as a semantic shorthand". Rather than regarding the company either as a person or an entity, "contractarian scholars view it as an aggregate of various inputs acting together to produce goods or services".⁵⁰ Employees provide labour; creditors fund debt capital, shareholders bring forth equity capital and consequently assume the risk of losses and oversee the performance of the management.⁵¹ Management supervises the performance of employees and coordinates the conducts of all the company's inputs.⁵² Hence, the company is not a thing, "but rather a nexus of explicit and implicit contracts establishing rights and

⁴⁷Klein, William A. "The modern business organization: Bargaining under constraints." *Yale Law Journal* (1982): 1521-1564; Bainbridge, Stephen. *The new corporate governance in theory and practice*. Oxford University Press, 2008.

⁴⁸Hart, Oliver. "Economist's Perspective on the Theory of the Firm, An." *Colum. L. Rev.* 89 (1989): 1775.

⁴⁹Bainbridge, Stephen. 2008. p 28

⁵⁰Ulen, Thomas S. "Coasean Firm in Law and Economics, The." *J. Corp. L.* 18 (1992): 301.

⁵¹Bainbridge, 2008, p 28

⁵²Ibid

obligations among the various inputs making up the firm”.⁵³ According to Jensen’s and Meckling’s form of contractual theory, corporate social responsibility is nonsense.⁵⁴ As such, the only accepted form of social responsibility is the one that each of the individuals making up the nexus of contracts has.⁵⁵ They stated that:

Viewing the firm as the nexus of a set of contracting relationships among individuals also serves to make it clear that the personalization of the firm implied by asking questions such as “what should be the objective function of the firm”, or “does the firm have a social responsibility” is seriously misleading. The firm is not an individual. It is a legal fiction which serves as a focus for a complex process in which the conflicting objectives of individuals (some of whom may “represent” other organizations) are brought into equilibrium within a framework of contractual relations. In this sense the “behavior” of the firm is like the behavior of a market; i.e., the outcome of a complex equilibrium process. We seldom fall into the trap of characterizing the wheat or stock market as an individual, but we often make this error by thinking about organizations as if they were persons with motivations and intentions.

Jensen’s and Meckling’s version of contractual theory has been criticised for that it fails to address “the possibility that contracts can be entered into for the sake of pursuing a common social objective”.⁵⁶ Common long-term social goals can be forgone as a consequence of enlightened self-interest of those entering into contractual relationships.⁵⁷ Indeed, corporate social responsibility could be the rational effect of contractual relations since “complex contracts often establish shared norms and behavioural expectations”.⁵⁸ However, it is to the directors and other participants in the contracts as to whether pursuing “social ends is of value to the company”.⁵⁹ Thus, I will be arguing later that the Saudi government has to impose social and environmental duties on directors of all companies in Saudi Arabia.

⁵³ Ibid.

⁵⁴ Kerr, et al, (2009), p 65.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid, p 66.

⁵⁸ Ibid.

⁵⁹ Ibid, p 67.

Stakeholder theory

The fulcrum of the whole debate about “stakeholder theory” is to locate and classify “those groups who can affect or are affected by the achievement of an organisation’s purpose”.⁶⁰ Freeman rightly argued that a company has to bear a fiduciary duty not only to its shareholders but to its stakeholders as well.⁶¹ Hayek suggested that “(t)here are four groups on whose behalf it might be claimed the corporations ought to be run in their interest: management, labor, stockholders and the public at large”.⁶² As argued by Donaldson and Preston, the fundamental basis of stakeholder theory is normative and involves the acceptance of two main ideas:

- (a) Stakeholders are persons or groups with legitimate interests in procedural and/or substantive aspects of corporate activity. Stakeholders are identified by their interests in the corporation, whether the corporation has any corresponding functional interest in them.
- (b) The interests of all stakeholders are of intrinsic value. That is, each group of stakeholders merits consideration for its own sake and not merely because of its ability to further the interests of some other group, such as the shareowners.

Corporate governance, as a result, is “the process by which corporations are made responsive to the right and wishes of stakeholders”⁶³. It has been argued that the momentum towards political interference and civic engagement in corporate regulation and activity is “manifested increasingly through the growing debate on the “shareholder/stakeholder” balance in corporate governance”.⁶⁴ This undertakes, according to Bob Garratt, that “stakeholders will have greater powers over corporate

⁶⁰Freeman, R. Edward. *Strategic management: A stakeholder approach*. Cambridge University Press, 2010, p 49.

⁶¹Ibid.

⁶²Hayek, Friedrich A. "The corporation in a democratic society: in whose interest ought it and will it be run." *Business Strategy. Harmondsworth: Penguin* (1969): 124-146.p 102

⁶³Demb, Ada, and F-Friedrich Neubauer. "The corporate board: Confronting the paradoxes." *Long range planning* 25.3 (1992): 9-20.

⁶⁴Garratt, B., *The Fish Roots From the Head The Crisis in Our Boardrooms: Developing the Crucial Skills of the Competent Director*. Harper Collins Business: London, (1996), p 245.

direction-giving in the twenty-first century”.⁶⁵ Proponents of stakeholder approach have used arguments derived from Kantian capitalism, modern theories of property and distributive justice, and Libertarian theories with its notions of freedom, rights and consent. It is believed that the “stakeholder legitimacy” is central to the stakeholder theory.⁶⁶ Freeman asserted that:

"[s]takeholder" connotes "legitimacy," and while managers may not think that certain groups are "legitimate" in the sense that their demands on the firm are inappropriate they had better give "legitimacy" to these groups in terms of their ability to affect the direction of the firm. Hence, "legitimacy" can be understood in a managerial sense implying that it is "legitimate to spend time and resources" on stakeholders, regardless of the appropriateness of their demands.⁶⁷

Freeman’s assertions have created ambiguity within stakeholder theory between “broad” versus “narrow” debate.⁶⁸ On the broad side, competitors, news media, and others, are considered as stakeholders.⁶⁹ The “narrow” perspective “conclude that only those groups to whom a moral obligation is owed be considered stakeholders, thereby omitting strategically important constituencies from the theory”.⁷⁰ However, stakeholder approach presents a different perspective on the concept of corporate social responsibility through which ethics is made central.⁷¹ Thus, and despite the lack of consensus around it, the stakeholder theory can be seen as a push for more consistent understanding of business-society relationship, in which morality plays a key role. According to Andrew Keay, there are three aspects of the theory: normative,

⁶⁵Ibid.

⁶⁶Freeman, 2010, p 45.

⁶⁷Ibid.

⁶⁸Phillips, Robert. "Stakeholder legitimacy." *Business Ethics Quarterly* (2003): 25-41, p 27.

⁶⁹Ibid

⁷⁰Ibid.

⁷¹Garriga and Melé. 2004, p 51.

descriptive and instrumental.⁷² The normative is an explanation, on a moral basis, of how those who are able to be classified as stakeholders should be treated, and it holds that stakeholders should be seen as ends and not means”.⁷³ Stakeholders are inherently valuable to the company and as a result they should be treated as such in the management of the affairs of the company.⁷⁴ This is a legitimacy claim, and at its heart is a clear disagreement with shareholder primacy,⁷⁵ the idea that managers should run companies primarily for the shareholders and to ensure that their wealth is maximised.⁷⁶ “The descriptive aspect of stakeholder theory is that it is used to explain specific corporate behaviour. The instrumental aspect provides a framework for examining the links between the practice of stakeholder management and a company’s performance, and is concerned with looking at how stakeholderism can improve a company’s efficiency and success”.⁷⁷

In this respect, and as early as 1776, Adam Smith’s famous book *The Wealth of Nations* asserted that there is an invisible hand links “the self-interest of private economic agents to desirable economic improvement in general welfare”.⁷⁸ Accordingly, economic entities have no intention whatsoever to operate in the interest of external parties, such as society; if some needs of such parties are fulfilled, then it

⁷² Keay, Andrew. "Stakeholder Theory in Corporate Law: Has it Got What it Takes?"(2010)." *Richmond Journal of Global Law and Business* 9: 249.

⁷³ Ibid

⁷⁴ Reynolds, Scott J., Frank C. Schultz, and David R. Hekman. "Stakeholder theory and managerial decision-making: Constraints and implications of balancing stakeholder interests." *Journal of Business Ethics* 64.3 (2006): 285-301.

⁷⁵ Van de Ven, Bert. "Human rights as a normative basis for stakeholder legitimacy." *Corporate Governance: The international journal of business in society* 5.2 (2005): 48-59.

⁷⁶ D. G. Smith, “The Shareholder Primacy Norm” (1998) 23 *Journal of Corporate Law* 277; L. Stout, “Bad and Not-So-Bad Arguments for Shareholder Primacy” (2002) 75 *South California Law Review* 1189; J. Fisch, “Measuring Efficiency in Corporate Law : The Role of Shareholder Primacy” 31 *J Corp L* 637 (2006)

⁷⁷ Keay, 2010.

⁷⁸ An observation made by Shum, Paul K., and Sharon L. Yam. "Ethics and law: Guiding the invisible hand to correct corporate social responsibility externalities." *Journal of business ethics* 98.4 (2011): 549-571, p 552.

is not intended by business. Moreover, Adam Smith accused business of operating against the public interest. In this regard, he stated:

People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices. It is impossible indeed to prevent such meetings, by any law which either could be executed, or would be consistent with liberty and justice. But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies; much less to render them necessary.⁷⁹

Hence, the classic economic theory assumes no more than pure competition by business operations in the sake of profit. Nonetheless, it can be said that a business operation that results in outcomes, whether bad or good, to an external party, society for example, suggests a relationship between that business and society. This is because society is involved with that business as a result of its operations that have affected the society whether good or badly. Given such relationship, I think it is fundamental that there must be regulations imposed on companies in order to make sure that their activities are socially and environmentally responsible.

⁷⁹Smith, Adam, Dugald Stewart, and M. Garnier. *The Wealth of Nations*, (1825), p 128.

The debate over “social responsibility”

There is a different view on the nature of business-society relationship described in Secchi’s “managerial theory”. This theory highlights corporate management wherein the corporation approaches corporate social responsibility internally.⁸⁰ This advocates that everything external to the corporation is considered for organizational decision-making.⁸¹ “As a consequence, corporate management should take into account social demands, and integrate them in such a way that the business operates in accordance with social values.”⁸² The essence behind the managerial theory is, however, the work of Sethi in the 1970s. He introduced the concept of “corporate social performance”. In so doing Sethi endeavoured how to distinguish between corporate behaviour that might be called “social obligation,” “social responsibility,” and “social responsiveness”.⁸³ According to him, “social obligation” is the behaviour of a corporation “in response to market forces or legal constrains”.⁸⁴ Here, the principles used are economic and legal.⁸⁵ However, “social responsibility implies bringing corporate behaviour up to a level where it is congruent with the prevailing social norms, values, and expectations of performance”.⁸⁶ Thus, “social responsibility, by contrast, goes beyond social obligation”.⁸⁷ The former is prescriptive in nature

⁸⁰Secchi, Davide. "Utilitarian, managerial and relational theories of corporate social responsibility." *International Journal of Management Reviews* 9.4 (2007): 347-373.

⁸¹Ismail, Maimunah. "Corporate social responsibility and its role in community development: An international perspective." *The Journal of International Social Research* 2.9 (2009): 200-209, p 201.

⁸²Garriga and Melé. 2004, p 57.

⁸³Sethi, S P ‘The dimensions of corporate social performance’ *An Analytic Framework*, California Management Review, (1975), 17, 58-64

⁸⁴Ibid.

⁸⁵Carroll, Archie B. "Corporate social responsibility evolution of a definitional construct." *Business & society* 38.3 (1999): 268-295, p 279.

⁸⁶Sethi, 1975, 58-64.

⁸⁷Carroll, 1999, p 279.

whereas the latter is proscriptive.⁸⁸ Finally, “social responsiveness” which entails that the corporate behaviour is adapted to social needs.⁸⁹

Perceiving that social responsibility as going beyond economic and legal considerations, poses an important question; that is to what extent, beyond economic and legal concerns, social responsibility should go. Carroll proposed a four-part definition of corporate social responsibility embedded in the concept of corporate social performance.⁹⁰ According to him, three distinct aspects of the latter must somehow be expressed and interrelated.⁹¹ These aspects are (a) a basic definition of corporate social responsibility, (b) an understanding of the issues for which social responsibility exists, and (c) a specification of the philosophy of response to social issues. Consequently, “(t)he social responsibility of business encompasses the economic, legal, ethical and discretionary expectations that society has of organisations at a given point in time”.⁹² Carroll argued that the first and foremost social responsibility of business is economic in nature.⁹³ This is because the business institution is, before anything else, is “the basic economic unit in our society”.⁹⁴ In fulfilling this role, a business is expected to produce goods that society requires, however, selling them at profit.⁹⁵ Therefore, “all other business roles are predicated on this fundamental assumption”.⁹⁶ However, society expects business to obey the

⁸⁸Ibid.

⁸⁹Sethi, 1975, 58-64.

⁹⁰Carroll, 1979, 497-505.

⁹¹Ibid, p 499.

⁹²Ibid, p 500.

⁹³ Wood, Donna J. "Corporate social performance revisited." *Academy of management review* 16.4 (1991): 691-718; Ibid.

⁹⁴ Carroll, Archie B. "The pyramid of corporate social responsibility: Toward the moral management of organizational stakeholders." *Business horizons* 34.4 (1991): 39-48; Ibid.

⁹⁵ Friedman, Milton. *The social responsibility of business is to increase its profits*. Springer Berlin Heidelberg, 2007; Ibid.

⁹⁶ Ibid

law just as they are expected to make profits.⁹⁷ Thus, the fulfilment of business economic mission has to be sought simultaneously within the framework of legal requirements of the society.⁹⁸ Ethical responsibility perceives that society has expectations of business beyond legal requirements.⁹⁹ Discretionary responsibilities are “purely voluntary”: they are “not mandated, not required by law, and not even generally expected of businesses in an ethical sense”; “they are left to individual judgment and choice”.¹⁰⁰

The popular conception of social responsibility have been criticised for its suggestion that the scope of managerial responsibility is unlimited.¹⁰¹ Preston and Post stated that:

In the face of the large number of different, and not always consistent, usages, we restrict our own use of the term social responsibility to refer only to a vague and highly generalized sense of social concern that appears to underlie a wide variety of ad hoc managerial policies and practices. Most of these attitudes and activities are well-intentioned and even beneficent; few are patently harmful. They lack, however, any coherent relation to the managerial unit’s internal activities or to its fundamental linkage with its host environment.¹⁰²

However, they presented the term “public responsibility” “to stress the importance of the public policy process, rather than individual opinion and conscience, as the source of goals and appraisal criteria”.¹⁰³ According to them, “public policy includes not only the literal text of law and regulation but also the broad pattern of social direction reflected in public opinion, emerging issues, formal legal requirements and

⁹⁷ Ibid

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ Ibid.

¹⁰¹ Preston, Lee E., and James E. Post. Private management and public policy: The principle of public responsibility. Stanford Business Books, 1975, 95.

¹⁰² Ibid, p 9.

¹⁰³ Ibid, p 102.

enforcement or implementation practices”.¹⁰⁴ This has been described as being the essence of the principle of public responsibility.¹⁰⁵

A further different view on “social responsibility” can be seen from Friedman’s famous argument about what he called “the doctrine of social responsibility”. He argued in his famous book *Capitalism and Freedom* that the doctrine is “fundamentally subversive”.¹⁰⁶ His assertion was that “few trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than to make as much money for their stockholders as possible”.¹⁰⁷ He stated that:

In a free-enterprise, private-property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom.¹⁰⁸

Friedman’s assertions are based on the “principal-agent relations” or “agency theory” discussed earlier in this chapter. Agency theorists, such as Jensen and Meckling, argued that corporations are systematised to minimize the costs of getting some participants (the agents) to do what other participants (the principals) desire; the agents are expected to represent their principals.¹⁰⁹ The primary assumption of agency theory is that the legal rights of owners and their ethical responsibility remain at the

¹⁰⁴Preston, L. E. and J. E. Post., ‘Private Management and Public Policy’, *California Management Review* 23(3),1981, 56–63.p 57.

¹⁰⁵Garriga and Melé. 2004, p 59.

¹⁰⁶Friedman, Milton. *Capitalism and freedom*. University of Chicago press, 2002.p 133.

¹⁰⁷Ibid.

¹⁰⁸Friedman, Milton. "The social responsibility of business is to increase its profits." *Corporate ethics and corporate governance* (2007): 173-178.p 173.

¹⁰⁹Jensen, Michael C., and William H. Meckling. "Theory of the firm: Managerial behavior, agency costs and ownership structure." *Journal of financial economics* 3.4 (1976): 305-360.

centre of the enterprise.¹¹⁰ Therefore, “there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud”.¹¹¹ This illustrates clearly that the only responsibility of business is the maximisation of profits to the shareholders. In pursuing such an objective, business is only required to adhere to “the rules of the game”; that is to maintain a “free competition”, which is free from “deception or fraud” as described by Friedman. As a result, “socio-economic objectives are completely separate from the economic objectives”.¹¹² Friedman’s approach to corporate social responsibility has been categorised under Secchi’s “utilitarian theories”¹¹³ and Garriga and Meles’ “instrumental theories”¹¹⁴.

Nevertheless, a broader view can be seen from McGuire’s thought where he rightly accepted the dominance of economic concerns, however, accompanied with a sense of social responsibility.¹¹⁵ He held that “the idea of social responsibilities supposes that the corporation has not only economic and legal obligations, but also certain responsibilities to society which extend beyond these obligations”.¹¹⁶ In a similar view, Backman proposed that “social responsibility usually refers to the objectives or motives that should be given weight by business in addition to those dealing with economic performance”.¹¹⁷ This additional requirement presented by McGuire and Backman suggested that the view of Friedman is limited in the way it restricts social

¹¹⁰Weiss, Andrew R. "Cracks in the foundation of stakeholder theory." *Electronic Journal of Radical Organizational Theory* 1 (1995): 1-12, p 3.

¹¹¹ Ibid.

¹¹²Garriga and Melé. 2004, p 53.

¹¹³ Secchi, Davide. "Utilitarian, managerial and relational theories of corporate social responsibility." *International Journal of Management Reviews* 9.4 (2007): 347-373.

¹¹⁴ Garriga and Melé. 2004, p 53.

¹¹⁵ McGuire, Joseph William. *Business and society*. McGraw-hill, 1963.

¹¹⁶ Ibid

¹¹⁷ Backman, J ‘The social responsibility and accountability’ New York University press (1975), p 2.

responsibility of business to a means for achieving economic objectives.¹¹⁸
Accomplishing such objectives will result in wealth creation and profits to the
shareholders which, as far as Friedman was concerned, is the only responsibility of
business.¹¹⁹

¹¹⁸ Ibid.

¹¹⁹ Ibid.

Concession Theory

The concession theory, according to Bottomley, entails two related claims; each has a strong and a weak version.¹²⁰ The first claim is “to describe the state grant of corporate status as a privilege, thereby underlining the state's claim to control over the process of incorporation and its subsequent use”.¹²¹ This can be seen from the judgment of Cooke J in *Nicholson v Permakraft Ltd*¹²² where he stated that:

[L]imited liability is a privilege. It is a privilege healthy as tending to the expansion of opportunities and commerce, but it is open to abuse. Irresponsible structural engineering involving the creating, dissolving or transforming of incorporated companies to the prejudice of creditors-is a mischief to which the courts should be alive.¹²³

The weak version of the first claim is restricted to the suggestion that a “corporation owes its *legal* existence and powers to the grant of corporate status from the state”.¹²⁴

The strong version of the claim, however, is that “the corporation is an artificial entity which owes its very existence to the state, thereby inviting a much wider debate”.¹²⁵

The second claim of the concession theory “can be read as a *quid pro quo* for the grant of corporate status”. As a result of being created by the state there is a supposition in favour of state regulation of a company's activity after incorporation.

The weaker side of this claim is the presumption that “purports to give the state control over both the extent of the corporation's legal capacity and the exercise of that capacity”. The strong version of the claim is that “it requires not only fulfilment of

¹²⁰Bottomley, Stephen. "Birds, The Beasts, and the Bat: Developing a Constitutionalist Theory of Corporate Regulation, The." *Fed. L. Rev.* 27 (1999): 243, p 247.

¹²¹*Ibid.*

¹²²(1985) 3 ACLC 453 at 459.

¹²³*Ibid.*

¹²⁴Bottomley, (1999), p 248.

¹²⁵*Ibid.*

public regulations but also an affirmative duty to perform in the public interest or in a socially responsible fashion. The strong regulatory claim “makes corporate law inseparable from corporate social responsibility in the sense that the concession authority can only be understood in light of public purposes”.¹²⁶ This idea has survived in the form of discussions about the necessity for corporate social responsibility, “and in the theory that companies should be regarded essentially as social enterprises”.¹²⁷ At least, corporate social responsibility is an implicit feature of the concession theory.¹²⁸

¹²⁶ Kerr, et al,(2009), p 65.

¹²⁷Bottomley, (1999), p 248.

¹²⁸ Ibid.

A New Proposal for Social and Environmental Duties of Directors in Saudi Arabia

There is no specific law or regulation on how MNCs should conduct business in Saudi Arabia in terms of their impacts on the society and environment. The Corporate Governance Regulations which impose some sort of obligation on directors of companies to take into account stakeholders of the company such as labour and the environment. Nevertheless, the Corporate Governance Regulations are limited to joint stock companies. Only national companies may choose this type of company. Foreign investors are incorporated under the limited liability company type. Thus, the Corporate Governance Regulations will not apply to MNCs in Saudi Arabia because they are outside the scope of the regulations. Although the regulations were recently amended in 2010, they still do not address the issue regarding foreign investments nor limited liability companies. But I think the Corporate Governance Regulations must be imposed on all types of business in Saudi Arabia since this will be seen as an important step by the government towards socially and environmentally responsible business practices which will lead to the achievement of sustainable economic development.

In Addition, the Saudi Companies Regulation must not be silent on issues regarding social and environmental concerns. Thus, in my view, the Saudi government has to impose social and environmental duties on directors of all companies in Saudi Arabia. As will be seen in chapter 4, the Saudi General Environmental Law can impose some environmental duties on directors of the company. However, I think that direct environmental duties of directors must be imposed through specific provisions in the Saudi Companies Regulation. In this respect, the following provisions which were

proposed by the 2002 UK Corporate Responsibility Bill¹²⁹ can be relevant to the Saudi Companies regulation. Hence, I argue that introducing the following provisions into the Saudi Companies Regulation is fundamental so as to ensure that directors of companies are in compliance with their social and environmental duties.

Environmental and social duties of directors:¹³⁰

A director of a company shall, when considering any matter or taking any decisions, act in the way which in his opinion would be most likely to promote the success of the company, but in so doing it shall be the duty of the directors of any company—

- (a) to consider—
 - (i) the environmental, social and economic impacts of their operations and any proposed operations; and
 - (ii) the interests of all their stakeholders when making any decision in respect of those operations or proposed operations;
- (b) to take all reasonable steps to minimise any negative environmental, social and economic impacts of any such operations or proposed operations; and
- (c) to prepare a annual report which identifies any risks to the company as a result of the company’s environmental, social and economic impacts and how any such risks would be managed.

Responsibilities of directors

The directors of any company [...] shall be liable for any significant adverse social, environmental or economic impacts of their

operations which arise from—

- (a) any negligence by them;
- (b) any wilful misconduct by them in relation to the duties of any company under this Act; or
- (c) any wilful misconduct by them relating to the disclosure of information required by this Act.

¹²⁹ United Kingdom, Corporate Responsibility Bill, 2002.

¹³⁰ Ibid.

Summary

Chapter 3 looked at corporate theories. As MNCs operate in developing countries they tend to enjoy favourable economic conditions as well as other benefits which are fully discussed in chapter two. MNCs' presence in host countries has come under great scrutiny in terms of the way they operate in such countries. Since MNCs come from different countries that do not necessarily apply the same corporate theory. These theories have resulted in many corporate governance models which are being practiced worldwide. It is widely acknowledged that corporate governance systems vary because of divergent ideologies, histories, political beliefs, and social, economic and other influences. Thus, this chapter examined four corporate theories which have influenced the discourse around corporate governance. Finally I argued that the Saudi Companies Regulation has to impose social and environmental duties on directors of all companies in Saudi Arabia in the aforementioned framework.

Chapter 4

Environmental responsibility of MNCs

Chapter 3 examined the corporate theories which have shaped corporate governance and how companies are expected to function according to each theory. This is important because different countries have different legal systems which may well apply different corporate theories. With MNCs being the main focus of this thesis, their ability to operate beyond home states necessitated the exploration of how they function in different jurisdictions. The argument of this thesis is that MNCs should be regulated so as to achieve sustainable development that does not harm the environment or the society. It is therefore essential that this chapter shows how the concept of sustainable development¹ has evolved and changed over time. Historically, the concept emerged from concerns about natural resources and how they can be rationalised so as to ensure the survival of future generations. Over the time, there have been many changes in the discourse about sustainable development. These changes advocate one of two main approaches: the preservationist and the conservationist. The former's primary focus was on nature and how it can be preserved, i.e. to keep nature safe from any interference by human. The latter approach was less intense in the way that it considered human entitlement to live on nature. However, themes under this approach varied in terms of their dealing with what is acceptable and what is not from human. This chapter will then examine these approaches and themes as to what effects they have had on the international political

¹ Sustainable development is to "meet the needs of the present without compromising the ability of future generations to meet their own needs". Comisión Mundial Del Medio Ambiente Y Del Desarrollo et al., *Our Common Future* (Oxford University Press, 1987). More discussion on the description of the concept will follow.

dialogue on sustainable development. Moreover, this chapter will propose a definition! of the concept of sustainable development.

The History behind the Emergence of Sustainable Development

Before engaging with the term of sustainable development which is a relatively new concept of the twentieth century, it is essential to look back even before the development of the term itself. This will allow for a better, clear and solid understanding of what is really behind the invention of the term. The exact meaning of sustainable development is believed to be unclear.² It has also been argued that the term gives little guidance as to the way in which it should be interpreted, offering two potential understandings which underline its ambiguity.³ David A. Munro argues that:

[t]he terms sustainable development and sustainability have been used to characterize almost any path to the kind of just, comfortable, and secure future to which everyone aspires. But like other suddenly fashionable words and phrases, these have been misunderstood and misused with increasing frequency. Even worse, they have been used to misinform so as to gain advantage for narrow and special interests. One may well ask, do they still have any meaning beyond rhetoric?⁴

An important step is to identify the history led to the development of the concept. Such a step has been taken by Christopher Gregory Weeramantry in his separate opinion on the *Case Concerning The Gabčíkovo—Nagymaros Project* (Hungary/Slovakia).⁵ He argued that “wisdom” had been implemented by ancient

²A. Ross, 'Modern Interpretations of Sustainable Development', *Journal of Law and Society*, 36/1 (2009), 32-54 at 34.

³K. Bosselmann, *The Principle of Sustainability: Transforming Law and Governance* (Ashgate Publishing, 2008) at 55.

⁴T.C. Trzyna, *A Sustainable World: Defining and Measuring Sustainable Development* (International Center for the Environment and Public Policy for the World Conservation Union (IUCN), 1995).

⁵ Separate Opinion of Justice Vice-President Christopher Gregory Weeramantry in *Case Concerning The Gabčíkovo—Nagymaros Project* (Hungary/Slovakia) (1997), ICJ Rep. 7.

civilizations and traditional legal systems over the world through which some principles of these systems are “pertinent to the concept of sustainable development”. Environmental wisdom, he added, is a rich source of the past (, which has reflections on the contemporary environmental issues,) yet is largely left untouched by modern environmental law. However, it can be argued that wisdom is not merely the reason that ancient civilisations were caring about the environment; other social and economic factors can be responsible for the development of environmental conservation as will be seen later in this chapter.

It is interesting that ancient civilizations were concerned about the environment. But this raises the question: why did they want to protect the environment and applied rules and principles through their legal systems? To answer such a question, the court on the same explained the constant interference of mankind throughout time with nature for economic and other reasons. This interference by man, if not regulated, could cause problems to the natural environment as observed by Mary Somerville in the nineteenth century. She noted that the animal creation, as a part of nature, has been affected by man whose intention is merely to fulfil his necessities and enjoyment. In a similar view of human’s impacts on nature, George Perkins Marsh asserted that “man has too long forgotten that the earth was given to him for usufruct alone, not for consumption, still less for profligate waste”.⁶ Marsh examined the interrelationships and interdependence of biotic groups, the balance of nature, and human disturbance of that balance.⁷ He sought to dismiss the myth of infinite resources, and called for scientific management practices. The work of Marsh was regarded by former US interior secretary Stewart Udall as “the beginning of land

⁶G.P. Marsh and D. Lowenthal, *Man and Nature* (Univ of Washington Pr, 1965) at 201-2.

⁷F.T. Wildes, 'Recent Themes in Conservation Philosophy and Policy in the United States', *Environmental conservation*, 22/02 (1995), 143-50 at 143.

wisdom”.⁸ The emergence of the ecological philosophy of conservation had been the result of Marsh’s remarkable work.

Marsh rightly warned against catastrophic disasters to nature that could happen as a consequence of non-conservative human involvement with nature. In this regard, a conservative human approach to nature is seemed to be fundamental if man is to protect nature and he shall thus survive himself. Hence, *Man and Nature* is believed to be “epoch-making”⁹ and “the fountain-head of the conservation movement”¹⁰. Fred T. Wilds provided the approaches to such a movement have been philosophically different over decades. The approaches can be categorized into two main sets – one represents non-use or preservation, and the other denotes utilitarian management of resources. The former was introduced by John Muir, naturalist and founder of the Sierra Club. He advocates the philosophy of preservation which entails that nature must be protected in use and preserved from all abuse. The conceptual underpinning for the preservationist school of thought in the United States was the ethical and aesthetic quality of nature as observed by Muir. Therefore, He thought that it was central to implement his idea of preservation of nature on the ground; which he was influential in the establishment of a number of national parks, and in the course of regulation for further preservation measures.

⁸S.L. Udall and J.F. Kennedy, *The Quiet Crisis* (Holt, Rinehart and Winston, 1963).

⁹G. Pinchot, *Breaking New Ground* (Island Pr, 1998) at xvi–xvii.

¹⁰L. Mumford, *The Brown Decades: A Study of the Arts in America, 1865-1895* (Dover Publications, 1971).

The latter approach is best described by Gifford Pinchot, architect of the utilitarian approach to conservation,¹¹ in his famous book *The Fight for Conservation*.¹² He rightly asserted that:

The central thing for which Conservation stands is to make this country the best possible place to live in, both for us and for our descendants [...]. Conservation stands for the same kind of practical common-sense management of this country by the people that every businessman stands for in the handling of his own business. It believes in prudence and foresight instead of reckless blindness; it holds that resources now public property should not become the basis for oppressive private monopoly; and it demands the complete and orderly development of all our resources for the benefit of all the people, instead of the partial exploitation of them for the benefit of a few. It recognizes fully the right of the present generation to use what it needs and all it needs of the natural resources now available, but it recognizes equally our obligation so to use what we need that our descendants shall not be deprived of what they need.

However, in my opinion, there has to be strict environmental regulations imposed on the private sector so as to make sure that their activities cannot irresponsibly exploit natural resources or result in environmental damages.

[The Main Themes within Conservation](#)

Started in the late nineteenth century and had achieved a dominant position in the first two decades of the twentieth century, conservation was not a subject of much importance throughout the period 1920-60 with a small number of exceptions in the Hoover and F.D. Roosevelt Administrations.¹³ Yet, after the period of stagnation, it was carried into the mainstream of scientific, economic, and even political thought by the environmental movement in the mid 1960s. This movement was primarily

¹¹Wildes, 'Recent Themes in Conservation Philosophy and Policy in the United States', (at 144.

¹²G. Pinchot, *The Fight for Conservation* (Doubleday, Page & Company, 1910) at VII.

¹³Wildes, 'Recent Themes in Conservation Philosophy and Policy in the United States', (at 143.

concerned about environmental destruction and pollution.¹⁴ Other themes of conservation followed this period, however, they are categorized under the two primary approaches described above: preservationist and utilitarian.

The reference to some of the recent themes in the conservation movement is essential to this research since they will be taken into account when it comes to the role of the international community regarding this subject. In particular, the study will peer closely at three themes; they are, as described by Wilds, *utilitarianism, limits to growth, and sustainable utilization*. The utilitarianism theme is explained as being concerned about the environment but at the same time retaining the developmental current situation.¹⁵ O’Riordan has described this approach within the utilitarianism theme as techno-centric. Nevertheless, according to Bill Devall, the attitudes towards environmental issues vary within this theme.¹⁶ Such attitudes, however, address and recognize environmental concerns through seeking economic growth and maintaining resource development.¹⁷

Unlike *utilitarianism, Limits to growth* theme emphasizes that human population should be controlled and people should move towards a "steady-state" or "conserver society" as swiftly as possible.¹⁸ In addition, “a number of observers have claimed that limits to continued growth, including steady-state societies, are necessary for the

¹⁴I. Burton, 'The Quality of the Environment: A Review', *Geographical Review*, (1968), 472-81.

¹⁵T. O’riordan, 'The Challenge for Environmentalism', *New models in geography: the political-economy perspective*, 1 (1989), 77-104.

¹⁶B. Devall, 'Deep Ecology Movement, The', *Nat. Resources J.*, 20 (1980), 299.

¹⁷Ibid.

¹⁸D.H. Meadows, Club Of Rome, and Potomac Associates, *The Limits to Growth: A Report for the Club of Rome's Project on the Predicament of Mankind* (Universe Books, 1974) at 45-46.; D.L. Meadows, *Alternatives to Growth-I: A Search for Sustainable Futures : Papers Adapted from Entries to the 1975 George and Cynthia Mitchell Prize and from Presentations before the 1975 Alternatives to Growth Conference, Held at the Woodlands, Texas* (Ballinger Pub. Co., 1977).

well-being, even the survival, of the human species”.¹⁹ Meadows et al identified two prerequisite conditions so as to sustain world economic and population increase.²⁰ The first comprises “the physical necessities that support all physiological and industrial activity — food, raw materials, fossil and nuclear fuels, and the ecological systems of the planet which absorb wastes and recycle basic chemical substance”.²¹ The second focuses on what can be termed “social necessities” such as peace and stability, education, employment and steady technological progress.

Sustainable utilization approach “is a natural extension of the dominant themes of the 1960s and 1970s” and is “a broader and more conceptual variation of Pinchot's philosophy.”²² It is also an endeavour to create a broad global environmental policy. In that policy, the concern is primarily about how to manage resources so that their capability for renewal is not endangered. Sustainable utilization preserves biological potential and boosts the long-term economic potential of resources. This approach is, in my view, essentially pragmatic since it provides sensible guidelines that can be followed so as to achieve the development with minimal costs to the environment or societies. Therefore, it will be discussed in more details below. However, the two approaches that have been taken towards defining conservation are the preservationists and the utilitarian. The former seems insignificant comparing to the latter when it comes to the debate about the protection of nature as from the 1970s. This will be explained later.

¹⁹Wildes, 'Recent Themes in Conservation Philosophy and Policy in the United States', (at 145.

²⁰Meadows, Rome, and Associates, *The Limits to Growth: A Report for the Club of Rome's Project on the Predicament of Mankind*.

²¹Ibid.

²²Wildes, 'Recent Themes in Conservation Philosophy and Policy in the United States', (at 145.

Sustainable development in Recent Times

The sustainable utilization theme is also known as sustainable development, which has been defined/analysed/examined by the report of the World Commission on Environment and Development, (hereinafter “*Our Common Future*”) or “*the Brundtland Report*” back in 1987.²³ At that time, the concept of sustainable development was defined as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs”.²⁴ Based on this concept, *Our Common Future* rightly advised that parallel problems of environmentally damaging issues and deficiency of social and economic development, should all be addressed together through an international political transformation.²⁵ The definition contains two main concepts: “the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs”.²⁶ *Our Common Future* warned against interrelated challenges facing human all around the world. These challenges include environmental, development, and energy crises. “Ecology and economy are becoming ever more interwoven – locally, regionally, nationally, and globally – into a seamless net of causes and effects.”²⁷

Despite the role played by *Our Common Future* in promoting the concept of sustainable development in the international dialogue, its underlining environmental

²³Comisión Mundial Del Medio Ambiente Y Del Desarrollo et al., *Our Common Future* (Oxford University Press, 1987).

²⁴Ibid., at ix.

²⁵Ibid.

²⁶Ibid. at <http://www.un-documents.net/ocf-02.htm#III.4>

²⁷ Ibid.

principles are not as recent.²⁸ As mentioned earlier, there have been endless efforts made regarding people's interaction with nature since ancient civilizations. The ultimate aim has always been to preserve human dignity and to ensure nature protection. It can be said that the current generation want to call their movement sustainable development. Their ancestors, however, may have different designations. Hence, what has led this generation to name their movement sustainable development is a question that needs to be answered because it will enhance the understanding of the research.

“Sustainable” has been used to describe the way in which people should interact with nature. It is possible that this term have been used to overtake the boundless discourse over conservation. This approach have been taken by the international community so as to reach a consensus on how the current generation deals with nature i.e. how people live their life without harming nature. The term first appeared in an International Union for Conservation of Nature (IUCN) publication called *World Conservation Strategy* back in 1980.²⁹ However, there is a difference between the two words: sustainable and conservative. The later is much stricter in that it sees human interaction with nature as interfering. On the other hand, the word sustainable perceives that it is a human right to live on nature. Living on nature involves consuming from nature what guarantees life. However, the word sustainable has been used to define the human approach towards nature as a balanced one.

²⁸M.C.C. Segger and A. Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* (Oxford University Press, 2004) at 16.

²⁹International Union for Conservation Of Nature, Natural Resources, and United Nations Environment Programme, *World Conservation Strategy: Living Resource Conservation for Sustainable Development* (The Union, 1980).

In the past, as seen above, people were concerned about their activities that involved interacting with nature. Such activities included obtaining food, water, and shelter. People were in desperate need to these three basic elements of life. Nevertheless, they did not neglect the fact that they had responsibilities to their descendants. Responsibilities that articulate the right of next generation to survive through rationalized use of the available resources by the parent generation. Not only people had a responsibility to the following generations, but also a responsibility to nature in which they had to look carefully into the way they take to fulfil their needs. It can be said that the ancestors' aims and needs were not too much to be accommodated, the descendants, however, seem to be struggling.

It is important to understand what the causes behind the struggling of the late generations to follow their ancestors. The answer is the eagerness of the recent generations to the so-called "development". "Development is a process directed at outcomes encapsulating improved standards of living and greater capacity for self-reliance in economies that are technically more complex and more dependent on global integration than before".³⁰ Accordingly, basic needs are considered to be fulfilled before moving to development as in its suggested form. In other words, it is assumed that food, water, and shelter are all met to some extent by the people who then seek to improve the existing living standards. Thus, it can be said that development is about growth. The question then is in which aspects of life human seek growth. The answer to this question requires looking to the political dialogue on the concept of sustainable development.

³⁰J. Remenyi, 'What Is Development?', *Key issues in development*, (2004), 22-44 at 22.

International Political Dialogue on Sustainable Development and Environmental Protection

Around the mid-twentieth century, the United Nations (UN) began to recognize an international sustainable development agenda. As such, in 1962, the UN General Assembly took a step in its resolution on economic development and the conservation of nature.³¹ In that resolution, the General Assembly requested governments to take effective natural resource preservation measures. Such measures were to be taken “at the earliest possible moment simultaneously with economic development”. The General Assembly placed further emphasis on pursuing such efforts in developing countries and called for assistance to be offered to them in that regard. Although the principal objective from the resolution is clear, the words used are ambiguous. The General Assembly used the words preservation and conservation virtually interchangeably. Nevertheless, the intention was to provide greater protection for nature when seeking economic development, yet the tone slightly advocates the preservation in the form of opposing economic growth. The Resolution 1831 of United Nations General Assembly can be indicative of the following view. As such, because foreign investors are thought to be the vehicle carrying especially developing countries towards economic growth, at least from the perspective of the classical theory on foreign investment, economic development that brought about by foreign investment is less welcomed. The reason could be the fact that foreign investors are more likely to be willing to benefit from natural resources that developing countries had to offer. This seems to be one reason that the resolution favoured a more preservationist approach to economic growth. Thus, there can be a link between this

³¹United Nations General Assembly, ' Resolution. 1831, 17th Session ', (1962).At <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/193/39/IMG/NR019339.pdf?OpenElement>

proposition and the anti-globalisation movement which promoted the theory of dependence as discussed in chapter two. Although this may well be the right decision to take at the time, it was not so at least from the point of view of the classical theory's supporters. In particular, such a move would only be seen as a hindrance to economic development sought by developing countries. In my opinion, a balanced approach can be more effective and achievable, not least because the need of developing countries to economic growth, but also as a way of fairness that such countries were not discriminated at when they seek more development. This is because the developed world has achieved the development it needed, now it is the time for the developing world to follow suit.

In 1968, the UN General Assembly passed a second resolution in which it expressed its concerns about the relationship between human and the environment.³² These concerns emerged from the General Assembly's belief that grave dangers could result from uncontrolled man's activities towards meeting his needs and aspirations. For example, the General Assembly mentioned some of the environmental problems such as air and water pollution. However, the General Assembly did highlight the key role played by modern scientific and technological development which helped in offering unprecedented opportunities for human to change and shape their lives. It also made reference to the importance of ensuring man's dignity, enjoyment of basic human rights, mental and physical health, and social well-being. The 1968 resolution seems to be more concerned about the negative impacts which had been caused by human activities including the activities aimed at further economic development in which MNCs are a key players, as seen earlier. The call now was not only for putting the

³²United Nations General Assembly, 'Resolution. 1733, 23rd Session', (1968). At <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/243/58/IMG/NR024358.pdf>

protection of nature ahead of economic development, but also to find ways of solving ongoing problems affecting both man and nature. Like the 1962 UN resolution, the 1968 resolution is an attempt that can also fall perfectly within the argument's scope on foreign investment theories discussed earlier.

The 1968 resolution led to the UN Conference on Human Environment (Stockholm Conference) in 1972. The conference provided an opportunity for the international community to discuss collaboration in protecting the environment. At that conference, many developing countries were very concerned about the issue of poverty. The Afghanistan delegation, for example, stated that “the world's ills involve the three P's – pollution, population and poverty”. It is clear that the Stockholm Conference was a further affirmation on the issues covered by the 1962, 1968 UN resolutions. The message was stronger; nations needed to acknowledge what they may have denied for some time – that is environmental wisdom. Such *wisdom* had been followed by the ancestors, as mentioned earlier, and had been for long time the ultimate benchmark against which the interference of human with nature was measured. Therefore, the question one may ask whether *wisdom* still has a role in shaping man's involvement with nature. The answer to this question is provided in the following paragraphs.

The Stockholm Declaration embodied 26 principles which reflected the demand to a global attention and effort to environmental crisis facing the earth.³³ Principle 2, for instance, states that:

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the

³³Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/CONF.48/14 (1972).

benefit of present and future generations through careful planning or management, as appropriate.

It can be said that Principle 2 emphasizes the utilisation approach, which has been described earlier, towards nature conservation which is to better manage the use of natural resources so as to ensure the dignity of present and future generations. Furthermore, Principle 4 recognizes “a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat”. It adds that planning for economic development must not neglect nature conservation; instead, embed it in such a planning process. It is notable that the Stockholm Declaration re-established the wise sense again that is to take an intensified action to protect the natural resources for the good of man.

The result of Stockholm Declaration was the United Nations General Assembly resolution 2997 of 1972, which stressed the “need for prompt and effective implementation by governments and the international community of measures designed to safeguard and enhance the environment for the benefit of present and future generations of man”.³⁴ The resolution established the United Nations Environment Programme (UNEP), which was made effective in 1973. The mandate and objectives of the UNEP emanate from United Nations General Assembly resolution 2997. The programme concentrated on reinforcing and coordinating environmental policy, especially in developing countries. The idea is clear; nations decided to take a wise approach that would allow for protected life for present and future generations.

³⁴United Nations General Assembly, 'Resolution. 2997 (Xxvii), 27th Session', (1972). At <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/270/27/IMG/NR027027.pdf?OpenElement>

However, the Stockholm Declaration was criticized for not being binding since "an international agency can only give force to those international environmental principles that are directly incorporated into binding agreements or are accepted as customary international law"³⁵. Furthermore, Principle 21 of the Stockholm Declaration, generally considered to constitute customary international law, is explicitly mentioned in the preamble to the Framework Convention on Climate Change.³⁶ The UNEP, the UN body responsible for coordinating environmental policy and action among the other UN bodies, particularly the United Nations Development Programme ("UNDP"), is also a product of the Stockholm Conference. Unfortunately, the guidelines provided by Principle 21 and the Stockholm Declaration as a whole are vague at best; they do nothing more than recognize the elusive objective of maintaining state sovereignty in the face of environmental problems that defy ordinary principles of property and causation.³⁷

Similarly, in 1982, the UN General Assembly adopted the *World Charter for Nature* which provided further encouragement of what had been recognised by the Stockholm Declaration.³⁸ The Charter aims at protection of nature. Such protection was described by the charter in five principles revolving around the concept of managing human activities. As far as the Charter is concerned, controlling human interaction with nature should be recognised in the decision making process. As such, due account shall be taken of the fact that the conservation of nature is an integral part of social and economic development. The charter provided that such effort should be

³⁵Roelofs, Jeffrey L. "United States-Canada Air Quality Agreement: A Framework for Addressing Transboundary Air Pollution Problems." *Cornell Int'l LJ* 26 (1993): 421.

³⁶United Nations Conference on Environment and Development: Framework Convention on Climate Change, May 9, 1992, 31 I.L.M. 849 [hereinafter FCCC].

³⁷Harvard Law Review Assoc, Harvard Law Review, and United States of America. "Developments in the Law: International Environmental Law." *Harvard Law Review* 104.7 (1991): 1484-1639.

³⁸United Nations General Assembly, World charter for nature: Resolution 37/7, (1982).

implemented in both short-term and long-term planning for development. A reflection of the charter was urged to be introduced in the law and practice of each state, as well as at international level.

Despite being criticised as suffering from continual references to sustainability that is to be achieved in an unspecified way³⁹, *Our Common Future* of the 1968 resolution came to further express the Charter's finding that environmental issues should be looked into alongside social and economic ones. This was, as seen earlier, the basis of the concept of sustainable development. It is believed that *Our Common Future* "gave some direction for comprehensive global solution in the conflict between the environment and development".⁴⁰ In that since, *Our Common Future* states that:

Environment and development are not separate challenges; they are inexorably linked. Development cannot subsist upon a deteriorating environmental resource base; the environment cannot be protected when growth leaves out of account the costs of environmental destruction. These problems cannot be treated separately by fragmented institutions and policies. They are linked in a complex system of cause and effect.⁴¹

Since development necessitates a healthy approach towards nature, the only way is to conduct a sustainable development, a view that is also held by this thesis. This is mainly because of two reasons. First,

[s]ustainable development provides a framework for the integration of environment policies and development strategies - the term 'development' being used here in its broadest sense. The word is often taken to refer to the processes of economic and social change in the Third World. But the integration of environment and development is required in all countries, rich and poor. The pursuit of sustainable development requires changes in the domestic and international policies of every nation.⁴²

³⁹Ludwig, Donald, Ray Hilborn, and Carl Walters. "Uncertainty, resource exploitation, and conservation: lessons from history." *Science(Washington)* 260.5104 (1993): 17.

⁴⁰R. Ramlogan, *Sustainable Development: Towards a Judicial Interpretation* (Martinus Nijhoff Publishers, 2010) at 19.

⁴¹Desarrollo et al., *Our Common Future*.

⁴²*Ibid.*

Secondly,

[e]conomic growth always brings risk of environmental damage, as it puts increased pressure on environmental resources. But policy makers guided by the concept of sustainable development will necessarily work to assure that growing economies remain firmly attached to their ecological roots and that these roots are protected and nurtured so that they may support growth over the long term. Environmental protection is thus inherent in the concept of sustainable development, as is a focus on the sources of environmental problems rather than the symptoms.⁴³

As a result of *Our Common Future*, the UN called for a second international conference. In 1992, the United Nations Conference on Environment and Development (UNCED), also known as Earth Summit, was held in Rio de Janeiro. The approach was shifted from merely focusing on the human impact on the environment and assessing the relevance of the environment in terms of human needs — in the Stockholm Conference⁴⁴—, to emphasizing the importance of environmental protection and fostering the development — in the Earth Summit—. Both are equally fundamental and thus should be given priority. Moreover, the Earth Summit maintained that due account should be taken of the environment during the process of social and economic development. The Rio de Janeiro Declaration contained twenty-seven principles reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 1972, and seeking to build upon it. Principle 1 of the Rio de Janeiro Declaration stresses the “[h]uman beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature”.⁴⁵ This illustrates the shift from eco-centric approach where the emphasis was primarily on the protection of the environment in

⁴³Ibid.

⁴⁴Segger and Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* at 20.

⁴⁵Rio de Janeiro Declaration 1992.

the Stockholm Declaration, to an anthropocentric perspective where social and economic development is central to a healthy and productive life, as clearly seen in Principle 1 of the Rio de Janeiro's.

The Rio Declaration went on to describe what “a healthy and productive life” requires. In this regard, Principle 3 provides that “[t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”.⁴⁶ Thus, human's entitlement to development both social and economic is what constitutes such an anticipated life. The right to development is also what positions human back to the centre of attention. Moreover, Principle 4 implied that development is the ultimate target, however, it needs to be sustainable. To achieve such sustainable development, “environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it”. It can be said that the dominance of human concerns over mainly focusing on the environment may have been the result of the ignorance of actual human needs. In order to fulfil such needs, development is required. Previously however, it had been assumed that such development has unfortunate side effects on the environment. For example, the Stockholm Declaration was to some extent worried about the impacts of human activities on the environment, yet cautiously mentioned the need for development. This is clearly evident from the principles embodied in the Stockholm Declaration. Furthermore, the United Nations General Assembly was in favour of putting environmental issues before economic development.⁴⁷

Agenda 21 was another significant result from the Earth Summit. It offers a wide-

⁴⁶ *ibid*

⁴⁷ Assembly, 'Resolution. 1733, 23rd Session'. At <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/243/58/IMG/NR024358.pdf?OpenElement>

ranging plan combines strategies and programmes to prevent from the outcomes of environmental degradation and to encourage sustainable development around the globe. The preamble shed light on the role of Agenda 21 proclaiming that

[it] addresses the pressing problems of today and also aims at preparing the world for the challenges of the next century. It reflects a global consensus and political commitment at the highest level on development and environment cooperation. Its successful implementation is first and foremost the responsibility of Governments. National strategies, plans, policies and processes are crucial in achieving this. International cooperation should support and supplement such national efforts. In this context, the United Nations system has a key role to play. Other international, regional and sub regional organizations are also called upon to contribute to this effort. The broadest public participation and the active involvement of the non-governmental organizations and other groups should also be encouraged⁴⁸

The agenda covers four sections namely—“Social and Economic Dimensions”,⁴⁹ “Conservation and Management of Resources for Development”,⁵⁰ “Strengthening the Role of Major Groups”,⁵¹ and “Means of Implementation”.⁵² More than 178 Governments at the United Nations Conference on Environment and Development adopted Agenda 21, which is not legally binding. However, the agenda is considered as soft law.⁵³ As a result of Agenda 21, the UN established the Commission for

⁴⁸E. Summit, 'Agenda 21', (1992) at Preamble

⁴⁹This section contains seven chapters concerning international cooperation to accelerate sustainable development in developing countries and related domestic policies, combating poverty, changing consumption patterns, demographic dynamics and sustainability, protecting and promoting human health conditions, promoting sustainable human settlement development, integrating environment and development in decision-making.

⁵⁰Section 2 addresses the atmosphere, land resources, deforestation, desertification and drought, mountain ecosystems, sustainable agricultural and rural development, biological diversity, biotechnology, oceans and seas, fresh waters, toxic chemicals, hazardous wastes, solid and sewage waters, and radioactive wastes.

⁵¹This section deals with the idea that women, children and youth, indigence people, non-governmental organisations, local authorities, workers and trade unions, business and industry, science and technology, and farmers; should all play roles in achieving sustainable development.

⁵²Containing chapters on financial resources and mechanisms, transfer of environmentally sound technology, cooperation and capacity-building, science for sustainable development, promoting education, public awareness and training, national mechanisms and international cooperation for capacity-building in developing countries international institutional arrangements, international legal instruments and mechanisms, and information for decision-making.

⁵³Segger and Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* at 21.

Sustainable development to ensure the effective continuation of decisions made at the Rio de Janeiro conference particularly international cooperation towards the integration of environment and development, and implementation of Agenda 21.

In 1997, the United Nations General Assembly held a special session on sustainable development. The session is commonly known as “Earth Summit+5”. The very name of the session reveals the tendency to review and appraise implementation of Agenda 21 and other commitments five years after their adoption at the Earth Summit in Rio de Janeiro. Earth Summit+5 aimed at assessing global progress made in sustainable development since Rio; showing that sustainable development works by highlighting stories of successful efforts being made by people around the world; identifying reasons why goals set in Rio have not always been met and suggest corrective action; highlighting special issues — such as finance and technology transfer, patterns of production and consumption, use of energy and transportation, scarcity of freshwater — and identify priorities for future action; calling on Governments, international organizations and major groups to renew their commitment to sustainable development.

Three years from the Earth Summit+5, the UN General Assembly adopted a resolution named the United Nations Millennium Declaration. It contained what is called the Millennium Development Goals (2000). These goals embraced a wide range of issues such as commitments to human rights, economic development, and environmental protection. The goals reaffirm the principles of sustainable development, including those set out in Agenda 21, agreed upon at the Earth Summit. The declaration made it clear that the international community “must spare no effort

to free all of humanity, and above all our children and grandchildren, from the threat of living on a planet irredeemably spoilt by human activities, and whose resources would no longer be sufficient for their needs”.⁵⁴ The Millennium declaration is believed to have “provided an important milestone and series of concrete targets as reference points”.⁵⁵

In 2005 and 2010, the United Nations General Assembly adopted resolutions in an effort to review and appraise implementation of the Millennium Development Goals and other commitments five and ten years after their adoption at the Millennium Declaration. The reviews aimed at assessing the global progress made regarding the achievement of the Millennium goals; showing that these goals works by highlighting stories of successful efforts being made by people around the world; identifying reasons why some goals set in the Millennium have not always been met and suggest corrective action; identify priorities for future action; and calling on governments, international organizations and major groups to make positive contributions in the promotion and implementation of development and human rights programmes and stress the importance of their continued engagement with Governments, the United Nations and other international organizations in these key areas.

In 2001, however, the United Nations General Assembly passed a resolution expressing its deep concern that deterioration of the environment and the natural resource base that support life on earth, is continuing to at an alarming rate, despite the many successful and ongoing endeavours of the international community since the

⁵⁴United Nations General Assembly, *United Nations Millennium Declaration: Draft Resolution* (United Nations, 2000).<http://www.un.org/millennium/declaration/ares552e.htm>

⁵⁵Segger and Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* at 25.

Stockholm conference in 1972 and the fact that some progress has been achieved.⁵⁶ Thus, it decided to convene a ten-year review of progress achieved in the implementation of the outcome of the Earth Summit including Agenda 21. The General Assembly, therefore, called for a conference to be held in 2002, to reinvigorate the global commitment to sustainable development. The name of the conference was the World Summit for Sustainable Development (WSSD). The WSSD was sought to “focus on the identification of accomplishments and areas where further efforts are needed to implement Agenda 21 and the other results of the (Rio de Janeiro) Conference ..., and (to) result in renewed political commitment and support for sustainable development”.⁵⁷ Moreover, the WSSD’s mandate was to “ensure a balance between economic development, social development and environmental protection, as these are interdependent and mutually reinforcing components of sustainable development”.⁵⁸

The WSSD resulted in the negotiation and adoption of two main documents: the Johannesburg Declaration on Sustainable Development and the Johannesburg Plan of Implementation (JPOI). The Johannesburg Declaration reaffirms the international community’s commitment to sustainable development from Stockholm to Rio de Janeiro to Johannesburg. It emphasizes the commitment to build a humane, equitable and caring global society, cognizant of the need for human dignity for all. The Declaration also recognizes the importance of advancing and strengthening the symbiotic and mutually reinforcing three pillars of sustainable development — economic development, social development and environmental protection — at the local, national, regional and global levels. It also addresses the current challenges

⁵⁶United Nations General Assembly, 'Resolution, 199, 55th Session', (2001). At <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/571/15/IMG/N0057115.pdf?OpenElement>

⁵⁷Ibid.

⁵⁸Ibid.

including, poverty eradication, changing consumption and production patterns and protecting and managing the natural resource base. Other challenges were included such as the deep fault line between rich and poor, loss of biodiversity, desertification, pollution, the benefits and costs of globalization, and the deep distrust of the democratic systems. The document also reaffirms all governments' commitment to the principles and purposes of the Charter of the United Nations and international law, as well as to the strengthening of multilateralism.

The JPOI is another document produced by the WSSD which recognized the serious challenges facing the world. These challenges could, in effect, ruin the process of sustainable development. In this regard, the JPOI states that:

47. Globalization offers opportunities and challenges for sustainable development. We recognize that globalization and interdependence are offering new opportunities for trade, investment and capital flows and advances in technology, including information technology, for the growth of the world economy, development and the improvement of living standards around the world. At the same time, there remain serious challenges, including serious financial crises, insecurity, poverty, exclusion and inequality within and among societies. The developing countries and countries with economies in transition face special difficulties in responding to those challenges and opportunities. Globalization should be fully inclusive and equitable, and there is a strong need for policies and measures at the national and international levels, formulated and implemented with the full and effective participation of developing countries and countries with economies in transition, to help them to respond effectively to those challenges and opportunities.⁵⁹

Thus, to overcome such challenges, the JPOI offers a framework for action to further build on the accomplishments achieved since the UNCED and expedite the realization

⁵⁹South Africa. Dept. Of Environmental Affairs and Tourism. Directorate: Sustainable Development Coordination, *Johannesburg Plan of Implementation: Adopted by the United Nations World Summit on Sustainable Development in Johannesburg, South Africa, on 4 September 2002* (Directorate: Sustainable Development Coordination, Department of Environmental Affairs and Tourism, 2003) at V. Sustainable development in a globalizing world.

of the remaining goals.⁶⁰ The framework of the JPOI comprises eleven chapters including an introduction (1); and chapters on Poverty Eradication (2); Changing Unsustainable Patterns of Consumption and Production (3); Protection and Managing the Natural Resource Base of Economic and Social Development (4); Sustainable Development in A Globalizing World (5); Health and Sustainable Development (6); Sustainable Development of Small Island Developing States (7); Sustainable Development for Africa (8); and Other Regional Initiatives (9). The remaining two chapters are: Means of Implementation (10); and Institutional Framework for Sustainable Development.

It has been noted that the results of the WSSD reflect certain conceptual and procedural developments since the UNCED in 1992. As such, “[t]he more integrated, balanced treatment of the three social, economic and environmental pillars in the 2002 WSSD provides an indication of how the sustainable development agenda has evolved over the past ten years.”⁶¹ Hence, the focus of sustainable development is not solely on environmental issues any more.⁶² The enhancement of the concept has opened debates about its essence.⁶³ One team is in favour of the three pillars approach highlighting the social, environmental and economic dimensions of sustainable development; whereas another prefers “a more dualistic typology (emphasizing the relationship between humanity and nature)”.⁶⁴

⁶⁰Ibid., at introduction.

⁶¹Segger and Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* at 29.

⁶²Ramlogan, *Sustainable Development: Towards a Judicial Interpretation* at 23.

⁶³J. Robinson, 'Squaring the Circle? Some Thoughts on the Idea of Sustainable Development', *Ecological economics*, 48/4 (2004), 369-84 at 373.

⁶⁴Ibid.

The United Nations General Assembly decided in its resolution 64/236 of March 2010 to organize the United Nations Conference on Sustainable Development at the highest possible level, including Heads of State and Government or other representatives. The conference was held in Rio de Janeiro, Brazil, in June 2012. The was to mark the 20th anniversary of the 1992 United Nations Conference on Environment and Development (UNCED), in Rio de Janeiro, and the 10th anniversary of the 2002 World Summit on Sustainable Development (WSSD) in Johannesburg. The conference focused on two themes: green economy in the context of sustainable development and poverty eradication; and institutional framework for sustainable development. “The concept of green economy focuses primarily on the intersection between environment and economy. This recalls the 1992 Rio Conference: the United Nations Conference on Environment and Development.”⁶⁵ The conference highlighted seven critical issues that need priority attention. These issues include jobs, energy, sustainable cities, food security and sustainable agriculture, water, oceans and disaster readiness.

The outcomes of the conference were included in a document titled *The Future We Want*.⁶⁶ The document called upon governments to take a wide range of actions. These include beginning the process to establish sustainable development goals; specifying how the green economy can be used as a instrument to achieve sustainable development; strengthening the UN Environment Programme; encouraging corporate sustainability reporting measures; Strengthening the three dimensions of sustainable development; taking steps to go beyond gross domestic product to assess the well-being of a country; developing a strategy for sustainable development financing; and

⁶⁵ The United Nations Conference on Sustainable Development, Rio+20, available at: <http://www.uncsd2012.org/about.html>

⁶⁶ The Rio+20, *The Future We Want*, available at: <http://www.un.org/en/sustainablefuture/>

adopting a framework for changing unsustainable and promoting sustainable patterns of consumption and production.

The precautionary principle

The precautionary principle confirms that a substance or activity posing a threat to the environment is prevented from adversely affecting the environment, even if there is no decisive scientific proof linking that particular substance or activity to environmental harm.⁶⁷ The precautionary principle is a guiding principle and its purpose is to encourage, perhaps even oblige, decision makers to consider the likely harmful effects of their activities on the environment before they pursue those activities.⁶⁸ Definitions differ widely, from the general notion that it is desirable to prevent pollution, to the requirement that polluters establish by some appropriate burden of proof that their activities are not releasing potentially eco-reactive substances into the environment and thereby causing damage.⁶⁹ Proponents of the precautionary principle, as a new and progressive policy instrument, strive for a reversal of, or at the very least, a shift away from the current position whereby polluters can continue to discharge a wide variety of substances into the biosphere.⁷⁰ For too long, humankind has acted in the short-term interests of progress and profit rather than the long-term health and welfare of the planet.⁷¹ This leads to the now familiar situation in which human society discovers that it has already caused extensive and perhaps irreversible damage to the environment and finds tremendous

⁶⁷ Cameron, James, and Juli Abouchar. "Precautionary Principle: A Fundamental Principle of Law and Policy for the Protection of the Global Environment, The." *BC Int'l & Comp. L. Rev.* 14 (1991): 1.

⁶⁸ Raffensperger, Carolyn. *Protecting public health and the environment: implementing the precautionary principle*. Island Press, 1999.

⁶⁹ Ibid

⁷⁰ Sands, Philippe, and Jacqueline Peel. *Principles of international environmental law*. Cambridge University Press, 2012; *ibid*.

⁷¹ Ibid

difficulty in coping with the consequences.⁷² The precautionary principle focuses on the philosophical and spiritual relationship between humankind and the environment which sustains our physical existence.⁷³ It marks a re-evaluation of the development path chosen by many societies since the great period of industrialization that began in England in the late eighteenth century.⁷⁴ Pursued as a means to economic growth, industrial development has severely degraded the environment.⁷⁵ Many of our environmental problems are so grave that within a generation, some ecosystems may no longer sustain future generations of species-including human beings, in some extreme circumstances such as drought, famine, and inundation.⁷⁶ At the very least, such losses of species will impoverish the human experience which has been enriched by the immense diversity of the natural world.⁷⁷

⁷² Bodansky, Daniel. "United Nations Framework Convention on Climate Change: A Commentary, The." *Yale J. Int'l L.* 18 (1993): 451.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Cameron, James, and Juli Abouchar, 1991.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

Analysis of the Approaches towards Defining Sustainable Development and Environmental Protection

It can be noted that the evolution of the concept of sustainable development could only add to its vagueness. Table 1 below provides a summary of the most significant phases that sustainable development and its agenda have gone through. Observing such stages of the evolution of the concept will result in noteworthy findings. First, the core of the argument about the concept, its agenda, and its implementation has been shifting over the time. Such variation is evident from the fact that the focus and the theme of sustainable development stages were different. In 1962, the protection of nature was at the heart of the debate about nature conservation and economic development. Priority seems to have been given to protection of natural resources regardless of the importance of economic growth. This attempt can show that the approach was taken at that time was preservationist favouring nature preservation to economic development.

In 1968, there was a political trend towards finding solutions to nature's problems and dangers. Seeking economic development shall not be halted so as to provide a solution to the issues and risks facing the earth. In this regard, it is possible to accommodate environmental problems by controlling human's activities, but not by putting restrictions on the way of economic growth. This might imply the following of the utilitarian approach where environmental protection should not contradict with economic development. The reason behind this change in thought may be the need to put human beings back to the centre of the discussion. This is because neglecting people's needs and aspirations will increase the division between the poor and the rich; between developing and developed nations.

The change-pattern in the argument over man-nature relationship is yet to reach further development. As such, in 1972, the idea of “inter- and intra-generational equity”⁷⁸ was introduced as a means of addressing the needs of current and future generations. As a result, this led to calls for safeguarding the natural resources for the benefit of present and future generations through careful planning and management. Therefore, the focus is no longer solely on the present generations of humankind but also on future ones too. This illustrates that the sustainable utilization approach had been shaped as early as in 1972. This approach has an additional element, which does not exist in the previous utilitarian approach: that is to ensure the efficient use of natural resources while protecting their capability for renewal. The conceptual shift may be a reflection of a recent international recognition that environmental wisdom should not be seen as merely protecting the environment but also as safeguarding nature which human is part of.

There have been constant efforts to uphold and maintain the approach taken by the Stockholm Conference. In this regard, the UNGA and the World Charter for Nature, in 1972 and 1982 respectively, gave further affirmations on the outcomes of the Stockholm Conference and call for measures of implementation. Such efforts were to ensure that conservation of nature is taken into account when pursuing economic goals. This was assumed to be a prerequisite for achieving and maintaining optimum sustainable productivity that adheres to sustainable utilization approach. This approach has inspired the international community to introduce the concept of sustainable development in 1987. Therefore, the main subject of the debate about ‘the need to develop’ and ‘the need to protect’ is that they both can be achieved, yet only through taking sustainable utilization approach.

⁷⁸Ramlogan, *Sustainable Development: Towards a Judicial Interpretation* at 12.

This theme continued to be the case in further international commitments such as in the UNCED Earth Summit (1992), in the United Nations Millennium Declaration (2000), and in the WSSD (2002). However, approaches within this theme recognize and address environmental concerns to one degree or another. In so doing, some of the efforts while maintaining sustainable utilization take an additional approach. For example, there has been an indication to the limits to growth approach by Our Common Future (1987) when it underlined the need to consider population growth. It asserts that “sustainable development can be pursued more easily when population size is stabilized at a level consistent with the productive capacity of the ecosystem”.⁷⁹ Another example, represents the utilitarian approach, can be seen from the Earth Summit and the WSSD where great deals of emphases have been placed on the idea of accommodating environmental issues without compromising economic development.

That being said, the implications of the different views about, approaches to, and interpretations of sustainable development lead to the question what does sustainable development suppose to mean? “One of the most striking characteristics of the term sustainable development is that it means so many different things to so many different people and organizations.”⁸⁰ In general, to some, it is about the preservation of the environment; to others, it is about the enhancement of development. The former recognises the negative impacts of human growth and development on the environment and communities. The latter, however, attempts to accommodate the demands of the former, however, greater attention is paid to human needs and aspirations.

⁷⁹Desarrollo et al., *Our Common Future*. At <http://www.un-documents.net/ocf-02.htm#III.4>

⁸⁰Robinson, 'Squaring the Circle? Some Thoughts on the Idea of Sustainable Development', (at 373).

Table 1: Summary of the Major Political Milestones of Sustainable Development at the International Level

Year	International initiative	Main Focus	Taken Approach towards Conservation
1962	UNGA Resolution. 1831, 17 th session	Governments to take effective natural resource preservation measures	Slightly advocates the preservationist approach in the form of opposing economic growth
1968	UNGA Resolution. 1733, 23 rd session	UNGA warns against grave dangers could result from uncontrolled human's activities towards meeting their needs and aspirations	Implicit the utilitarian approach that environmental problems shall be accommodated within the dominant pattern of resource development and economic growth
1972	The Stockholm Conference	Safeguarding the natural resources for the benefit of present and future generations through careful planning or management	Pre-empted the sustainable utilization approach which is to ensure the efficient use of natural resources while protecting their capability for renewal
1972	UNGA Resolution. 2997, 27 th session	Affirming the outcomes of the Stockholm Conference and calling for measures and implementation	Maintaining the sustainable utilization approach founded by the Stockholm Conference
1982	World Charter for Nature	Conservation of nature is an integral part of social and economic development. All natural resources that are utilized by man shall be managed to achieve and maintain optimum sustainable productivity.	Further affirmation on the sustainable utilization approach in general, with some reference to other approaches.

Year	International initiative	Main Focus	Taken Approach towards Conservation
1987	<i>Our Common Future</i>	Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.	Emphases were placed on the <i>sustainable utilization approach</i> . However, an indication has been given of the need for considering population growth, which may imply referring to the <i>limits to growth approach</i> .
1992	UNCED Earth Summit	Emphasizing the importance of environmental protection and fostering the development.	The <i>utilitarian approach</i> might have been employed to some extent, however, the summit and its outcomes have clear indication to the <i>sustainable utilization approach</i> .
2000	United Nations Millennium Declaration	Covering a wide range of issues such as commitments to human rights, economic development, and environmental protection. Reaffirming the principles of sustainable development, including those set out in Agenda 21, agreed upon at the Earth Summit.	A very conservative tactic seems to have been taken towards the <i>sustainable utilization approach</i> in a way that is very much concerned about the protection of nature.
2002	The World Summit for Sustainable Development	Ensuring a balance between economic development, social development and environmental protection, as these are interdependent and mutually reinforcing components of sustainable development	The focus appears to be mostly on development that accommodates environmental problems. This is a <i>utilitarian approach</i> . The core of the <i>sustainable utilization approach</i> was also implied.

A Proposed Definition of the Concept of Sustainable Development

Having examined the stages which the concept of sustainable development has gone through, I will try to define what the concept means or should mean. One way of describing the concept can be through perceiving the term in its whole form as one entity, i.e. 'sustainable development' is a compound noun that only refers to one object. Thus, when it is mentioned it would draw the attention to one distinctive sense, perhaps, a positive one. 'Positive' would imply that the opinions are in favour of development that is sustainable. 'Positive' might also imply that there is no contradiction between development and sustainability. Rather, sustainability is about development and vice versa. This type of thought can be seen from the World Summit for Sustainable Development 2002 onwards.

Another way of defining the concept can be by deeming that the term 'sustainable development' consists of two different ideas. On the one hand, the word 'sustainable' represents efforts to sustain nature. This might be emerged from the concerns surrounding what is called 'development' and its negative impacts on nature. The word 'development' on the other hand indicates human aspirations to fulfil their needs and beyond. In so doing, they will require to use natural resources. The use of these resources may be excessive due to the large number of people who all need to such natural resources. However, their uses vary depending on their countries, cultures, and lifestyles. Such uses of natural resources, in particular uses in order to achieve beyond basic needs, are what 'development' is all about. This conflict

between the two ideas is evident from the attempts made towards preservation of nature prior to the UNCED Earth Summit in 1992.

Therefore, I suggest that the concept of sustainable development should be dealt with as a yardstick by which development is measured. As such, if activities towards development would exceed the 'acceptable limit', the concept should be applied in the direction of more conservative or preservative approach, as required. The acceptable limit should be decided in collaboration of both scientific and non-scientific experts all in their respective fields. However, if the level of activities towards development would go under the 'acceptable limit', the concept should then be applied to encourage development. Regarding the concept of sustainable development as a yardstick in the suggested formula is important since it will provide a protection from potential risks associated with disproportionate patterns of development and conservation. It will also provide assurance for developing countries that their needs and aspirations of better life which can be achieved through development, are not undermined by calls for a more preservationist attitude when they seek further development. This balancing way of dealing with the concept of sustainable development is also a reminder of the debate over the involvement of foreign investment in developing countries. Thus, it is equally important to find a middle path between the classical theory where foreign investment is believed to be wholly beneficial to the host developing country and therefore no restriction should be imposed on such investment, and the dependency theory whereby foreign investment can only be harmful to the host state and as a result should not be welcomed. The middle path assumes MNCs as a form of foreign investment in developing countries can cause both positive impacts and harm to economic

development, it is sensible therefore to adopt that such corporations should be harnessed to the objective of economic development and must be carefully regulated to reach that conclusion. Benefits can be fraught with risks and hence the higher the benefits, the lesser the risks and vice versa.

Sustainable Development and Environmental Protection in the Context of Saudi Arabia

It is of a significant importance to examine the concept of sustainable development⁸¹ in light of the Saudi context. This will require a close look to the concept from an Islamic perspective. The reason behind involving a discussion on sustainable development in Islam in this study, arises out of the fact that the Saudi law is built upon the Islamic legal system or what is known as “Sharia”. Article 1 of the Basic Law of Government states that “its constitution is Almighty God's Book, The Holy Quran, and the Sunna (Tradition) of the Prophet (PBUH)”.⁸² Quran and Sunna are the two main sources of Islamic law. Therefore, lights will be shed on the role of Islamic law regarding the environment which is central to the debate on sustainable development. The aim, thus, is to establish a clear vision on what the concept means in the Saudi law and Islamic law. It will also seek to determine whether the concept of sustainable development is perceived in the same manner both by Saudi law and Islamic law. In doing so, two elements to the concept should be explored, namely, environmental protection and development. The former is very much related to safeguarding the environment from any potential risks or damages. The latter, however, is related to the right of pursuing development.

⁸¹ For more discussion on the concept and its definition see Chapter 3 below.

⁸² Saudi Government, 'Saudi Basic Law of Government', (1992). Article 1, Majlis Ash-Shura's website at: <http://www.shura.gov.sa/wps/wcm/connect/ShuraEn/internet/Laws+and+Regulations/The+Basic+Law+Of+Government/Chapter+One/>, <last visit 05 December 2013>.

Sustainable Development and Environmental Protection in Islamic Law:

Islamic law embraces the philosophy of protecting the environment, which is the primary focus of the concept of sustainable development. Hence, Islam has recognised the creation of both earth and people by God (Allah) who also provides guidelines for human interactions with the earth system. In other words, the land belongs to God and he makes people inhabit it. Quran, which is the main authoritative source of Islamic law, explains this idea in many verses. For instance, ‘Said Moses to his people, ... "Indeed, the earth belongs to Allah. He causes to inherit it whom He wills of His servants” ’.⁸³ Moreover, Quran provides that “he (Allah) has produced you (people) from the earth and settled you in it”.⁸⁴ Not only Quran has established such a view, but also has directed to the ideal relationship between people and the earth system. Such relationship is governed by guidelines drawn up by many sections of Quran. By way of illustration, God obliges people not to cause any harm on earth. He says: "(e)at and drink from the provision of Allah , and do not commit abuse on the earth, spreading corruption."⁸⁵; and also says: “(a)nd cause not corruption upon the earth after its reformation”⁸⁶. Consequently, harming the earth system is regarded as corruption and thus Quran describes such an action as follows. “And when he goes away, he strives throughout the land to cause corruption therein and destroy crops and animals. And Allah does not like corruption.”⁸⁷

It is clear from what has been said about sustainable development that Islamic law is opposing any form of destroying, harming or degradation of the surrounding

⁸³ Quran, *Surat Al-'A`raf*, 7:128.

⁸⁴ Quran, *Surat Hūd*, 11:61.

⁸⁵ Quran, *Surat Al-Baqarah*, 2:60.

⁸⁶ Quran, *Surat Al-'A`raf*, 7:56.

⁸⁷ Quran, *Surat Al-Baqarah*, 2:205.

environment. Such activities, which have negative impacts on earth, are, therefore, prohibited. This is because the creation of earth and its surroundings is there for reasons; that are, inter alia, to acknowledge God's ownership of the world and carefully utilise what has been created for mankind. Exploiting and excessive use of what is in the earth is forbidden as provided in Quran.⁸⁸ It can be seen that the biosphere has been a central topic throughout Quran. The following verse of Quran describes in great details life on earth and aspects of the ecosystem.

Indeed, in the creation of the heavens and earth, and the alternation of the night and the day, and the [great] ships which sail through the sea with that which benefits people, and what Allah has sent down from the heavens of rain, giving life thereby to the earth after its lifelessness and dispersing therein every [kind of] moving creature, and [His] directing of the winds and the clouds controlled between the heaven and the earth are signs for a people who use reason.⁸⁹

Accordingly, there is a reason behind the formation of earth as also seen in another verse. “We did not create the heavens and **earth** and what is between them except in truth and [for] a specified term.”⁹⁰ In a survey of traditional legal systems that can be intertwined into the fabric of sustainable development, Justice Vice-President Christopher Gregory Weeramantr asserts the survey would not be comprehensive without mentioning the principles of Islamic law “that inasmuch as all land belongs to God, land is never the subject of human ownership, but is only held in trust,” with all the implications that entail due diligence, “wise management, and custody for future generations”. He added that the principle of “trusteeship” of world resources—the first principle of current environmental law—is thus categorically articulated in this system.

⁸⁸ Allah says in Quran: “And He it is who causes gardens to grow, [both] trellised and untrellised, and palm trees and crops of different [kinds of] food and olives and pomegranates, similar and dissimilar. Eat of [each of] its fruit when it yields and give its due [zakah] on the day of its harvest. And be not excessive. Indeed, He does not like those who commit excess.” Quran, *Surat Al-'An`ām*, 6:141.

⁸⁹ Quran, *Surat Al-Baqarah*, 2:164.

⁹⁰ Quran, *Surat Al-'Aḥqāf*, 46:3.

It has been noted that the philosophy behind sustainable development has its roots deep in both Islamic culture and teachings.⁹¹ Many Islamic scholars have drawn the attention to the central Islamic principles that are concerned with human involvement with the natural world. These principles are “unity, trusteeship and accountability”; and are believed to be “the pillars of the environmental ethics of Islam”.⁹² The “unity” principle, or what is also known as “Tawhid”, “denotes the unity and equality of all God’s creations in the worship of God and their equality as partners in terms of the due respectful recognition of the existence of all and the due appreciation of interdependency and interconnectedness between all”.⁹³ All creatures that God has made in this world are created in “due proportion and measure both quantitatively and qualitatively”. God says: "Verily, all things have We created by measure"⁹⁴ and "And everything with Him is by due measure."⁹⁵ And He says, "And We have produced therein everything in balance."⁹⁶ Hence, there is an equipoise administering the universe, and all the creations by are assumed to be in equilibrium or “in harmony in this respect, having been created in a measured way or by measure, a measure not to exceed or to fall short of”.⁹⁷ Quran continues to provide evidence of God’s ability and power in creating the planet according to his measures. God says: “The sun and the moon [move] by precise calculation, and the stars and trees prostrate, and the heaven

⁹¹Sardar, Ziauddin, ed. *The touch of Midas: science, values and the environment in Islam and the West*. Buy this book, 1984; O'Brien, Joanne, ed. *Islam and ecology*. London: Cassell, 1992; Al-Qaradawi, Y. "Safeguarding the environment in Islamic Sharia." *Al-Khaleej* (2000).

⁹²Omar Naseef, A. ‘The Muslim declaration on nature’. In Abdel Haleem, Harfiyah, ed. *Islam and the Environment*. London: Ta-Ha Pub- lishers, 1998. At 13.

⁹³Kamla, Rania, Sonja Gallhofer, and Jim Haslam. "Islam, nature and accounting: Islamic principles and the notion of accounting for the environment." *Accounting Forum*. Vol. 30. No. 3. Elsevier, 2006, at 249.

⁹⁴Quran: *Surat al-Qamar* 54:49.

⁹⁵Quran: *Surat ar-Ra'd* 13:8.

⁹⁶Quran: *Surat al-Hijr* 15:19.

⁹⁷Hobson, I. ‘Guiding principles for a solution to environmental problems’, in Abdel Haleem, Harfiyah, ed. *Islam and the Environment*. London: Ta-Ha Pub- lishers, 1998; Al-Qaradawi, 2000; Kamla, et al., 2006.

He raised and imposed the balance, that you not transgress within the balance”.⁹⁸ Therefore, and according to Islamic law, the principle of “unity” is upheld to establish God’s ownership of the universe and that his creations are made to perfection. It is, thus, that the creator is the one who dictates how the universe is to be run and how human’s interactions with their surroundings should be.

The second principle of Islamic law concerning the relationship between mankind and the universe is “trusteeship”. This principle conveys what the role of human into the natural world is to be. Trustees, or “Khalifahs”, is what is expected from mankind in their relationship with earth to which they are integral.⁹⁹ Quran reveals this idea of trusteeship; God says: “It is He who has made you successors upon the earth”.¹⁰⁰ Thus, humankind is responsible for caring about and safeguarding not only humanity, but also the broader environment and creatures.¹⁰¹ This is why some scholars call this principle “the Responsibility Principle” wherein trusteeship imposes moral responsibility on human.¹⁰² “Indeed, we offered the Trust to the heavens and the earth and the mountains, and they declined to bear it and feared it; but man [undertook to] bear it.”¹⁰³ This ‘trusteeship’ of the humankind on earth does not entail that a privilege has been granted to exploit the planet for merely-human self-interests.¹⁰⁴ In other words, “man has been granted stewardship to manage the earth in accordance with the purpose intended by its creator; to utilise it for his own benefit and the

⁹⁸Quran, *Surat Ar-Rahmān*, 55:5-8.

⁹⁹Lewis, Mervyn K. "Islam and accounting." *Accounting Forum*. Vol. 25. No. 2. Blackwell Publishers Ltd, 2001, p 110.

¹⁰⁰Quran, *Surat Fāṭir*, 35:39.

¹⁰¹Abdel Haleem, Harfiyah, ed. *Islam and the Environment*. London: Ta-Ha Publishers, 1998. At 9.

¹⁰²Khalid, Fazlun M. "Islam and the Environment." *Volume 5* (2002): 332-339.

¹⁰³Quran, *Surat Al-'Aḥzāb*, 30:72.

¹⁰⁴Begader, A., El-Sabbag, A., Al-Glayand, M., Samarraï, M., & Llewellyn, O.. *Environmental protection in Islam*. 2005, cited in Kamla, Rania, Sonja Gallhofer, and Jim Haslam. "Islam, nature and accounting: Islamic principles and the notion of accounting for the environment." *Accounting Forum*. Vol. 30. No. 3. Elsevier, 2006, at 251.

benefit of other created beings, and for the fulfilment of his interests and of theirs”.¹⁰⁵ Yet, trusteeship cannot and should not be deemed as an infinite restriction on mankind’s interactions with their planet. Rather, people need to impose limits to their actions while maintaining a balance in this concern.¹⁰⁶ Hence, what is included here is upholding the natural world, “including its people, and cultivating it to the highest point consistent with sustainability”.¹⁰⁷

The final principle of Islamic law regarding human’s relation to the universe is “Accountability Principle”. This principle implies that the rights of usufruct are associated with accountability for the appropriate use and “maintenance or conservation of the resource”.¹⁰⁸ This conforms to the primary legal principle founded ‘by the Prophet Muhammad, upon him be blessings and peace, "The benefit of a thing is in return for the liability attaching to it"’.¹⁰⁹ Thus, the role of trusteeship “amanah” which human are expected to fulfil inflict “a moral responsibility”.¹¹⁰ This presumption of responsibility denotes that mankind is accountable for their actions.¹¹¹ Understandably, such actions include those of environment-related, that is, human’s activities which have negative impacts on the environment are subjected to scrutiny and moral accountability.

¹⁰⁵ibid

¹⁰⁶Kamla et al., 2006, at 251.

¹⁰⁷ibid

¹⁰⁸Abubaker A. Bagader et. al., *Environmental Protection in Islam*, IUCN ENVTL POL'Y & L. PAPER NO. 20 REV. (IUCN-The World Conservation Union, 1994); Bagader, A A, El-Chirazi El-Sabbagh, A, As-Sayyid Al-Glay- and, M, Samarrai, M U I, and Llewellyn, O A (1994) Environmental Protection in Islam, *IUCN Environmental Policy and Law Paper*, 20, second revised edition, Gland, Switzerland. Richard Foltz, *Is there an Islamic Environmentalism?*, 22 ENVTL. ETHICS 63 (2000).

¹⁰⁹Bagader et. al., at 11.

¹¹⁰Khalid, 2002, at 338.

¹¹¹Ibid.

Islamic Economic Development Theory

Examining Islamic scholars' thoughts on the concept of sustainable development, it seems that Islam is only concerned with the protection of the planet for the sake of nature revival and human survival. Surely, such an assertion is true yet not comprehensive. This is because it will imply the impression that Islam is not in favour of development or, to be more specific, economic development. It would also suggest that environmentalism is an ideology that has some of its roots deep in Islam. Such implications are neither true nor conceivable. First, humans cannot survive on a merely-conservative interaction with nature since the population over the globe has been in a rapid increase. Therefore, such an increase of the world's population finds economic development an effective solution to meet ever-increasing human needs. Hence, it can be said that Islam perceives development as a continuous process of improvement and change, where possible, towards the best, taking into account human's abilities and skills in such a process, to satisfy the meaning of 'trusteeship' of humankind.¹¹² This process is a government-led and in collaboration and integration with all nations yet without any form of subjection to others' ideologies.¹¹³ Accordingly, economic development is a prerequisite to the improvement and change process.

How such a development is pursued remains a question to be answer by societies. The differences between nations are substantial when it comes to determining each nation's needs and its approach to fulfilling them. What seems to be necessary to one nation's existence and prosperity is extreme and beyond requirement to another

¹¹² This definition has been translated from Arabic. Hindaui, Hasan Ibrahim, *Altaaleem wa Eshkalat Altanmeeah*, Ministry of Awqaf and Islamic affairs, 2004,

¹¹³ Ibid.

nation. However, what economic development means from an Islamic standpoint needs to be explained alongside the respective western one. In this respect, contemporary economic theory which defines the perfect pattern of behaviour of people in commercial activities, to which they should endeavour to conform so as to attain economic growth and development.¹¹⁴ The ideals, as to modern economic theory, follow certain rules and are formed by a worldview that is inspired by “rationality and act in conformity with the maximization principle”.¹¹⁵ As such, profit maximisation is at the heart of economic development and considered as the primary motivation.¹¹⁶ Thus, it is argued that “the pursuit of self-interest in a conventional economy may not necessarily lead to improvements in the general well-being of society.”¹¹⁷ This due to the fact that some practices such as “monopolistic situations may develop; price distortions, speculation, and hoarding of goods may ensue, and can result in certain segments of the society being deprived in favor of others with more influence in the market”.¹¹⁸ There is, however, a tendency to move towards recognising the wider dimension of human development in which social solidarity, belonging, welfare, sharing, caring for others, basic human rights, and modest living are some of the aspects progressively being highlighted.¹¹⁹

Unlike modern economic theory, the Islamic understanding of economics, finance, and development has an additional dimension in the shape of “moral and spiritual values”.¹²⁰ The concept of development in Islam involves three interconnected

¹¹⁴ Iqbal, Zamir, Mirakhor, Abbas, *Economic Development and Islamic Finance*, International Bank for Reconstruction and Development / The World Bank, 2013, at 3.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Mirakhor, Abbas, and Hossein Askari, *Islam and the Path to Human and Economic Development*. New York: Palgrave Macmillan, 2010; Iqbal, Z., Mirakhor, A., 2013.

¹²⁰ Mirakhor, A., Hossein, A., 2010.

elements: “individual human development, physical-material development, and development of the human collectivity”.¹²¹ These dimensions of the Islamic concept of development have been explained as follows:

The first dimension is the most important, and specifies a dynamic process of the growth of individuals toward realizing their full potential given by the Creator. The second dimension refers to the utilization of natural resources provided by the Creator to meet the material needs of individuals and society. The third dimension refers to the progress of the human collectivity toward full integration and unity. The first dimension—which starts from an intense awareness of oneself and the Creator, such that every action is taken in compliance with the rules prescribed by the Creator—will lead to harmony and unity with the rest of humanity and creation. Failure for the three dimensions to proceed in tandem leads to harmful distortions.¹²²

Yet, the concept of Islamic economic theory of development requires more than profit maximisation. It is a theory that demands interdependency between developing individuals’ skills and abilities and taking advantage of available sources in a shared manner that ensures integration and harmony.

It is evident that the concept of environmentalism in its extreme form of merely restricting human activities to the limit that suggests to leave nature as it is and that human’s main responsibility is to protect the environment, is not accurate from an Islamic viewpoint. As such, people are required to explore their abilities and skills in developing balanced methods of utilising their surrounding resources. This necessitates that economic development is at the forefront of Islamic objectives. Of course, such development will not be accomplished unless certain rules are followed. These rules are made by the Maker of the world.¹²³ Clear rules and guidance are

¹²¹ Ibid.

¹²² Ibid.

¹²³ Bagader, et al. 1994, provided an extensive work which summaries the rules governing human’s interactions with nature.

provided to ensure that human survives and nature revives. Development that are not in adherence with the Creator's will lead to adverse consequences.

Sustainable Development and Environmental Protection: Saudi Arabian Standpoint

The concept of sustainable development is perceived to be the optimal goal that Saudi Arabia is trying to achieve. In this respect, the Saudi government explained that its policy of protecting its natural environment stems from the teachings of Islam.¹²⁴ Hence, the government “has adopted this policy in its endeavour to achieve development and welfare for its people without compromising the natural environment or encroaching upon the rights of future generations”.¹²⁵ This goal requires finding a balance between development activities and the protection, promotion and sustainability of the environment.¹²⁶ Article 22 of the Saudi Basic Law of Government reads “Economic and social development shall be carried out according to a fair [and] wise plan”.¹²⁷ Moreover, sustainable development should be an effective integration of economic, social and environmental aspects.¹²⁸ The concept of sustainable development and the rationale behind it should be taught to society, public organisations and the decision makers in Saudi Arabia.¹²⁹ Increased understanding of these concepts will help in the achievement of sustainable

¹²⁴Saudi Arabia Statement at The World Summit for Sustainable Development, Johannesburg, South Africa, 3 September 2002, available at <http://www.un.org/events/wssd/statements/saudiaE.htm>

¹²⁵Saudi Arabia Statement at The World Summit for Sustainable Development, Johannesburg, South Africa, 3 September 2002, available at <http://www.un.org/events/wssd/statements/saudiaE.htm>

¹²⁶Ibid.

¹²⁷Saudi Government, 'Saudi Basic Law of Government', (1992).Article 22, Majlis Ash-Shura's website at:

<http://www.shura.gov.sa/wps/wcm/connect/ShuraEn/internet/Laws+and+Regulations/The+Basic+Law+Of+Government/Chapter+Four/>, <last visit 12/04/2012>.

¹²⁸ Ibid

¹²⁹ Ibid

development goals. Thus, it is not only economic development that is needed by Saudi Arabia, but a combination of economic, social and environmental development.¹³⁰

In this respect, Saudi Arabia, whilst seeking economic growth, also wants to ensure that no harm occurs to the environment and the people.¹³¹ The development needed by Saudi Arabia through foreign investment is expected to be subject to environmental and societal considerations. This is evident from the government's insistence on fair and wise planning when seeking further development.¹³² Therefore, Saudi Arabia needs to see the commitments of MNCs with regards to the protection of the environment and the respect of the society. Such protection and respect require MNCs to stick to domestic and international laws, standards, initiatives, and guidelines; all in relation to environmental and social matters. In addition, MNCs are required to wisely utilise the natural resources of Saudi Arabia and ensure that their impacts on the environment are avoided. Article 2 of the Saudi General Environmental Law (GEL) describes the objectives of and essence behind introducing such law in the country.¹³³ According to Article 2, the aims are as follows: the conservation and the protection of the environment from pollution; ensuring that the public health is protected from potential dangers resulting from damaging the environment; safeguarding and enlarging natural resources and justifying their use; integrating environmental plans into general development planning in industrial,

¹³⁰ Ibid

¹³¹ See Saudi Arabia Statement at The World Summit for Sustainable Development, Johannesburg, South Africa, 3 September 2002, available at <http://www.un.org/events/wssd/statements/saudiaE.htm>

¹³² Saudi Government, 'Saudi Basic Law of Government', (1992). Article 22

¹³³ The Saudi General Environmental Law can be accessed online at: http://www.pme.gov.sa/en/env_regul.asp, <last visit 5 September 2010>.

agricultural, architectural aspects; enhancing individuals' consciousness of environmental risks and the need to preserve the environment.

In its endeavours to achieving sustainable development, Saudi Arabia stated that it has instructed experts from several government departments and ministries to contribute in articulating National Sustainable Development Strategies (NSDS). The NSDS was called upon by Agenda 21, the principal outcome of the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992. The aim of NSDS is to build upon and complement the different sectoral economic, social and environmental policies and plans running at the national level. UNCED also acknowledged the key role that indicators can play in assisting states to make informed decisions regarding sustainable development. As a result, states and international governmental and non-governmental organisations were requested to acquire such indicators. Thus, Saudi Arabia has established sectoral goals and policies, interim and long-term plans of action and a final assessment stage. In this respect, subcommittees contained representatives from each department formulated the strategic policy of that specific department in cooperation with Ministry of Planning. The strategy objectives include improving and developing prosperity, safeguarding biodiversity, combating pollution, advancing environmental capacities, ensuring the best use of human resources, providing clean water, managing waste, and preserving natural resources. The objectives also cover issues related to water provision, finance, power and energy, pollution reduction, cleaner mining and industrial operations, urban development, and agriculture. Of course, Saudi Arabia should take into account the work of the Intergovernmental Panel on Climate Change (IPCC) which considers climate change as one of the great challenges of the 21st

century. Its most severe impacts may still be avoided if efforts are made to transform current energy systems. Renewable energy sources have a large potential to displace emissions of greenhouse gases from the combustion of fossil fuels and thereby to mitigate climate change. If implemented properly, renewable energy sources can contribute to social and economic development, to energy access, to a secure and sustainable energy supply, and to a reduction of negative impacts of energy provision on the environment and human health.

One key issue that concerning Saudi Arabia when it comes to the field of sustainable development, is water. Indeed, water is the most natural resource Saudi Arabia is in shortage of. This due to the country's extreme dry climate conditions which are further aggravated by the harsh regional desert environment.¹³⁴ Moreover, it plays a central role in affecting the progression and pathway for social and economic development.¹³⁵ Therefore, "the scarcity of fresh water resources is one of the main challenges for sustainable development in Saudi Arabia"¹³⁶. The following are some of the strategies adopted by Saudi Arabia in order to reach the millennium development goal with regard to water issue¹³⁷: application of cutting-edge methods and technologies in water utilisation and management; promotion of rationalised usage of water in the increasing agriculture demand; intensifying programs for development of surface water, and renewable ground water, while ensuring efficient utilisation; implementation of strict follow up procedure to confirm adherence to the regulations of conservation and reasonable utilisation of water; establishment of databank for water information, and utilise the data in continued detailed analysis,

¹³⁴Saudi Arabia Intervention, "Intergovernmental Preparatory Meeting for the 13'h Session of the Commission for Sustainable Development", 2005.

¹³⁵ Ibid.

¹³⁶ ibid.

¹³⁷ ibid.

and further dissemination of this information; improvement of maintenance and operations for water related work, in a manner to attain the maximum efficiency; increasing national capacity building in the field of water management; inclusion of environmental aspects during the establishment and operation of water facilities; improvement of private sector participation in integrated water management; encouraging the scientific research and technical development in the field of desalination and waste water treatment.

However, it has been claimed that environmental abuses have been present in some countries governed by Islamic law.¹³⁸ For instance, the government of Saudi Arabia has been encouraging extensive wheat production in the desert by using costly groundwater, leading the country to be a major wheat producer and exporter.¹³⁹ In 1992, the government of Saudi Arabia endorsed payments totalling US\$2.1 billion as a subsidy for wheat crop, which was valued at one-fourth as much at the world market price.¹⁴⁰ Consequently, the groundwater levels in Saudi Arabia are rapidly decreasing and the water is becoming salty, making it difficult to use for essential purposes such as drinking.¹⁴¹ Additionally, due to over-subsidized Saudi wheat, many countries, which are naturally suited to wheat production, are denied their fair share in the world market.¹⁴² Thus, “it would be rather naive to think that embracing the Sharia will guarantee environmental protection”.¹⁴³ However, it is vital to

¹³⁸Ibrahim, F. *Ecological Imbalances in the Republic of Sudan*. Bayreuth, Germany: Druckhaus Bayreuth Verlagsgesellschaft. 1984; Myers, Norman, and Jennifer Kent. *Perverse subsidies: tax \$ s undercutting our economies and environments alike*. IISD, 1998.

¹³⁹Postel, S., Facing water scarcity. In: *State of the World*, ed. Lester R. Brown et al., pp. 22–41, 1993, London, UK: Earthscan.

¹⁴⁰Al-Ibrahim, Abdulla Ali. "Excessive use of groundwater resources in Saudi Arabia: Impacts and policy options." *Ambio* (1991): 34-37; Nicholson, M. "Saudis reap bumper wheat subsidy", *Financial Times*. 21 January 1992.

¹⁴¹Kula, Erhun. "Islam and environmental conservation." *Environmental conservation* 28.1, 2001, at 6.

¹⁴²Postel, 1993.

¹⁴³Kula, 2001.

differentiate between claiming to implement Islamic law and actual execution of such law. This is because the absence of the former does not necessarily mean undermining the credibility of the latter. Merely assuming that violations of a law results only in that law being useless, is neither accurate nor rational. Responsibility rests with those committing irresponsible actions but not falls simply on the law.

Energy is also a dominant subject that needs to be considered when talking about the concept of sustainable development in Saudi Arabia. This is because Saudi Arabia is by far the world's largest exporter of oil and has about 20 per cent of the world's oil reserves. Thus, Saudi Arabian economy heavily relies upon its revenues from oil exports. Such reliance on oil explains the country's views with respect to development, and in particular, economic development. These views are best described by the Saudi Arabian statement on Energy for Sustainable Development. It stated that "More Energy (means): More Development; No Energy (means): No Development". The statement added that none of the objectives or ambitions under the three pillars of sustainable development is attainable "without access to energy". Hence, energy is considered by Saudi Arabia as a major driver for sustainable development with all its three dimensions: economic, social and environmental. This, as far as the country is concerned, due to the fact that "adequate and affordable energy supplies have been key to economic development, and the transition from subsistence agricultural economies, to modern industrial and service-oriented societies".

It is clear that economic development in Saudi Arabia is sought through the use of natural resources: predominantly oil. This approach has been taken so as to meet the

requirements for sustainable development, i.e., to achieve development that is based on three fundamental aspects: economic, social and environmental. The latter needs to be closely examined since some would argue that the heavy dependence on oil is only a form of nature exploitation and will only lead to environmental degradation. Such an argument is likely to be dismissed by the Saudi government on the following grounds. First, it argues that nations have “different definitions of their own sustainable development objectives and priorities, reflecting national resources and needs, aspirations, and social and economic conditions”¹⁴⁴. In other words, the statement suggests that what is possibly an objective or a priority for one country seeking sustainable development, is not necessarily the case to another. Countries are not identical in terms of resources, needs, and ambitions. Therefore, sustainable development policies are structured to ‘accommodate a wide range of definitions of what “desirable sustainable development” can encompass’¹⁴⁵. Secondly, Saudi Arabia has stressed in several occasions that it strives towards ensuring safe and clean energy thorough by means of cutting-edge technologies and strategic plans.¹⁴⁶

It can be said that the Saudi government seems to be striving to protect the environment since it has established the GEL¹⁴⁷ which aims at protecting the environment from pollution; ensuring the protection of public health which can be affected by potential dangers resulting from damaging the environment; maintaining and enlarging natural resources and justifying their use; integrating environmental plans into general development planning in industrial, agricultural, architectural

¹⁴⁴ Saudi Arabia Statement on Energy for Sustainable Development Intergovernmental Preparatory Meeting for CSD-15 New York – Tuesday, February 27, 2007.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ The Saudi General Environmental Law can be accessed online at: http://www.pme.gov.sa/en/env_regul.asp, <last visit 5 September 2015>.

aspects; enhancing individuals consciousness of environmental risks and the need to preserve the environment. To achieve these targets, the GEL has established a detailed environmental protection mechanism.¹⁴⁸ The GEL provides very consistent and strict rules for the protection of the environment, which have to be adhered to by companies and others. For instance, article 8 of the GEL states that companies are required to:¹⁴⁹

1. Rationalize the use of natural resources to preserve and prolong the reserve life of non-renewable resources and to develop renewable resources.
2. Achieve coherence between the bearing capacity of the resources and utilization levels of the various resource categories.
3. Apply recycling technologies and reuse of resources.
4. Develop conventional technologies and traditional systems that are coherent with the local and regional environmental conditions.

Moreover, all wastage, smokes, gases and other refuses generated from a company's operations must be dealt with in accordance with the GEL's regulations and environmental standards.¹⁵⁰ This shows the Saudi strategy to have a precautionary plan for the protection of the environment. Such a plan will help to avoid possible environmental hazards. The GEL also requires each company, whose operations may involve environmental risks, to establish an emergency plan to avoid or alleviate the dangers posed by its activities and to further have adequate means of implementing such a plan.¹⁵¹ With the aim of the prepared precautionary plan to be a first protection wall, the emergency plan will further help to prevent or control potential environmental risks.

¹⁴⁸ See the Saudi General Environmental Law, article 2.

¹⁴⁹ Ibid, article 8.

¹⁵⁰ Ibid, article 12 (1)-(3).

¹⁵¹ Ibid, article 9 (3).

Thus, under the GEL all companies are obliged to ensure that their activities are in conformity with the applicable environmental standards¹⁵² and regulations.¹⁵³ Article 11 of the GEL states that:

1. Each person responsible for designing or operating any project or activity shall ensure that such design and operation is in compliance with the applicable regulations and standards.
2. Any person engaged in an activity with potential adverse environmental impacts shall take the appropriate actions to limit such impacts or minimize the probability of their occurrence.

Therefore, article 11 of the GEL can impose direct duties on all companies' directors to ensure that their actions are in compliance with the applicable environmental regulations and standards in Saudi Arabia. Furthermore, article 16 of the GEL reads “[c]ommitment to environmental protection regulations and standards must be a conditional pre-requisite for receiving loans for projects from lending agencies”.¹⁵⁴ Noncompliance by a company with the environmental standards and regulations will be subjected to punishment and penalising rules provided by the GEL.¹⁵⁵

The Environmental Protection Standards (EPS) introduced by the Saudi government to provide appropriate bases for the evaluation and regulation of existing industrial and urban activities in the country and “to help in the planning, design, implementation and operation of the facilities to be established in future in a manner which shall not adversely affect the health, safety and welfare of the people and

¹⁵² Environmental Protection Standards are attached to the Saudi General Environmental Law, available at: http://www.pme.gov.sa/en/env_prot.asp , <last visit 5 September 2010>.

¹⁵³ See the Saudi General Environmental Law, article 11 (1).

¹⁵⁴ Ibid article 16.

¹⁵⁵ Ibid, articles 17-21.

which shall help in promoting their overall economic and social well-being and protect the Kingdom's environment in general".¹⁵⁶

I believe that the Saudi government is right in imposing environmental regulations on all companies operating in Saudi Arabia so as to ensure that the activities of such companies do not have negative impacts on the environment. However, I think that no company should be exempted from the GEL or the EPS since such any exemption, in my view, will undermine the core of the GEL. Unfortunately, there are exceptions to the applicability of the standards. Suction 5 of the EPS provides that "the standards shall apply to all facilities in (Saudi Arabia), existing and newly designed, public and private, with the exception of facilities specifically exempted by the Presidency of Meteorology and Environment"¹⁵⁷. Suction 9 of the EPS states that "(t)he Presidency reserves the authority to grant certain facilities, under special circumstances, an exemption from the application of some source or performance standards ... after ensuring that such an exception shall not result in exceeding the environmental quality standards and is not detrimental to the public health".¹⁵⁸ In my opinion, such exemptions could be abused by some companies and therefore the EPS must apply to all companies without any exception.

Summary

This chapter has shown how the concept of sustainable development and environmental protection has evolved and changed over time. Historically, the

¹⁵⁶ Saudi Environmental Protection Standards, Pursuant to the Royal Decree No. 7/M/8903.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

concept emerged from people concerns about natural resources and how they can be rationalised so as to ensure the survival of future generations. Over the time, there have been many changes in the discourse about sustainable development. These changes advocate one of two main approaches: the preservationist and the conservationist. The former's primary focus was on nature and how it can be preserved, i.e. to keep nature save from any interference by human. The latter approach was less intense in the way that it considered human entitlement to live on nature. However, themes under this approach varied in terms of their dealing with what is acceptable and what is not from human. This chapter then examined these approaches and themes as to what effects they have had on the international political dialogue on sustainable development. Moreover, this chapter proposed a description of the concept of sustainable development and how it was perceived by Saudi Arabia.

Chapter 5

The Responsibility of MNCs Towards Human Rights and Labour Rights

This chapter seeks to explore the concept of social responsibility of business and in particular MNCs. Along with what have been discussed in chapter three especially the discussion about the stakeholder theory of the company, this chapter will look at the development of the concept through arguing that business-society relations are central to such emergence of the concept. Thus, some theories around the concept of social responsibility of business will be examined. Moreover, the subject of human rights is an integral part to the discussion about the social responsibility of MNCs. Therefore, this chapter will look at international and regional instruments regarding social responsibilities of MNCs. Such instruments will be used as a parameter against which Saudi Arabia's approach towards internationally recognised human rights and freedoms will be examined. In this respect, this chapter will study the role played by Saudi Arabia and EU MNCs in relation to fundamental human rights and freedoms. This chapter argues that enshrining stakeholder consideration and protection in both the Saudi company law and home states corporate laws, is crucial to ensure that EU MNCs are legally accountable for their actions not only in their home states but also in Saudi Arabia. Thus, I propose that a new law titled 'Corporate Responsibility Law' is to be introduced in Saudi Arabia. The objects of the proposed law are to impose human rights, employment, and health and safety standards on the conduct of companies and to provide for the enforcement of those standards.

Can Corporate Social Responsibility be Defined?

Like sustainable development, there is uncertainty as to what corporate social responsibility (CSR) means or should mean. The following quotation rightly described the difficulty in finding an answer the question presented above.

Corporate social responsibility (CSR) means something, but not always the same thing to everybody. To some it conveys the idea of legal responsibility or liability; to others, it means social responsible behaviour in the ethical sense; to still others, the meaning transmitted is that of 'responsible for' in a causal mode; many simply equate it with a charitable contribution; some take it to mean socially conscious; many of those who embrace it most fervently see it as a mere synonym for legitimacy in the context of belonging or being proper or valid; a few see a sort of fiduciary duty imposing higher standards of behaviour on business- men than on citizens at large.¹

Therefore, defining the term is not as easy as it might be thought.² Even more, some extreme views have argued that there is no definition for CSR.³ A consensus on a precise definition of the term has yet to be achieved, despite a vast and growing body of literature on the concept of CSR.⁴ This is due to the fact that the field of CSR "presents not only a landscape of theories but also a proliferation of approaches, which are controversial, complex and unclear".⁵ The controversy, complexity and vagueness surrounding CSR spectrum have lead to a major problematic situation. Carroll rightly stated that "one of the factors contributing to the ambiguity that frequently shrouded discussions about social responsibility was the lack of consensus

¹Votaw, D., 'Genius Became Rare: A Comment on the Doctrine of Social Responsibility Pt 1', *California Management Review*, 1972, 15(2), 25–31.

²Garriga, Elisabet, and Domènec Melé. "Corporate social responsibility theories: mapping the territory." *Journal of business ethics* 53.1 (2004): 51-71.

³ An observation made by Dahlsrud, Alexander. "How corporate social responsibility is defined: an analysis of 37 definitions." *Corporate social responsibility and environmental management* 15.1 (2008): 1-13, p 1.

⁴Campbell, John L. "WHY WOULD CORPORATIONS BEHAVE IN SOCIALLY RESPONSIBLE WAYS? AN INSTITUTIONAL THEORY OF CORPORATE SOCIAL RESPONSIBILITY." *Academy of Management Review* 32.3 (2007): 946-967; Lee, Min-Dong Paul. "A review of the theories of corporate social responsibility: Its evolutionary path and the road ahead." *International Journal of Management Reviews* 10.1 (2007): 53-73.

⁵Garriga and Melé. 2004, p 51.

on what the concept really meant”.⁶ His argument is still valid until now as it is evident from the fact that the term CSR means many different things to a wide range of audiences, including academic scholars, businesses, governmental organizations, non-governmental organizations (NGOs), politicians, and communities. The state of CSR being approached differently is emanated from the wider audiences’ orientation towards the concept.⁷ Thus, this chapter aims at offering a general view on the debate over CSR.

How does a business owe social and environmental responsibility?

The question presented above is at the very heart of the discourse over CSR. It can be argued that business–society relations is what dominates the debate about CSR. In this respect, and as early as 1776, Adam Smith’s famous book *The Wealth of Nations* asserted that there is an invisible hand links “the self–interest of private economic agents to desirable economic improvement in general welfare”.⁸ Accordingly, economic entities have no intention whatsoever to operate in the interest of external parties, such as society; if some needs of such parties are fulfilled, then it is not planned by business. Moreover, Adam Smith accused business of operating against the public interest. In this regard, he stated:

People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to

⁶Carroll, Archie B. "A three-dimensional conceptual model of corporate performance." *Academy of management review* (1979): 497-505, p 497.

⁷Some orientations of the different groups are discussed later on.

⁸An observation made by Shum, Paul K., and Sharon L. Yam. "Ethics and law: Guiding the invisible hand to correct corporate social responsibility externalities." *Journal of business ethics* 98.4 (2011): 549-571, p 552.

raise prices. It is impossible indeed to prevent such meetings, by any law which either could be executed, or would be consistent with liberty and justice. But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies; much less to render them necessary.⁹

Hence, the classic economic theory assumes no more than pure competition by business operations in the sake of profit. Nonetheless, it can be said that a business operation that results in outcomes, whether bad or good, to an external party, society for example, suggests a relationship between that business and society. This is because society is involved with that business as a result of its operations that have affected the society whether good or badly.

The debate on business-society relationship is centred on three theories. First, “corporate constitutionalism theory” which mainly focuses on social power and responsibility of business. Formulated by Davis, it has two principles: “power–responsibility equation” and “the iron law of responsibility”. Secondly, “integrative social contract theory” advancing the view of contractual relationship between business and society. Thirdly, “corporate citizenship theory” regarding a firm as a real citizen in terms of duties and responsibilities. The three theories have been categorised as “political theories” since they are comprised of both political considerations and political analysis in corporate social responsibility discussion.¹⁰ They have also been labelled as “relational theories”, however, adding one more theory that is: “stakeholder approach” or theory.¹¹

⁹Smith, Adam, Dugald Stewart, and M. Garnier. *The Wealth of Nations*, (1825), p 128.

¹⁰Garriga and Melé. 2004, p 55.

¹¹Secchi, Davide. "Utilitarian, managerial and relational theories of corporate social responsibility." *International Journal of Management Reviews* 9.4 (2007): 347-373.

The Rule of Power and Responsibility

However, there is more to say about the relationship between business and society. This relationship is to be protected only through businesses' moral behaviour, which in effect will result in a sustainable long-term economic growth.¹² In this respect, Davis suggested that the function of business in society, particularly in the area of social responsibilities, has to be re-examined.¹³ According to him, there are three questions that have been asked and should be addressed: "why do ...[businesses] have social responsibilities? How does a [business] know in what directions [its] social responsibilities lie? And if businesses fail to accept their social responsibilities, what consequences may be expected?"¹⁴ Davis mentioned that businesses enjoy a significant social power yet with such power comes responsibilities. He explained that businesses gain their power through the fact that they are very influential that government and community seek their counsel. Thus, "social responsibilities of businessmen arise from the amount of social power they have."¹⁵ In addition, Davis stressed that business's power and responsibility should be dealt with as "co-equal" not only in relation to the inside-business affairs but also to the outside-business in this case, society. This is a principle referred to as the "power-responsibility equation" which states that "if responsibility arises from power, then the two conditions tend to stay in balance over the long run".¹⁶

¹²An observation made by Shum and Sharon 2011, p 554.

¹³Davis, K. "Can business afford to ignore social responsibilities?" *California Management Review*, 1960, 2(3), p 58.

¹⁴ *Ibid.*

¹⁵Davis, Keith. "Understanding the social responsibility puzzle." *Business Horizons* 10.4 (1968): 45-50, p 48.

¹⁶Davis, 1968, p 48.

The question now is what if a business avoids its social responsibility? An answer can be found in the principle of “the iron law of responsibility” formulated by Davis. This principle explains how devastating the consequences resulted from business avoidance of social responsibility. In this regard, “whoever does not use his social power responsibly will lose it. In the long run those who do not use power in a manner which society considers responsible will tend to lose it because other groups eventually will step in to assume those responsibilities”.¹⁷ An unbalanced relationship between business power and responsibility “leads to gradual erosion of social power”¹⁸ If this occurs, the relationship between business and society is fragmented. This disjointed relationship is yet a serious challenge to a sustainable long-term economic growth that can only be attained through business’s moral behaviour as described earlier.

Contractual Relationship between Business and Society

It has been argued that the relationship between business and society is built upon a contract that implies some non-commercial obligations of business to society. In the words of Henry Ford II, “the terms of the contract between industry and society are changing... Now we are being asked to serve a wider range of human values and to accept an obligation to members of the public with whom we have no commercial transactions”.¹⁹ Donaldson described the obligations imposed on business as indirect and informal, but rather “ a set of binding, abstract ones”.²⁰ He provided that an

¹⁷ Davis, (1960), p 63.

¹⁸ Davis, 1968, p 49

¹⁹ Churning, R.C., Eby, J.W. & Roel, S.J. Business through the eyes of faith. San Francisco: Harper and Row. (1990), p 207; Donaldson, Thomas. *Corporations and morality*. Prentice-Hall, 1982, p 36.

²⁰ Donaldson, 1982 p 36.

implicit social contract can exist between business and society. “ A social contract for business, if one exists, is not a typewritten contract in the real world, but a metaphysical abstraction not unlike the “social contract” between citizens and government that philosophers have traditionally discussed.”²¹

Donaldson’s thought, however, was developed later into what is known as “integrative social contract theory” by Donaldson and Dunfee.²² This theory was introduced to advance the intersection between empirical and normative research in business ethics by offering a normative theory. Empirical research in business ethics, on the one hand, is informed by “concepts that describe and explain factual states of affairs, such as managerial motivation, organizational accountability structures, and relationships between ethical behaviour and financial performance”.²³ Whereas normative research in ethics, on the other hand, is influenced by “ideas which, although not necessarily grounded in existing business practices and structures, are what ethicists call prescriptive. They guide us to what we should do”.²⁴

Donaldson and Dunfee’s normative theory integrates “empirical findings as part of a contractarian process of making normative judgments”. Developed from origins in classical and social contract theory, this integrative theory acknowledges “ethical obligations based upon two levels of consent: first, to a theoretical "macrosocial" contract appealing to all rational contractors.²⁵ The contract of this level is aimed at establishing objective background standards for social interplay, such as, the

²¹ Donaldson, 1982 p 36.

²²Donaldson, Thomas, and Thomas W. Dunfee. "Toward A Unified Conception Of Business Ethics: Integrative Social Contracts Theory." *Academy of Management Review* 19.2 (1994): 252-284.

²³Donaldson and Thomas, 1994, p 252.

²⁴Ibid, p 253.

²⁵Ibid, p 254.

specification of government to respect people's rights found in John Locke's thought; and Rawls's requirement of the two principles of justice, stem from "macro" or hypothetical types of contracting.²⁶ The second level of consent is "real "microsocial" contracts by members of numerous localized communities".²⁷ This style of contract, which is also known as "extant contract ", denotes non-hypothetical, actual, however informal, agreements in existence within and amongst industries, national economic systems, corporations, trade associations, and so on.²⁸ The "micro" or "extant" social contracts are reflected in the ethical principles accepted accountants or lawyers, for example.²⁹

Corporate Citizenship

Adding to the discussion about business-society relationship, new concept namely: corporate citizenship needs to be addressed. Corporate citizenship imposes the view that a corporation is an entity with status equivalent to a person.³⁰ This concept can be traced back to the 1970s. Davis suggested that "business institutions as citizens have responsibilities for social involvement in areas of their competence where major social needs exist".³¹ This is because business as a major social institution should "bear the same kinds of citizenship costs for society that an individual citizen

²⁶Donaldson, Thomas, and Thomas W. Dunfee. *Ties that bind: A social contracts approach to business ethics*. Harvard Business Press, 1999, p 19.

²⁷Donaldson, Thomas, and Thomas W. Dunfee. "Toward A Unified Conception Of Business Ethics: Integrative Social Contracts Theory." *Academy of Management Review* 19.2 (1994): 252-284, p 254.

²⁸Donaldson and Thomas, 1999, p 19.

²⁹Ibid.

³⁰Davis, Keith, Five Propositions for Social Responsibility, *Business Horizons* 18, 1975, p 23; Andriof, J. and M. McIntosh: 2001, *Perspectives on Corporate Citizenship* (Greenleaf Publishing, Sheffield, UK).

³¹Davis, K 'Five propositions for social responsibility' *Business Horizons* 1975, p 23

bears”.³² Just as much as any citizen will benefit from a better society, business will benefit too; and thus, “business has a responsibility to recognize social problems and actively contribute its talents to help solve them”.³³ According to Davis, solving such problems is not the primary responsibility of business yet it has to play a significant role. In the views of Zadek and others, “corporate citizenship implies a strategy that moves from a focus on short-term transaction to longer term, values-based relationships with these stakeholders. Loyalty will be based on a company’s ability to build a sense of shared values and mission with key stakeholders”.³⁴ However, the concept of corporate citizenship has been described as a “fictional concept”, since the rights and duties of business is different from those of a “real” citizen.³⁵ Hence, “business citizenship cannot be deemed equivalent to individual citizenship instead it derives from and is secondary to individual citizenship”.³⁶

Matten and Crane have identified three views of corporate citizenship. First, a “limited view” which associates corporate citizenship with self-interested corporate social activity, such as philanthropy or community involvement.³⁷ Secondly, an “equivalent view” which equates corporate citizenship with corporate social responsibility. For example, Carroll argued that the “four faces” of corporate social responsibility (i.e. economic, legal, ethical, and discretionary responsibilities), are

³² Ibid.

³³ Ibid.

³⁴ Zadek, Simon, Hojensgard, Niels and Raynard, Peter: *The New Economy of Corporate Citizenship, The Copenhagen Centre* (2001), p 8.

³⁵ Windsor, Duane. "Corporate citizenship: Evolution and interpretation." *Perspectives on corporate citizenship* (2001): 39-52.

³⁶ Wood, Donna, and Jeanne Logsdon. "Business citizenship: from individuals to organizations." *Ethics and entrepreneurship* 3 (2002): 59-94, p 86.

³⁷ Waddock, Sandra. "The multiple bottom lines of corporate citizenship: Social investing, reputation, and responsibility audits." *Business and Society Review* 105.3 (2002): 323-345; Wood, D. J and J. M Logsdon., 'Theorising Business Citizenship', in J. Anriof and M. McIntosh (eds.), *Perspectives on Corporate Citizenship* (Greenleaf Publishing, Sheffield, UK, 2001), pp. 83–103; Dine, *Companies, International Trade and Human Rights* (Cambridge: Cambridge University Press, 2005), p.48.

constantly the “four ‘faces’” of corporate citizenship.³⁸ Thirdly, an “extended view” which defines corporate citizenship as describing the role of the corporation in governing citizenship rights for individuals; taking the position of government as corporations become much more powerful.³⁹ These diverse views of the concept of corporate citizenship can add to the ambiguity of its precise meaning. This said however, the concept has something to contribute to the debate over business-society relationship; this, in turn, has some implications on the main concept of corporate social responsibility.

³⁸Carroll, Archie B. "The four faces of corporate citizenship." *Business and society review* 100.1 (2003): 1-7.

³⁹Matten, Dirk, Andrew Crane, and Wendy Chapple. "Behind the mask: Revealing the true face of corporate citizenship." *Journal of Business Ethics* 45.1 (2003): 109-120; Matten, Dirk, and Andrew Crane. "CORPORATE CITIZENSHIP: TOWARD AN EXTENDED THEORETICAL CONCEPTUALIZATION." *Academy of Management review* 30.1 (2005): 166-179.

Corporate Social Responsibility: A Legal Perspective

To begin a legal discussion on the concept of corporate social responsibility, it is essential to recall the debate over business-society relationship, in particular, the talk about corporate citizenship. This is because there is a need to establish a very clear understanding about the nature of the firm. In this regard, the question should be asked is whether a corporation can be deemed as a real citizen or otherwise. To answer such a question, legal scholars have long discussed the conception of whether to understand the corporation as a real entity or as a legal entity –what some call “a legal fiction”–. As such, Foster argued that while the term “corporation” seems to denote one “thing”, “in fact it denotes two, enterprises (a subcategory of real entities) and legal entities”.⁴⁰ The term “real entity” is used to describe an organised group of people whose goal is commercial profits, in which case the term “enterprise” is meant by.⁴¹ The “legal entity” or the “legal fiction” on the other hand “does not purport to describe or correspond to any actual state of affairs. Rather, it facilitates decision-making while preserving the appearance of consistency and eschewing arbitrariness.”⁴² In other words, “the “legal entity” is a pure abstraction, a creation of the imagination”.⁴³

It is not always agreed that a corporation is a combination of both “real” and “legal” entities. This further supports the argument about the nature of the corporation. Thus, it is “a theory of fiction contrasted with a theory of realism”.⁴⁴ On the one hand, the

⁴⁰Foster, Nicholas HD. "The Theoretical Background: The Nature of the Actors in Corporate Social Responsibility." *Research Handbook on Corporate Legal Responsibility* (2005): 1., p 3.

⁴¹Ibid, p 5.

⁴² Kerr, M., R. Janda and C. Pitts, *Corporate Social Responsibility – A Legal Analysis*, (2009), p 71.

⁴³Foster, (2005), p 6.

⁴⁴Vinogradoff, Paul. "Juridical Persons." *Colum. L. Rev.* 24 (1924): 594, p 600.

corporation is “nothing but an artificial creation of the law; and that law, in placing by the side of the natural person the so-called legal or juridical persons, intends to provide for an easy and convenient arrangement of certain common interests”.⁴⁵ On the other hand, corporations are social realities to which the legal arrangement is merely the external expression.⁴⁶ Chief Justice Marshall expressed in *Trustees of Dartmouth College v. Woodward*⁴⁷ the view that the corporation is merely a fiction introduced for legal purposes; he said:

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual⁴⁸.

However, to the theory of “realism”, the corporation is not a fiction, rather, it is a real being.⁴⁹ Therefore, according to Dicey,

[w]hen a body of twenty or two thousand or two hundred thousand men bind themselves together to act in a particular way for some common purpose, they create a body which, by no fiction of law, but by the very nature of things, differs from the individuals of whom it is constituted.⁵⁰

The lack of consensus on the nature of the corporation has some implications on the debate about the concept of corporate social responsibility. Thus, more discussion is needed on the main corporate law theories, namely: concession theory, contractual theory, and constitutionalist theory. The former two theories were examined in chapter three. However, the latter will be explored in this chapter. Such discussion

⁴⁵Ibid.

⁴⁶Ibid.

⁴⁷(U. S. 1819) 4 Wheat. 518, at 636.

⁴⁸ Ibid.

⁴⁹Vinogradoff, (1924), p 600.

⁵⁰Dicey, Albert V. "The Combination Laws as Illustrating the Relation between Law and Opinion in England during the Nineteenth Century." *Harvard Law Review* (1904): 511-532, 513.

will provide a helpful understanding of how the concept of corporate social responsibility is perceived by corporate law theories.

Constitutionalist Theory of Corporate Law and its Reflections on the concept of Corporate Social responsibility:

Bottomley maintained that the constitutionalist theory “accommodates something of both the concession and contractual perspectives discussed in chapter three, but it is not locked into the either/or choice which they present”. It acknowledges the role of state in regulating corporations in which “individual choices are formed and collective decisions are made”. Hence, corporate law has both external and internal dimensions; the former is concerned with relations between corporations and society, and the latter deals with intra-corporate relations.⁵¹ The linkage between corporate and the ideas of constitutional law was emphasised. In the words of Melvin Eisenberg:

Corporate law is constitutional law; that is, its dominant function is to regulate the manner in which the corporate institution is constituted, to define the relative rights and duties of those participating in the institution, and to delimit the power of the institution vis-à-vis the external world.⁵²

Constitutionalist theory has been characterised by Richard Eells as following:

[I]n a society based upon constitutionalist principles, procedural safeguards for freedom] are to be found not only in the structure and processes of public government; they are substantial as well in the governance of the private sectors.

Eells defined corporate constitution as:

That body of fundamental principles, whether codified or unmodified, written or unwritten, which in practice determines the authority and power relationships within the core area of administrative co-ordination and in the area of its contractual and

⁵¹Millon, David. "Theories of the Corporation." *Duke Law Journal* (1990): 201-262, pp 201-202.

⁵²Eisenberg, Melvin A. *The structure of the corporation: A legal analysis*. Beard Books Incorporated, 1976, p 1.

noncontractual relationships with groups of interests that make contributions to and assert claims on the corporation.

Eells' definition of corporate constitution comprises the essence of contractual theory – that the corporation assembles a network of stakeholders – and the core of the concession theory – that the corporation is infused with authority and functions according to a set of purposes.⁵³ Thus,

[t]he theory of corporate constitutionalism begins with the proposition that corporations are more than just artificially created legal institutions (contrary to the suggestion of concession theory) and they are more than just economic institutions (contrary to the argument of contract-based theories). Corporations have *both* of these dimensions, but they are also social enterprises *and* they are polities in their own right. Beginning with this proposition, corporate constitutionalism argues that the means by which corporations are governed and by which they govern should be constituted by state *and* corporate inputs.⁵⁴

On constitutionalist theory, corporation obtain a public licence to operate allowing them to develop their own governance values at least partly.⁵⁵ Seeking corporate social responsibility becomes the way in which they pursue profit while calculating their own ethical standards “in response to the legal – constitutional – imperative of maintaining social legitimacy”.⁵⁶ The Constitutionalist theory reflects the debate over business-society relationship aforementioned. In particular, it echoes to some extent Davis's theory of “corporate constitutionalism”. In this regard, the principle “power–responsibility equation” indicates that corporations have gained their power through society which in turn assumes corporations to operate in a responsible manner. The public licence to operate can be withdrawn according to Davis's principle of “the iron law of responsibility” if social power is not used responsibly. Hence, “in the long run those who do not use power in a manner which society considers responsible will

⁵³ Kerr, et al,(2009), p 68.

⁵⁴Bottomley, (1999), p 255.

⁵⁵ Kerr, et al,(2009), p 70.

⁵⁶ Ibid, p 71.

tend to lose it because other groups eventually will step in to assume those responsibilities”.⁵⁷ The constitutionalist theory can also have some reflections on Donaldson’s “social contract”⁵⁸ theory which implies some non-commercial obligations of business to society. These non-commercial obligations can be deemed as the corporate social responsibilities that have been derived from the so-called “public licence to operate”⁵⁹.

⁵⁷ Can business afford to ignore social responsibilities Davis p 63

⁵⁸ This theory has been mentioned earlier.

⁵⁹ Kerr, et al,(2009), p 68.

The State's Obligations to Protect Human Rights

Under international human rights law, the duty to protect human rights is a task of nation states. Solely states, in the form of governments and other state institutions, are proper subjects of international human rights law as “it is founded on a state-based framework”.¹ Article 2 of the International Covenant on Civil and Political Rights (ICCPR) provides:²

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

States' obligations under international human rights law can also be found in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 2 of ICESCR reads:³

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the

¹McCorquodale, Robert. "Human rights and global business." *Commercial law and human rights* (2002): 89-114.

² International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

³ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Therefore, both treaties place the obligations on the state alone which has to “adopt legislation or other measures to ‘ensure’ or ‘realise’ the rights in the human rights treaty”.⁴ Moreover, because they are the ones who have to agree to these treaties, states have primary obligations to comply with the provisions of treaties.⁵ They are responsible, under international law as enunciated in the articles mentioned above, for all infringements of human rights obligations within their jurisdictions.⁶ However, Vierdag claims that economic, social and cultural rights are not acknowledged by law.⁷ He maintains that the word "right" should be reserved "for those rights that are capable of being enforced by their bearers in courts of law, or in a comparable manner".⁸ According to him “social rights are not directed at government action that can be described in terms of law. The creation of social and economic conditions under which social rights can be enjoyed is not yet describable in terms of law. In order to be a legal right, a right must be legally definable; only then can it be legally enforced, only then can it be said to be justiciable”.⁹

⁴McCorquodale, Robert. "Human rights and global business." *Commercial law and human rights* (2002): 89-114.

⁵Ibid.

⁶Ibid

⁷Vierdag, Egbert W. "The legal nature of the rights granted by the international Covenant on Economic, Social and Cultural Rights." *Netherlands Yearbook of International Law* 9 (1978): 69-105.

⁸Ibid

⁹Ibid

This means that economic, social and cultural rights enunciated by the United Nations are only programmatic recommendations for a state's national policies. Bossuyt asserts that fundamental differences between civil and political rights and economic, social and cultural rights cannot be simply overlooked and combined into a single concept of human rights.¹⁰ He sees the difference between the two sets of rights lies in the precise nature of the rights. Civil and political rights are fundamental rights since they are inherent to human dignity.¹¹ Economic, social and cultural rights are relative notions considered by states when conveying policy decisions; i.e. they are highly discretionary and subjected the political and economic situations.¹²

Criticizing Vierdag and Bossuyt's views, Eide correctly states that "it is highly questionable, at best, whether an enforceability test can appropriately be applied in order to ascertain whether a right can be deemed to be part of international human rights law".¹³ As Van Hoof argues, "one cannot simply 'transplant' conceptions and ideas derived from municipal systems into international law, because often these are not attuned to the realities of international relations".¹⁴ He adds that "it is the exception rather than the rule that norms of international law can be enforced through courts of law".¹⁵ Hence, it is mistaken to confuse "the question whether a right has become a justiciable right, with the question whether the right exists under international law".¹⁶ According to Edie, a number of economic rights have been

¹⁰Bossuyt, Marc. "International human rights systems: Strengths and weaknesses." *Human Rights in the Twentieth Century*. Dordrecht/Boston/London: Martinus Nijhoff Publishers (1993): 47-55.

¹¹Ibid.

¹²Ibid.

¹³Eide, Asbjorn. "Realization of social and economic rights: The minimum threshold approach." *ICJ Rev.* 43 (1989): 40.

¹⁴Van Hoof, Godfried JH. "The legal nature of economic, social and cultural rights: a rebuttal of some traditional views." *The right to food* 97 (1984): 106-107.

¹⁵Ibid

¹⁶ Eide, Asbjorn. "Realization of social and economic rights: The minimum threshold approach." *ICJ Rev.* 43 (1989): 40.

found to be enforceable in the context of domestic law providing only that their component parts are formulated in an adequately precise and specified manner. For instance, some of the economic rights which have been stated in the International Covenant on Economic, Social and Cultural Rights have also been spelled out in greater detail within the framework of the system of international labour conventions and recommendations adopted by the International Labour Organization.¹⁷

Eide rightly argues that “(t)he indivisibility and interdependence of civil and political rights on the one hand and economic, social and cultural rights on the other is a fundamental tenet of the United Nations approach to human rights”.¹⁸ However, he suggests that although this doctrine has often been reaffirmed by the many human rights organs, it has not been demonstrated in practice whether at the domestic or international levels. One of the reasons for this inconsistency, as Eide puts it, is the fact that both the exact content of a number of economic, social and cultural rights, as well as the precise obligations which they entail for States Parties to the International Covenant on Economic, Social and Cultural Rights, remain significantly ambiguous. This ambiguity, when compared to the degree of exactness “with which most civil and political rights have been elaborated, has tended to encourage the relative neglect of economic and social rights”.¹⁹

Thus, Alston encouraged the core content concept which recognises the normative content of the rights set forth in the ICESCR so as to reconcile the division between

¹⁷Ibid

¹⁸ Ibid

¹⁹Ibid

the political, economic and social systems of the states parties.²⁰ As such, this normative content is valid, regardless of the differences in existing state systems, and must be fulfilled as an absolute minimum.²¹ Alston advocates that "each right must ...give rise to an absolute minimum entitlement, in the absence of which a State Party is to be considered to be in violation of its obligations".²² Eide affirms that "governments should establish a nation-wide system of identifying local needs and opportunities for the enjoyment of economic and social rights," especially for the most disadvantaged and vulnerable groups in the country. Through constructing national minimum standards, governments can attain progress in socio-economic issues in line with the nature of their own national situation, economic and social conditions, and national habits and culture.²³

It has also been argued that economic rights are of profoundly different nature from civil and political rights in that the former are 'positive' and costly²⁴ whereas the latter are 'negative' rights the implementation of which is cost-free. 'Negative' means that they consist in freedom from the state, and 'positive' that they require action by the state, and therefore are costly. However, it is not conceivable to make a neat distinction around the axis 'negative/positive' between civil and political rights on the one hand and economic, social and cultural on the other.²⁵

²⁰Alston, Phillip. "Out of the abyss: the challenges confronting the new un committee on economic, social and cultural rights." *Human Rights Quarterly*(1987): 332-381.

²¹Ibid

²²Ibid

²³ Eide, Asbjorn. "Realization of social and economic rights: The minimum threshold approach." *ICJ Rev.* 43 (1989): 40.

²⁴Ibid

²⁵ Ibid

Under the ICCPR²⁶, the Human Rights Committee takes the view that:

the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.

Thus, the principle is that states are anticipated to take all measures that could rationally be taken, in agreement with international law, to preclude private actors from any conduct that could result in human rights violations.²⁷ When such violations occur which the state could have averted without imposing an irrational burden on such a state, “the international responsibility of the state shall be engaged”.²⁸ In the case of *Honduras v Velasquez Rodriguez*, the Inter-American Court of Human Rights held that such an international responsibility of a state in specific circumstances may arise “not because of the act itself, but because of a lack of due diligence to prevent the violation or to respond to it as required by the human rights treaty”.²⁹ Therefore, “under customary international law a state will incur international responsibility for a breach of an international legal obligation, where the act in question can be attributed to the state. This has been codified by the International Law Commission (ILC) in its

²⁶Similarly, the Committee on Economic, Social and Cultural Rights under the International Covenant on Economic, Social and Cultural Rights, adopted the same position: ‘The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food’. Committee on Economic, Social and Cultural Rights, ‘General Comment No. 12 (1999): The Right to Adequate Food (Art 11)’, UN Doc E/C.12/1999/5, para. 15

²⁷DE SCHUTTER, Olivier. "Towards a New Treaty on Business and Human Rights." *Business and Human Rights Journal* 1.01 (2016): 41-67.

²⁸Ibid.

²⁹*Honduras v Velasquez Rodriguez*. Inter-American Court of Human Rights, (ser. C, No 4, judgment of 29 July 1988. Cited in McCorquodale, Robert. "Human rights and global business." *Commercial law and human rights* (2002): 89-114.

Articles on the Responsibility of States for Internationally Wrongful Acts”.³⁰ In *Lopez Ostra v. Spain*, the European Court of Human Rights decided that a state’s failure to take constructive efforts to preclude an infringement of a human right by a corporation could constitute a breach of that state’s treaty obligations.³¹ De Schutter points out that the duty to protect involves a duty to provide access to remedies where a violation did happen “i.e., the preventive measures failed or were insufficient”.³²

There have been increasing efforts towards developing international legal obligations directly upon MNCs.³³ The International Council on Human Rights Policy suggested that “(l)ooking further into the future, one can see a conscious and gradual evolution of international law towards clear, binding norms that are directly applicable to companies. Law is more than a body of pre-established rules that merely need to be discovered and interpreted. Law is an agent of social policy.” Higgins stresses “[a] refusal to acknowledge political and social factors cannot keep law ‘neutral’, for even such a refusal is not without political and social consequence. There is no avoiding the essential relationship between law and politics”.³⁴

The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been

³⁰International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission on the Work of its 53rd session, A/56/10, August, 2001, UN GAOR. 56th Sess Supp No 10, UN Doc A/56/10(SUPP) (2001) (ILC Articles). See, McCorquodale, Robert, and Penelope Simons. "Responsibility beyond borders: state responsibility for extraterritorial violations by corporations of international human rights law." *The Modern Law Review* 70.4 (2007): 598-625.

³¹*Lopez Ostra v. Spain*, 303 Eur. Ct. H.R. (ser. A) 38, 303 Eur. Ct. H.R. 41 (1994).

³²DE SCHUTTER, Olivier. "Towards a New Treaty on Business and Human Rights." *Business and Human Rights Journal* 1.01 (2016): 41-67.

³³ McCorquodale, Robert. "Human rights and global business." *Commercial law and human rights* (2002): 89-114.

³⁴ Higgins, Rosalyn. *Problems and Process: International law and how we use it*, Oxford: Clarendon Press, 1994.

influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States.

There have also been calls for a move “towards a new legal order” to bring “multinational actors... within the mores of human rights, and the principle of accountability”.³⁵ Christopher Weeramantry, who is a former judge of the International Court of Justice, stated that:

We must attune the international law of the future to the concept that a large variety of new actors have appeared on the international scene, with rights and responsibilities which international law will recognize as inhering in them. The great corporations are a very important group of these new international actors whom the law of the future will recognize as accountable to the international legal system.³⁶

Dine rightly argues that although there is “some evidence of direct applicability” to MNCs mustered by the International Council’s report, “it is clear that the development of this jurisprudence is very much in its infancy and the use of the OECD Guidelines for Multinational Companies is less than a convincing support for the concept”. She adds that there are no enforcement mechanisms which is an additional significant issue “with the international human rights framework”. Moreover, other international codes of conducts such as the OECD Convention on Combating Bribery of Foreign Public officials in International Business Transactions 1997, the International Labour Organisation’s (ILO) Tripartite Declaration of

³⁵ Weeramantry, Christopher G. “Human Rights and the Global Marketplace”, *Brooklyn Journal of International Law*, Vol. 25, No. 1, 1999.

³⁶ *Ibid.*

Principles Concerning Multinational Enterprises and Social Policy 1977, and many others are non-legally binding.³⁷

In addition, the ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy” Framework’ (Guiding Principles) published John G. Ruggie, in 2011 under the guidance of the United Nations Special Representative of the Secretary-General for Business and Human Rights, are voluntary guidelines with no legal enforcement mechanisms.³⁸ These Guiding Principles are grounded in recognition of: (a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms; (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.³⁹ These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. Further, in meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;

³⁷ McCorquodale, Robert. "Human rights and global business." *Commercial law and human rights* (2002): 89-114.

³⁸ WERHANE, Patricia H. "Corporate Moral Agency and the Responsibility to Respect Human Rights in the UN Guiding Principles: Do Corporations Have Moral Rights?." *Business and Human Rights Journal* 1.01 (2016): 5-20.

³⁹ United Nations. *Guiding principles on business and human rights: implementing the United Nations "protect, respect and remedy" framework*. UN.

(d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.⁴⁰

In addition, states should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence. Moreover, states should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights. Furthermore, states should promote respect for human rights by business enterprises with which they conduct commercial transactions. Because the risk of gross human rights abuses is heightened in conflict affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

(a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships; (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence; (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation; (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.⁴¹

⁴⁰ Ibid

⁴¹ Ibid

Additionally, states should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts. States, when acting as members of multilateral institutions that deal with business-related issues, should:

- (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;
- (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;
- (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.⁴²

The Guiding Principles advocate that business enterprises should also respect human rights.⁴³ This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.⁴⁴ The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.⁴⁵ The responsibility to respect human rights requires that business enterprises: “(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b)

⁴² Ibid

⁴³ Ibid

⁴⁴ Ruggie, John. "Protect, respect and remedy: a framework for business and human rights." *innovations* 3.2 (2008): 189-212.

⁴⁵ Ibid

Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”.⁴⁶ Furthermore, the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure.⁴⁷ Nonetheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.⁴⁸ In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: “(a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute”.⁴⁹

However, according to Dine, “Ruggie’s final report offers little to overcome the problem. His ‘three pillars’ (which mirror the ‘protect, respect and fulfil’ motif of human rights standards with ‘protect, respect, remedies’) and his focus on ‘operationalizing’ seem to produce an unsatisfying lack of effective sanctions or reparations.⁵⁰ Further, Most International regulation through guidelines, resolutions, declarations, recommendations, principles, reports, charters and draft documents of

⁴⁶ United Nations. *Guiding principles on business and human rights: implementing the United Nations’ protect, respect and remedy” framework*. UN.

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Dine, Janet. "Jurisdictional arbitration by multinational companies: a national law solution?." *Journal of Human Rights and the Environment* 1 (2012): 44-69.

various types, are not legally binding too.⁵¹ The practical usefulness of these codes is still unclear.⁵² This can be seen from, for instance, the ILO's conclusion that "at present there is insufficient data to determine the actual impacts of (such) codes on labour practices of (MNCs)".⁵³ In addition, research has revealed that MNCs do not always comply with codes of conduct⁵⁴ and guidelines as will be seen subsequently in this thesis.

Indirect Human Rights Legal Obligations on MNCs via Regulation by the Host State

The host state, in which MNCs have operations, unequivocally has jurisdiction to regulate the activities of all those entities functioning within its borders, "be they natural persons, corporations incorporated in the host state, or overseas branches of (MNCs) incorporated elsewhere".⁵⁵ As mentioned earlier, under international human rights law, states' obligations to protect all individuals within its territory can be found in the two International Human Rights Covenants. According to the report *Beyond Voluntarism*:

A state has three types of obligations in implementing human rights standards. It must respect these rights, which means making sure that state officials and public agents do not do anything to violate people's rights. Its obligations would include prohibiting arrests without warrants, outlawing torture, and preventing discrimination by public authorities. The state must fulfil the rights, which means taking positive action through government authorities and agents so that people can enjoy their rights. This might include improving the quality of health care, bringing clean water

⁵¹ Johns, Fleur E. "The invisibility of the transnational corporation: an analysis of international law and legal theory." *Melbourne University Law Review* 19 (1994): 893-923.

⁵² McCorquodale, Robert, 2002, at 90.

⁵³ ILO Working Party on The social Dimensions of the Liberalization of International Trade

⁵⁴ McCorquodale, Robert, 2002, at 90.

⁵⁵ Ibid.

to poor areas, or training judges to be truly independent. ...The state must also protect human rights. It is under this heading that a state is obliged to protect people by preventing private actors from abusing rights.⁵⁶

Thus, state's obligations to protect people within its territory from potential abuses of human rights by private actors including MNCs operating there, entail that such a state is responsible to adopt constitutional, legislative, judicial, administrative and other measures to ensure that human rights are upheld and protected.⁵⁷ Taking such measures is even fundamental for the Saudi Arabian government so as to guarantee the protection of human rights of all individuals within its borders, no matter the perpetrator may be. In this context however, it is worth noting that Saudi Arabia abstained on the final vote on the Universal Declaration of Human Rights (UDHR) in 1948 and has not ratified the ICCPR. The ramifications of such actions have some impacts on the concept of freedom in the case of Saudi Arabia, as some critics would argue. The only mention of human rights in the Saudi Basic Law of Governance can be found in article 26 which denotes that "(t)he State shall protect human rights in accordance with the Islamic Shari'ah".⁵⁸ The Saudi Basic Law of Governance, which formalises several aspects of the constitutional framework of the country, does not provide any guidance to what human rights may entail from an Islamic perspective. Such major government deficiency in regulations for human rights led to many criticisms. One criticism is that while the Basic Law of Governance and other laws, introduced at the same period in Saudi Arabia, "constitute significant steps toward codifying the largely unwritten legal system of the country, they fall far short of internationally recognized standards in their treatment of civil and political rights (and

⁵⁶ Beyond Voluntarism

⁵⁷ McCorquodale, Robert. "Human rights and global business." *Commercial law and human rights* (2002): 89-114

⁵⁸ Basic Law of Governance, Royal Order No. A/90 dated 27 / 8 / 1412 H, 1992.

economic, social, and cultural rights). Disappointingly, the final products are far below expectations, and Empty Reforms explains and analyzes each”.⁵⁹ These rather harsh words stress the utmost urgency for full and comprehensive regulation of human rights in the country. No single piece of legislation regarding human rights has been introduced ever since in Saudi Arabia.

However, the following scenario has to be taken into account when the Saudi government is negotiating a bilateral investment treaty since host states may wish to regulate the economy, including foreign investors embedded therein, in a manner which seeks to promote or protect certain human rights interests (and the environment).⁶⁰ Examples could range from a state’s efforts to use its police powers to protect citizens from having their right to free speech interfered with by foreign investors, to policy measures designed to operationalize the progressive realization of economic and social rights, such as the right to food, the right to health, or the right to water.⁶¹ Where bilateral investment treaties are in place, foreign investors will often enjoy the ability to challenge these human-rights inspired measures through international arbitration.⁶²

Thus, I argue that as a starting point the government of Saudi Arabia should consider accepting internationally recognised human rights which are inherent to all people. This is because the fact that all human are born free and equivalent in dignity and rights and everyone is entitled to these rights, without discrimination. Human

⁵⁹Human Right Watch, *Empty Reforms*, MAY 1, 1992.

⁶⁰ Peterson, Luke Eric, and Kevin R. Gray. "International human rights in bilateral investment treaties and in investment treaty arbitration." *International Institute for Sustainable Development (IISD), Winnipeg* (2003).

⁶¹ Ibid

⁶² Ibid

rights include, inter alia, the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Moreover, promoting and encouraging respect for human rights for all has been a fundamental objective of the United Nations since its establishment in 1945, as specified in the United Nations Charter (the UN Charter). In its preamble, the UN Charter stated that “the peoples of the United Nations are determined to reaffirm their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women” and are determined “to promote social progress and better standards of life in larger freedom”⁶³. As such, human rights are at the heart of the establishment of the United Nations and therefore must be at the core of Saudi Arabian constitution, legislations, and judiciary system. This is because, as mentioned earlier, International Bill of Human Rights sets out the obligations of states to act in certain patterns of behaviour or to refrain from certain conducts in order to promote and protect human rights and fundamental freedoms of individuals or groups.

Since business entities in Saudi Arabia cannot be bound by international human rights law unless where the Saudi government implements and enforces international law through domestic legislation, it is thus essential, first of all, that Saudi Arabia recognises universally accepted human rights and introduce them into its constitutional framework, i.e. The Saudi Basic Law of Governance. Secondly, the government of Saudi Arabia should adopt a human rights legislation so as to ensure that such rights are upheld and protected. The aim of this legislation is to provide a framework for human rights that have to be respected by everyone including

⁶³ United Nations, Charter, Preamble.

businesses in the country. Such framework should be in proportion to the UDHR. In this regard, freedom and equality must be at the very heart of the framework on the subject of human rights. Article 1 of the UDHR, which lays down the idea on which the Declaration is based, reads: “(a)ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.⁶⁴ The article thus defines the basic assumptions of the Declaration: that the right to liberty and equality is man's birth right and cannot be alienated: and that, because man is a rational and moral being, he is different from other creatures on earth and therefore entitled to certain rights and freedoms which other creatures do not enjoy.⁶⁵ Thus, article 1 of the UDHR has to be reflected in the proposed framework for human rights. Moreover, the new framework must also take into account article 2 of the UDHR which went further to explain the basic principle of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms that is to forbid "distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The role of MNCs in this regard is as important as that of states. As mentioned previously in this chapter, MNCs have responsibilities towards human rights since the UDHR implicitly referred to businesses including MNCs as being organs of society. Further, Article 29 of UDHR provides that “(e)veryone has duties to the community in which alone the free and full development of his personality is possible”. This is an obvious acceptance of the opinion that MNCs do have human rights responsibilities “on the basis of their social existence”.⁶⁶ As discussed earlier, in order to for business entities in Saudi Arabia to be obliged by international human

⁶⁴ UDHR, Article 1.

⁶⁵ United Nations, Fact Sheet No.2 (Rev.1), The International Bill of Human Rights, Geneva June 1996

⁶⁶ Muchlinski, Peter T. *Multinational enterprises & the law*. Oxford University Press, 2007, p 519.

rights law, the Saudi government needs to implement and enforce international law through domestic legislation which I argue for.

In addition to the UDHR's significant position on the aforementioned human rights, such rights were also reflected in more details with explicit reference to MNCs in the UN Norms. Under 'right to equal opportunity and non-discriminatory treatment' in part B of the UN Norms, great emphasis was put on the responsibility of MNCs and other businesses to ensure equality of opportunity and treatment, as provided in the relevant international instruments and national legislation as well as international human rights law, for the purpose of eliminating discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age - except for children, who may be given greater protection - or other status of the individual unrelated to the inherent requirements to perform the job or of complying with special measures designed to overcome past discrimination against certain groups. As defined in the UN Norms commentary, discrimination means any distinction, exclusion, or preference made on the above-stated bases, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.⁶⁷ Therefore, All policies of MNCs and other business enterprises in Saudi Arabia, including, but not limited to, those relating to recruitment, hiring, discharge, pay, promotion and training, shall be non-discriminatory. Moreover, other stakeholders, such as indigenous peoples and communities, are to be treated by MNCs with respect and dignity, and on a basis of equality. However, unless the Saudi government puts in place effective measures through the suggested human rights legislative framework, it is really problematic to

⁶⁷ Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/38/Rev.2 (2003).

impose obligations on business entities to respect and fulfil the right to equal opportunity and non-discriminatory treatment.

Article 3, the first keystone of the Declaration, proclaims the right to life, liberty and security of person -a right essential to the enjoyment of all other rights. This article introduces articles 4 to 21, in which other civil and political rights are set out, comprising: freedom from slavery and servitude; freedom from torture and cruel, inhuman or degrading treatment or punishment; the right to recognition everywhere as a person before the law; the right to an effective judicial remedy; freedom from arbitrary arrest, detention or exile; the right to a fair trial and public hearing by an independent and impartial tribunal; the right to be presumed innocent until proved guilty; freedom from arbitrary interference with privacy, family, home or correspondence; freedom of movement and residence; the right of asylum; the right to a nationality; the right to marry and to found a family; the right to own property; freedom of thought, conscience and religion; freedom of opinion and expression; the right to peaceful assembly and association; and the right to take part in the government of one's country and to equal access to public service in one's country. Again, these are fundamental rights that have to be addressed in the proposed legislative framework for human rights by the Saudi Arabian government. This because there are many rights which have to be respected and upheld by businesses entities including EU MNCs in Saudi Arabia, such as freedom of thought, conscience and religion; freedom of opinion and expression; and the right to peaceful assembly and association. Business entities will only be bound to respect and uphold such rights if the Saudi government adopt legislation in this regard.

The Saudi government should also echo article 22, which is the second cornerstone of the Declaration. It presents articles 23 to 27, in which economic, social and cultural rights -the rights to which everyone is entitled "as a member of society" -are specified. The article characterizes these rights as indispensable for human dignity and the free development of personality, and indicates that they are to be realized "through national effort and international cooperation". At the same time, it points out the limitations of realization, the extent of which depends on the resources of each State. The economic, social and cultural rights recognized in articles 22 to 27 include the right to social security; the right to work; the right to equal pay for equal work; the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay; the right to a standard of living adequate for health and well-being; the right to education; and the right to participate in the cultural life of the community; the right to form and to join trade unions for the protection of his interests. Of course, many of these rights have to be borne by business entities and therefore the Saudi government must adopt legislation

The concluding articles, articles 28 to 30, recognize that everyone is entitled to a social and international order in which the human rights and fundamental freedoms set forth in the Declaration may be fully realized, and stress the duties and responsibilities which each individual owes to his community. Article 29 states that "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society". It adds that in no case may human rights and fundamental freedoms be

exercised contrary to the purposes and principles of the United Nations. Article 30 emphasizes that no State, group or person may claim any right, under the Declaration, "to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth" in the Declaration.

Developments Since UDHR:

Since 1948 it has been and rightly continues to be the most important and far-reaching of all United Nations declarations, and a fundamental source of inspiration for national and international efforts to promote and protect human rights and fundamental freedoms. It has set the direction for all subsequent work in the field of human rights and has provided the basic philosophy for many legally binding international instruments designed to protect the rights and freedoms which it proclaims. In the Proclamation of Teheran, adopted by the International Conference on Human Rights held in Iran in 1968, the Conference agreed that "the Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community".⁶⁸ The Conference affirmed its faith in the principles set forth in the Declaration, and urged all peoples and Governments "to dedicate themselves to [those] principles . . . and to redouble their efforts to provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare".⁶⁹

At the sixtieth anniversary of the adoption of the Declaration in 2008, the United Nations Secretary-General Ban Ki-moon stated that the Declaration "has become a yardstick by which we measure respect for what we know, or should know, as right and wrong".⁷⁰ He added, it "is an occasion for all of us to recommit to the vision of the Declaration. It remains as relevant today as it was on the day it was adopted. I

⁶⁸ Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3 (1968).

⁶⁹ Ibid.

⁷⁰ United Nations, "60th Anniversary Special Edition 1948-2008".

hope you will make it part of your life”⁷¹. The emphasis was put on the significance of the Declaration to all people around the world only describe how precious the document is. It is, as High Commissioner for Human Rights, Louise Arbour has put it, “a living document that will continue to inspire generations to come”⁷².

Although, the legal status of UDHR maintains that of a non-binding declaration⁷³, UDHR is truthfully universal in scope, as it conserves its validity for every member of the human family, everywhere, regardless of whether or not governments have formally accepted its principles or ratified the Covenants⁷⁴. The preambles and articles 1, 3 and 5 of the two International Covenants: International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights are almost duplicate. In this regard, the preambles recall the obligation of States under the Charter of the United Nations to promote human rights; remind the individual of his responsibility to strive for the promotion and observance of those rights; and recognise that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights. The Covenants, by their nature as multilateral conventions, are legally binding only on those states which have accepted them by ratification or accession.

The coming into force of the Covenants, by which States parties accepted a legal as well as a moral obligation to promote and protect human rights and fundamental

⁷¹Ibid.

⁷²Ibid.

⁷³Muchlinski p 519

⁷⁴Fact Sheet No.2 (Rev.1), The International Bill of Human Rights

freedoms, did not in any way weaken the far-reaching influence of the Universal Declaration.⁷⁵ Quite the reverse, the very existence of the Covenants, and the fact that they contain the measures of implementation required to ensure the realisation of the rights and freedoms set out in the Declaration, gives greater strength to the Declaration.⁷⁶ The two Covenants, however, impose responsibilities on governments to ensure that human rights are promoted and protected. Businesses including MNCs are obliged adhere to a government's regulations which surely takes into account its international obligations. Thus, such a government will be bound, if ratified the Covenants, to reflect such inherent obligations into its domestic laws in order for corporations to abide by such obligations if relevant. This is because some obligations are for states to fulfill, for example, Article 14 of International Covenants: International Covenant on Civil and Political Rights which provide that "(a)ll persons shall be equal before the courts and tribunals".⁷⁷

⁷⁵Muchlinski p 519.

⁷⁶ Ibid.

⁷⁷ International Covenants: International Covenant on Civil and Political Rights, Article 14.

International, Regional, and Domestic Perspectives of Fundamental Freedoms of Human Beings

It is widely accepted that fundamental freedoms are integral aspects of human rights. Such acceptance can be found at multiple levels: universal, regional, and domestic. On the universal level, UDHR formed the basis of the universally recognised aspects of human rights. As such, article 1 of UDHR states that “(a)ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.⁷⁸ The word “free” is there for one likely reason that is to overstep the boundaries limiting the altitude of freedom that human beings deserve. Such boundaries and restrictions of freedoms were tighter and even “resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want”⁷⁹. Further, human freedoms also entail the following: “the right to freedom of movement and residence within the border of each state”, as provided in article 13 of UDHR and article 12 of the International Covenant on Civil and Political Rights (ICCPR), 1966; “the right to freedom of thought, conscience and religion”, as stated in article 18 of UDHR and ICCPR; “the right to freedom of opinion and expression”, as specified in article 19 of UDHR and ICCPR; “the right of freedom of peaceful assembly and association”, as indicated in article 20 of UDHR and articles 21 and 22 of ICCPR.

⁷⁸ UDHR, Article 1.

⁷⁹UDHR preamble.

Why Should MNCs Involve in Respecting, Upholding, and Protecting Human Freedoms?

UDHR implicitly referred to businesses including MNCs as being organs of society and hence they have responsibilities towards human rights and freedoms. Moreover, Article 29 of UDHR provides that “(e)veryone has duties to the community in which alone the free and full development of his personality is possible”. This is an obvious acceptance of the opinion that MNCs do have human rights responsibilities “on the basis of their social existence”.⁸⁰ However, explicit references were made to MNCs and their responsibilities with regard to human rights. Consequently, several international instruments have reiterated the importance of respecting, promoting and upholding such fundamental freedoms of human beings. One significant document is the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights⁸¹(the UN Norms), 2003. In this document, direct obligations were placed upon MNCs “to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law”.⁸² Therefore, MNCs share with states the responsibilities of promoting, securing the fulfillment of, respecting and protecting certain fundamental freedoms of people. In this regard, under section D of the UN Norms entitled “Rights of workers”, article nine states that “transnational corporations and other business enterprises shall ensure freedom of association”. Resembling UDHR, Article 12 of the UN norms provided that “transnational corporations and other business enterprises shall respect economic, social and cultural

⁸⁰Muchlinski p 519

⁸¹UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, 2003, E/CN.4/Sub.2/2003/12/Rev.2

⁸² Ibid

rights as well as civil and political rights and contribute to their realization, in particular the rights to ... freedom of thought, conscience, and religion and freedom of opinion and expression, and shall refrain from actions which obstruct or impede the realization of those rights".⁸³

Saudi Arabian Involvement in Regional Instruments for Human Rights

Cairo Declaration on Human Rights in Islam

The intense pressure on the country to act responsively towards acknowledging and upholding civil rights, could be one reason that Saudi Arabia has been keen on to join the path for recognising human rights and accepting them as a part of the social responsibility of the state. In this respect, Saudi Arabia voted in favour of the adoption of the 1990 Cairo Declaration on Human Rights in Islam (Cairo Declaration) which provides a general guidance for member States in the field of human rights. It affirmed in its preamble that:

Fundamental rights and freedoms according to Islam are an integral part of the Islamic religion and that no one shall have the right as a matter of principle to abolish them either in whole or in part or to violate or ignore them in as much as they are binding divine commands, which are contained in the Revealed Books of Allah and which were sent through the last of His Prophets to complete the preceding divine messages and that safeguarding those fundamental rights and freedoms is an act of worship whereas the neglect or violation thereof is an abominable sin, and that the safeguarding of those fundamental rights and freedom is an individual responsibility of every person and a collective responsibility of the entire Ummah.⁸⁴

⁸³ Ibid, Article 12.

⁸⁴ Cairo Declaration on Human Rights in Islam, 1990.

According to Cairo Declaration, Fundamental rights and freedoms are devoutly religious aspects of Islam and, thus, responsibility for safeguarding such rights and freedoms starts with the individual person who is also a part of the society. Such society is also responsible for making sure that rights and freedoms are protected and upheld. For example, Article 13 which states that "... (e)veryone shall be free to choose the work that suits him best and which serves his interests as well as those of the society..."⁸⁵; and article 22 which asserts that "(a) (e)veryone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah".⁸⁶

Arab Charter on Human Rights

Unlike UDHR, Cairo Declaration provided little guidance on human freedoms. Only freedom to choose work and freedom of expression were included in Cairo Declaration. Other freedoms such as the right to freedom of thought, conscience and religion and the right of freedom of peaceful assembly and association, which are core to UNHR, were not mentioned in Cairo Declaration. Absence of such significant freedoms in Cairo Declaration could be amounted to the very conservative culture of Arab states at the time which is predominantly religiously driven. As such, Arab countries do not want to imitate mainly western ideologies and ways of thinking, but rather demand for adhering to their cultural and religious believes which in their opinion might be harmed by others. This becomes clearer when Arab countries including Saudi Arabia adopted the 2004 Arab Charter on Human Rights (Arab Charter)⁸⁷ in which they endeavoured to address some of the issues in Cairo Declaration. In its preamble, Arab Charter proclaims that it reaffirms the principles of

⁸⁵ Cairo Declaration on Human Rights in Islam, 1990, Article 13.

⁸⁶ Ibid, Article 22.

⁸⁷ League of Arab States, Arab Charter on Human Rights, May 22, 2004

the Charter of the United Nations, the Universal Declaration of Human Rights and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This led to the introduction of many other fundamental human rights and freedoms that were non-existent in Cairo Declaration. These newly introduced rights and freedoms in Arab Charter were to some extent a reflection of UDHR. Such shift towards more recognition of fundamental human rights and freedoms was a result of an international pressure on Arab countries as well as on other states to be fully committed to universally recognised human rights and freedoms.

As a result of the need to keep up with international standards on human rights and freedoms, Arab Charter contains for the first time articles regarding freedom of association, freedom of thought, conscience and religion, and freedom of opinion. In this respect, article 24 of Arab Charter reads: “every citizen has the right to ... freely form and join associations with others; freedom of association and peaceful assembly”.⁸⁸ However, article 24 also stresses that “(n)o restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public health or morals or the protection of the rights and freedoms of others”.⁸⁹ Such provision may well be interpreted in favour of the policy of any state party to Arab Charter, in this case Saudi Arabia. As such, the Saudi government is strongly against any form associations whether by forming or joining, and also against peaceful assembly. It is a contradiction that the country is a party to Arab Charter yet it opposes the charter’s fundamental provisions. The consequences of

⁸⁸ League of Arab States, Arab Charter on Human Rights, 2004, Article 24.

⁸⁹ Ibid

such actions by Saudi Arabia will have some impacts when it comes to the rights and freedoms of MNCs' workers in the country. This is because workers of MNCs in Saudi Arabia are not likely to enjoy or even have the same rights and freedoms their peers have in other countries where such rights and freedoms are guaranteed. However, Arab Charter also provided provisions on freedom of thought, conscience and religion, as proclaimed in article 30, and freedom of opinion and expression, as stated in article 32. What is said earlier about the Saudi government restriction on freedoms stated in article 24 is also relevant to articles 30 and 32 of Arab Charter.⁹⁰

European Union's Perspective on Fundamental Human Rights and Freedoms

Since this study is primarily concerned about EU MNCs operating in Saudi Arabia, the study will attempt to underline EU instruments for fundamental human rights and freedoms that should be respected and upheld by MNCs. In this respect, the Charter of Fundamental Rights of the European Union⁹¹ (the EU Charter) is one of the several regional instruments echoing the importance of respecting, promoting and upholding fundamental rights and freedoms of human beings. Proclaimed in 2000, the EU Charter has become legally binding on the EU with the entry into force of the Treaty of Lisbon, in December 2009. Article 10 of the EU Charter states that “everyone has the right to freedom of thought, conscience and religion”.⁹² Freedom of expression was also reflected in article 11 of the EU Charter. Article 12 of the EU charter asserts that “everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his

⁹⁰ Ibid.

⁹¹ Charter of Fundamental Rights of the European Union, (2010/C 83/02)

⁹² Ibid, Article 10.

or her interests”.⁹³ Moreover, Article 15 of the EU Charter affirms everyone’s right of freedom to choose an occupation and right to engage in work.

In 1998, the European Parliament (EP) passed a resolution calling on the European Union (EU) to draft a Code of Conduct for European Multinationals.⁹⁴ The EP resolution calls for the creation of a legally binding code on European Multinationals and the establishment of a monitoring mechanism to ensure implementation of the Code provisions. Provision 10 of the EP resolution recommends that a model code of conduct for European business should comprise existing minimum applicable international standards which include, inter alia, the OECD guidelines for Multinational Enterprises, UDHR and different Covenants on human rights. Additionally, the Commission of European Communities submitted the Green Paper Promoting a European Framework for CSR⁹⁵. The European Commission also suggested that for companies seeking a formal approach to CSR, especially large companies, authoritative guidance is provided by internationally recognised principles and guidelines, in particular the recently updated OECD Guidelines for Multinational Enterprises, the ten principles of the United Nations Global Compact, the ISO 26000 Guidance Standard on Social Responsibility, the ILO Tri-partite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and the United Nations Guiding Principles on Business and Human Rights.⁹⁶ The European Commission also stated that this core set of internationally recognised principles and guidelines represents an evolving and recently strengthened global framework for

⁹³ Ibid, Article 12.

⁹⁴European Parliament (EP), Resolution on EU standards for European Enterprises operating in developing countries: towards a European Code of Conduct, Resolution A4-0508/98 of 1998.

⁹⁵COM(2001)366.

⁹⁶European Commission, ‘A renewed EU strategy 2011-14 for Corporate Social Responsibility’, COM(2011) 681.

CSR.⁹⁷ Therefore, European policy to promote CSR should be made fully consistent with this framework.⁹⁸

The Responsibilities of MNCs Towards Labour Rights

It is argued that MNCs' strategies and practices have the most immediate impact on the enjoyment of labour rights due to their specific position as employers.⁹⁹ Moreover, the essential need to formulate labour standards is echoed in the fact that the majority of current international initiatives endeavour to address MNCs' responsibility to respect labour rights more than any other set of rights.¹⁰⁰ The minimum responsibilities of MNCs concerning labour rights should be based on "core" labour rights, as articulated by Article 2 of the 1998 ILO Declaration on Fundamental Principles and Rights at Work (ILO Declaration), and extended on by the eight fundamental ILO Conventions.¹⁰¹ These core labour rights comprise the freedom of association, the right to organize and bargain collectively, and the prohibitions against discrimination, bonded and forced labour, and child labour. The ILO Declaration commits Member States to respect and promote the abovementioned principles and rights whether or not they have ratified the relevant Conventions. Furthermore, the ILO Declaration makes it clear that these rights are universal, and that they apply to all people in all States - irrespective of the level of economic

⁹⁷Ibid.

⁹⁸Ibid

⁹⁹Kinley, David, and Junko Tadaki. "From talk to walk: The emergence of human rights responsibilities for corporations at international law." *Virginia Journal of International Law* 44.4 (2004): 931-1023.

¹⁰⁰Gordon, Kathryn, and Maiko Miyake. *Deciphering codes of corporate conduct: a review of their contents*. No. 1999/2. OECD Publishing, 1999.

¹⁰¹Forced Labour Convention, No. 29, June 28, 1930, 39 U.N.T.S. 55; Abolition of Forced Labour Convention, No. 105, June 25, 1957, 320 U.N.T.S. 291; Freedom of Association and Protection of the Right to Organize Convention, No. 87, July 9, 1948, 68 U.N.T.S. 17; Right to Organize and Collective Bargaining Convention, No. 98, July 1, 1949, 96 U.N.T.S. 257; Equal Remuneration Convention, No. 100, June 29, 1951, 165 U.N.T.S. 303; Discrimination (Employment and Occupation) Convention, No. 111, June 25, 1958, 362 U.N.T.S. 31; Minimum Age Convention, No. 138, June 26, 1973, 1015 U.N.T.S. 297 [hereinafter ILO Convention No. 138]; Worst Forms of Child Labour Convention, No. 182, June 17, 1999, 38 I.L.M. 1207.

development. It particularly mentions groups with special needs, including the unemployed and migrant workers. It acknowledges that economic growth alone is not enough to ensure equity, social progress and to eradicate poverty.

This initiative is supported by a follow-up procedure whereby Member States that have not ratified one or more of the core Conventions are requested each year to report on the status of the relevant rights and principles within their borders, noting impediments to ratification, and areas where assistance may be required. These reports are reviewed by the Committee of Independent Expert Advisers. In turn, their observations are considered by the ILO's Governing Body. The ILO Declaration and its follow-up provide three means to help countries, employers and workers attain the full realisation of the Declaration's objective. First, there is an annual review composed of reports from countries that have not yet ratified one or more of the ILO Conventions that directly relate to the specific principles and rights stated in the ILO Declaration. This reporting process provides governments with an opportunity to state what actions they have taken towards achieving respect for the ILO Declaration. It also provides organisations of employers and workers with a chance to express their views on progress made and measures taken. Secondly, the Global Report each year offers a dynamic global picture of the present situation of the principles and rights expressed in the ILO Declaration. The Global Report is an objective view of the global and regional tendencies towards the issues relevant to the ILO Declaration and assists to highlight those areas that require greater attention. It serves as a basis for determining priorities for technical cooperation. Technical cooperation projects, the third way to give effect to the ILO Declaration, are designed to address identifiable

needs in relation to the Declaration and to strengthen local capacities thereby translating principles into practice.

It is important to note that, in the 1960s and 1970s, the activities of MNCs provoked intense discussions that ended in efforts to draft international instruments for regulating their conduct and defining the terms of their relations with host countries, mostly in the developing world. Labour-related and social policy issues were among those concerns to which the activities of MNCs gave rise. The ILO's exploration for international guidelines in its sphere of competence resulted, in 1977, in the adoption by the ILO Governing Body, of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). The principles laid down in this universal instrument offer guidelines to MNCs, governments, and employers' and workers' organizations in such areas as employment, training, conditions of work and life, and industrial relations. Its provisions are reinforced by certain international labour Conventions and Recommendations which the social partners are urged to bear in mind and apply, to the greatest extent possible. The adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998 underscored the importance of the fundamental Conventions in realising the objectives of the ILO, and subsequently, the MNE Declaration takes into account the objectives of the ILO Declaration.

Paragraph 13 of the MNE Declaration states that "governments should declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment". In this regard, the government of Saudi Arabia has endeavored to achieve such a target by assigning the task of assisting job seekers in

finding the suitable employments. Article 22 of the Saudi Labour Law states that “the Ministry (of Labour) shall provide employment units, free of charge, at locations convenient for employers and workers”.¹⁰² On the other hand, MNCs “particularly when operating in developing countries, should endeavour to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments, as well as security of employment and the long-term development of the enterprise”¹⁰³. Moreover, before starting their activities, MNCs “should, wherever appropriate, consult the competent authorities and the national employers' and workers' organizations in order to keep their manpower plans, as far as practicable, in harmony with national social development policies”¹⁰⁴.

The Saudi labour law gives significant support to upholding, promoting and respecting labour rights in the private sector in Saudi Arabia. The law sets forth comprehensive regulations in respect of work conditions and situations. In this regard, four fully detailed chapters of the law are provided. In the first chapter, the Saudi labour law provides regulations for the wages of employees and imposes the requirements of all employers.¹⁰⁵ This chapter, for instance, states that a minimum salary may be set by the Council of Ministers when needed.¹⁰⁶ The second chapter lays down the working hours permissible, which are generally no more than eight continuously hours per day or forty hours per week.¹⁰⁷ Chapter three sets out the rest periods required during working hours and the rest days.¹⁰⁸ The fourth chapter provides

¹⁰² Saudi Labour Law, Royal Decree No. M/51 dated 23 / 8 / 1426.

¹⁰³ INT'L, Labour Org. "Tripartite Declaration Of Principles Concerning Multinational Enterprises And Social Policy." (2006): 8. Para 16.

¹⁰⁴ Ibid para 17.

¹⁰⁵ The Saudi labour law, articles 89-97.

¹⁰⁶ Ibid, article 89.

¹⁰⁷ Ibid, articles 98-100.

¹⁰⁸ Ibid, articles 101-108.

detail on the regulations for employees' leaves.¹⁰⁹ In addition to this, work-related hazards, major manufacturing accidents, injuries in the workplace, and health and social services are vital areas of labour concerns that are covered by the law.¹¹⁰ These aspects are accorded consideration in the law and seek to ensure employers pay due regard to health and safety in their operations. By way of illustration, article 122 reads:¹¹¹

An employer shall take the necessary precautions to protect the workers against hazards, occupational diseases, the machinery in use, and shall ensure work safety and protection. He shall post in a prominent place in the firm the instructions related to work and workers safety in Arabic and, when necessary, in any other language that the workers understand. The employer may not charge the workers or deduct from their wages any amounts for the provision of such protection.

Other aspects of labour rights have also been covered by the Saudi labour law. These aspects include, inter alia, the prohibition of child labour, as stated under article 162 (1), which states that employers are not allowed to employ children under the age of fifteen.¹¹² Moreover, regulations for some special work cases, such as working in mines and quarries, are provided by the law.¹¹³ In addition, and in case of disputes arising between workers and their employers, Commissions for settlement of labour disputes have been established.¹¹⁴ The law provides and explains the legal procedure of the dispute settlement commissions.¹¹⁵ However, The Saudi Labour Law must include provisions which ensure complying with minimum international labour

¹⁰⁹ Ibid, articles 109-118.

¹¹⁰ Ibid, articles 121-148.

¹¹¹ Ibid, article 122.

¹¹² Ibid, article 162 (1). This chapter of the Saudi labour law cannot be found in English due to technical problem in the Saudi Ministry of Labour's website. However an Arabic version of this chapter is accessible at the same website.

¹¹³ The Saudi labour law, articles 185-193.

¹¹⁴ Ibid, articles 210-228.

¹¹⁵ Ibid

standards, including the 1948 Freedom of Association and Protection of the Right to Organize Convention, the 1949 Right to Organize and Collective Bargaining Convention, and the 1981 Occupational Safety and Health. It is worth noting that these conventions and many others have not been ratified by the government of Saudi Arabia. In my view, the Saudi government should ratify such conventions since they constitute fundamental labour rights.

The Need for a New Corporate Responsibility Law in Saudi Arabia

I argue that, enshrining stakeholders consideration and protection in the Saudi company law, is the only way forward to ensure that EU MNCs are legally accountable for their actions in Saudi Arabia. The rationales underling this view are best explained by the UK's Corporate Responsibility (CORE) Coalition, as follows:¹¹⁶

In recent years multinational corporations have faced criticism from consumers, community groups, non-governmental organisations and even the United Nations, for not paying sufficient attention to the side effects of their business activities. In their pursuit of profit, companies have been accused of everything from violating labour rights, to destruction of the environment, to cooperating with oppressive regimes. As a result, there has been increasing awareness amongst company executives and employees that, in a globalised world, decisions and actions can have unforeseen consequences in many different locations. As this awareness has grown, so has the idea that corporations must ensure that, as a minimum, their business activities do not have an adverse impact on the various 'stakeholders' they affect – including workers, consumers, local communities and the environment. After years of investment deregulation and trade liberalisation, companies are realising that, with rights, come responsibilities. A number of firms have taken steps to identify and address areas where their activities pose a risk to the well-being of people and the environment.

Others have voluntarily signed up to codes of conduct that set standards for good corporate 'citizenship', and/or have entered into partnerships with state or non-governmental organisations to support community and environmental projects. Change, however, has been slow and in many cases only superficial steps have been taken. A mismatched patchwork of voluntary best-practice standards and codes of conduct has materialised, obscuring the main priorities and encouraging companies to undertake a 'pick-and-mix' approach to corporate social responsibility (CSR). For clear and consistent practices of CSR to emerge, companies need a common set of enforceable rules. This is where the Government must play a role. The current laws

¹¹⁶ Christian Aid, *Behind the mask: the real face of corporate social responsibility*, (London: Christian Aid, 2004)

governing corporate conduct, set out nearly 150 years ago, no longer equates with the way businesses conduct their affairs in an age of increased globalisation. New company law legislation is now needed to level the playing field and ensure that corporations based in Britain are not only more responsible to their wider stakeholders, but are also legally accountable for their actions both here and overseas.

Therefore, I believe it is fundamental to establish legally binding obligations both in Saudi Arabia and EU home states of MNCs for the conduct of their business. Such frameworks must cover adherence to accepted standards of human rights, employment conditions, and work place health and safety. In the UK for example, the Corporate Responsibility bill¹¹⁷ was based on the principles of accountability, through enhanced director's duties, and responsibility to a wider group of stakeholders. The Bill recognised that the parent company was liable for the actions of its subsidiaries.

Under the Bill, a company shall carry out its operations in accordance with administrative practices and laws of the countries in which it operates, as well as international agreements, responsibilities and standards, including but not limited to, those relating to— public health and safety; employment; human rights; and consumer protection. In my opinion this bill should have been introduced into law in the UK so as to ensure that UK MNCs are responsible to their wider stakeholders and are also legally accountable for their actions in the UK and Saudi Arabia.

Of course, Saudi Arabia can borrow some legal aspects of any developed country provided that no contradictions with national laws or the Saudi basic law of governance exist. In this regard, Lawrence Friedman has provided some helpful

¹¹⁷ United Kingdom Corporate Responsibility Bill, 2002.

insights about what he calls the diffusion of rules, codes or practices from one country to another.¹¹⁸ He suggests that a country can borrow (laws or some legal aspects) from another country, or can have an alien system inflicted on it. He adds that a lot of “transplanting” has happened throughout history by way of conquest and colonisation. According to Friedman, “the common law, for example, is a world-wide system because the British had a worldwide empire. The common law migrated, quite naturally, to the places where the British formed settlements— the United States; or New Zealand. It took hold, too, in such colonies as Nigeria and Malaysia, because they were British colonies. The civil law systems prevail all over Latin America because the countries of Latin America were once colonies of Portugal and Spain”.

Friedman believes that a lot of (legal) borrowing, however, is strictly voluntary; nobody has inflicted it on anybody.¹¹⁹ Therefore, “a system can develop its own institutions; or, if it wants to, can buy ready-made models off the rack”. It is not very useful to call this process “trans-planting”. This, according to Friedman, is because the fact that “systems voluntarily borrow out of motives of efficiency or expediency”.¹²⁰ Friedman adds that “the emphasis on “borrowing” or “transplants” tends to obscure what has really been happening, which is modernisation and industrialisation. These transform society and create new needs and problems for legal solution. To solve the problems, or cope with them at least, countries adapt, beg,

¹¹⁸ Friedman, Lawrence. "Some Comments on Cotterrell and Legal Transplants." *Adapting legal cultures* 5 (2001): 93.

¹¹⁹ Van Rooij, Benjamin. *Regulating land and pollution in China: lawmaking, compliance, and enforcement: theory and cases*. Amsterdam University Press, 2006; Ibid.

¹²⁰ Nolan Jr, James L. *Legal accents, legal borrowing: The international problem-solving court movement*. Princeton University Press, 2009; Ibid.

borrow, or steal law from places that have faced the problems earlier, or came up with an earlier response”.¹²¹

For instance, “the background to the Japanese “reception” of western law is well known. The Japanese were trying to open up, to industrialise, to become a world power—in short, to catch up with the West. They borrowed technology right and left; and they felt that they needed to borrow legal technology as well. Importing a European code was a way to modernise their system; and quickly”.¹²² Friedman is “also not sure whether we can construct some sort of general theory of legal diffusion, using this typology of communities”. He indicates that “we take it for granted that purely technical forms of law—instrumental norms in instrumental communities—spread from country to country more easily than, say, norms of family law. A country like Saudi Arabia, I suppose, is perfectly happy to borrow laws about stock exchanges and the like from the West; but will not abandon the Islamic law of the family”.¹²³

However, in my view, the conduct of business activities must be adherent to accepted standards of human rights, employment conditions, and work place health and safety. Thus, I argue that these aspects are to be introduced into law in Saudi Arabia. The law shall be titled ‘Corporate Responsibility Law’. The objects of the proposed law are to impose, human rights, employment, and health and safety standards on the conduct of companies and to provide for the enforcement of those standards.

¹²¹ Ibid

¹²² Friedman, 2001.

¹²³ Ibid

A Proposal for a New Saudi Corporate Responsibility Law

Human Rights Standards:

Under this section, the proposed Corporate Responsibility Law shall include the following provisions¹²⁴:

- 1) Companies must recognise that individuals are entitled to equal treatment and must not distinguish between individuals on the basis of race, caste, national origin, disability, colour, gender, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.
- 2) companies must recognise that every individual has the right to life, liberty and security of the person and must ensure that their activities do not infringe any of these fundamental rights in relation to any individual or group of individuals.
- 3) Companies must recognise that no individual should be held in slavery or servitude of any kind and must ensure that their activities do not infringe this fundamental right.
- 4) Companies must recognise that no individual should be subjected to torture, physical mistreatment or to cruel, inhuman or degrading treatment or punishment and must ensure that their activities do not infringe this fundamental right.
- 5) Companies must recognise that no individual should be of subjected to arbitrary arrest, detention exile and must ensure that their activities do not infringe this fundamental right. In particular, companies must ensure that any security operations that are necessary to its operations are conducted in a manner that is consistent with the fundamental human rights of individuals and with any other applicable national or international law or regulation.
- 6) Companies must recognise that all individuals are entitled to protection against arbitrary and unjustified interference with their privacy and the privacy of their families and must ensure that their activities do not infringe this fundamental right.

¹²⁴ These provisions are derived from Amnesty International (Australia), *Just Business: A Framework for Australian Companies*, Amnesty International, Sydney, 2000.

- 7) Companies must recognise that all individuals have the right to own property and access common resources, either alone or in association with others, and must ensure that their activities do not infringe this fundamental right. Any deprivation of property and access to common resources for the purposes of the company's business must only be carried out by a government authority, be on just terms (including the payment of prompt, adequate and effective compensation) and be for the benefit of the public. In the specific context of local communities, this requires that companies not only respect the fundamental rights of these communities but also respect the principles of self-determination, including economic self-determination.
- 8) Companies must recognise that all individuals have the right to freedom of religion, where that religion does not impinge on the fundamental human rights of other individuals, and must ensure that their activities do not infringe this fundamental right or condone or promote infringement by any other person. This includes the right of assembly the right maintain practices of worship and observance.
- 9) Companies must recognise that all individuals have the freely hold ideas and opinions, where those ideas and opinions do not impinge on the fundamental human rights of other individuals, and to hold those ideas or opinions without interference from the state or other individuals. Companies must not limit the ability of individuals to hold ideas or opinions, or, where compatible with the normal operation of their business, to freely express such ideas or opinions.
- 10) Companies must recognise that all individuals have the right of association with other individuals and the right to bargain collectively, and must ensure that their activities do not infringe this fundamental right.

Employment standards

Under this section the proposed Corporate Responsibility Law shall include the following provisions¹²⁵:

¹²⁵ These provisions are derived from the Australian Corporate Code of Conduct Bill 2000

(1) Companies must not use or obtain the benefit of any forced or compulsory labour.

(2) Companies must not use or obtain the benefit of the labour of any child under the age of fourteen years in any public or private industrial undertaking.

(3) companies must:

(a) as a minimum, pay all its workers a living wage; and

(b) not dismiss a worker for reasons of illness or accident; and

(c) respect the freedom of its workers to associate; and

(d) respect the right of its workers to organise independently and bargain collectively; and

(e) enable any complaints about conditions of labour to be forwarded to independent authorities; and

(f) comply with minimum international labour standards, including Freedom of Association and Protection of the Right to Organize Convention (No. 87); Right to Organize and Collective Bargaining Convention (No. 98); Forced Labour Convention (No. 29); Abolition of Forced Labour Convention (No. 105); Discrimination (Employment and Occupation) Convention (No. 111); Equal Remuneration Convention (No. 100); Minimum Age Convention (No. 138); Occupational Safety and Health (No. 155).

Health and safety standards:¹²⁶

(1) Companies must take all reasonable measures to promote the health and safety of its workers.

(2) companies must:

(a) provide a safe and healthy workplace for its employees; and

(b) provide satisfactory sanitary conditions at a workplace; and

(c) not require its employees to work for more than 5 consecutive hours without a break of at least 20 minutes; and

¹²⁶ Ibid.

- (d) not require its employees to work for more than 12 hours each day; and
- (e) not require its employees to work more than 48 hours each week without the agreement of the employees; and
- (f) have appropriate policies for responding to an accident or medical emergency at a workplace; and
- (g) provide adequate education and training to employees in health and safety matters, including the prevention of accidents.

Enforcement:

Remedies of Stakeholders:¹²⁷

1) Where a company contravenes a provision of Part 1, any person who suffers loss or damage as a result may bring an action in the Court.

(2) Where a company contravenes a provision of Part 1, any person who is reasonably likely to suffer loss or damage as a result may bring an action in the court.

(3) If the Court is satisfied that a person has suffered loss or damage as a result of a contravention of a provision of Part 1, the Court may:

- (a) grant an injunction to prevent any further loss or damage; and
- (b) make an order for compensation.

Penalties:¹²⁸

(1) Any person who breaches any provision of this law commits an offence.

(2) An offence under this law shall as appropriate be punishable by—

- (a) imprisonment or a fine or both;
- (c) a person being required to make redress to any other person who has suffered as a result of any offence;
- (d) a company being suspended from trading on the (Saudi Stock Exchange);

or

(e) in cases of persistent serious breaches of this law a company being directed to cease operations or certain of its operations.

¹²⁷ Ibid.

¹²⁸ These provisions are derived from the United Kingdom Corporate Responsibility Bill, 2002.

Summary

This chapter explored the concept of social responsibility of business and in particular MNCs. Along with what have been discussed in chapter three especially the discussion about the stakeholder theory of the company, this chapter looked at the development of the concept through arguing that business-society relations are central to such emergence of the concept. Therefore, some theories around the concept of social responsibility of business have been examined. Moreover, the subject of human rights is an integral part to the discussion about the social responsibility of MNCs. Hence, this chapter considered international and regional instruments regarding social responsibilities of MNCs. Such instruments were used as a parameter against which Saudi Arabia's approach towards internationally recognised human rights and freedoms was examined. Since I believe that the conduct of business activities must be in compliance with accepted standards of human rights, employment conditions, and work place health and safety, I proposed that these aspects are to be introduced into law in Saudi Arabia. The proposed law will impose human rights, employment, and health and safety standards on the conduct of companies and will provide for the enforcement of those standard.

Chapter 6:

The Significance of Transparency and Disclosure

Having examined the legal bases social and environmental responsibilities of MNCs in chapter 4 and chapter 5, the present chapter will now deal with the related issues of transparency and disclosure by MNCs. This is because they have become highly significant issues in the wake of recent corporate scandals involving MNCs, most notably the Enron collapse¹ and the Deepwater Horizon oil spill crisis². There is also a demand by governments and international bodies calling for information about MNCs' activities both within and across jurisdictions to be disclosed.³ This chapter argues that while information of EU MNCs' operations in home countries are disclosed and easily accessed, in host developing states, in this case Saudi Arabia, the contrary is true. I believe that this contradicts with the fact that other stakeholders such as investors, creditors, employees, consumers, and the community at large have also demands for information for MNCs about matters of direct concern to their welfares.⁴ As a result, demands for increased disclosure has given rise significant developments in national, regional, and international disclosure laws and has encouraged new policy proposals.⁵ However, Saudi Arabia seems to be an exception

¹Hamilton, Stewart, and Inna Francis. *The Enron collapse*. International Institute for Management Development, 2003; Fearnley, Stella, and Vivien Beattie. "The Reform of the UK's Auditor Independence Framework after the Enron Collapse: An Example of Evidence-based Policy Making." *International Journal of Auditing* 8.2 (2004): 117-138. Muchlinski p337

²Osofsky, Hari M. "Multidimensional Governance and the BP Deepwater Horizon Oil Spill." *Fla. L. Rev.* 63 (2011): 1077.

³Backer, Larry Catá. "Multinational corporations as objects and sources of transnational regulation." *ILSA Journal of International & Comparative Law* 14.2 (2008); Muchlinski p337

⁴Muchlinski p337

⁵Fox, Tom, Halina Ward, and Bruce Howard. *Public sector roles in strengthening corporate social responsibility: A baseline study*. Washington, DC: World Bank, 2002. Muchlinski p337

since it will be seen in this chapter that minimal efforts have been made in respect to the issues of transparency and disclosure by corporations.

Consequently, the same demands for MNCs' disclosure have brought about appeals for accountability through changes in the internal structure of the corporation.⁶ Enhancing accountability necessitates greater transparency and disclosure representing a considerable change from the private, shareholder-centric legal model of corporations that confines information disclosed publicly to financial information relevant to investors or the shareholder's right, to see books and records on demand.⁷ This has been referred to as "regulation by disclosure," suggesting that the flow of information allows market monitoring and therefore influences the conduct of corporations more effectively than "command-and-control regulation".⁸ Social and environmental reporting and disclosure are now on top of the agenda when it comes to the debate about transparency and corporate governance of MNCs. It is, however, a subject that rarely touched upon when considering EU MNCs operating in Saudi Arabia. Thus, the focus of this part of the chapter will first be on this issue in terms of the main driving forces behind this trend, and why it does not exist in Saudi Arabia. Secondly, this chapter will consider some of the regulatory initiatives motivating social and environmental reporting in a selection of representative jurisdictions, namely; the United Kingdom, Germany, and Saudi Arabia. Finally, this chapter will argue for the need for reforming the internal governance structure of MNCs as well as reforming Saudi law in relation to reporting.

⁶Muchlinski p337

⁷Percival, Robert V., et al. "Environmental regulation: Law, science, and policy." (2009); Kerr, Michael, Richard Janda, and Chip Pitts. *Corporate social responsibility: a legal analysis*. LexisNexis, 2009. p 241

⁸Post, Frederick R. "The social responsibility of management: A critique of the shareholder paradigm and defense of stakeholder primacy." *American Journal of Business* 18.2 (2003): 57-61; Kerr., et al. p 241

The Main Driving Forces behind Transparency and Disclosure

International organisations have been one of the main drivers for more transparency and disclosure by MNCs. Established by the United Nations Economic and Social Council (ECOSOC) in 1982⁹, the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR), is the only intergovernmental working group dedicated to corporate transparency and accounting matters at the corporate level. It is one of dominant outcomes of the United Nations Conference on Trade and Development's (UNCTAD) work on corporate transparency and accounting. ISAR has one session a year in Geneva. It reports to UNCTAD's Commission on Investment, Technology and Related Financial Issues. ISAR tackles a variety of issues in corporate accounting and reporting with a view to enhancing the international comparability and reliability of corporate reports. Dealing with such issues is, in my opinion, a fundamental task so as to ensure that corporations' activities are properly assessed. This is because, as will be seen later in this chapter, MNCs tend to report differently regarding their social and environmental impacts. Thus, I believe that the comparability and reliability of MNCs' reports including their non-financial ones have to be achieved through specified means in order for the integrity of such MNCs to be preserved and in some cases restored.

Therefore, I would argue that taking real efforts to achieve the objectives set forth in the ISAR's mandate is urgently needed. These objectives include making a positive contribution to standard setting at the national and regional levels; taking appropriate

⁹ United Nations Economic and Social Council, resolution 1982/67.

action to ensure the comparability of disclosures by transnational corporations; reviewing developments in the field of international accounting and reporting, including the work of standard-setting bodies; establishing work priorities, taking into account the needs of home and host countries, particularly developing countries; consulting international bodies that it deems appropriate on matters pertaining to the development of international standards of accounting and reporting, and elicit the views of interested parties; promoting increased transparency and financial disclosure by encouraging the use of internationally recognized accounting and auditing standards and improved corporate governance. However, I am unconvinced that such goals can be accomplished, at least in the near future, not to mention the fact that without any sort of enforcement on MNCs to comply with such reporting standards, these efforts would be fruitless.

The ISAR areas of work cover, inter alia, corporate governance disclosure, corporate responsibility reporting, and environmental reporting. These areas are discussed in turn in this chapter. First, the area of corporate governance disclosure, which during UNCTAD's 10th quadrennial conference Bangkok, 2000, Member States called on ISAR to encourage increased corporate transparency, including enhanced corporate governance disclosure. Since then, market developments have underscored the vital importance of quality corporate disclosure for building investor confidence and attracting new investment. The objective of UNCTAD's work in this area is to help developing countries and countries with economies in transition to improve their ability to attract investment capital by improving their corporations' interactions with stakeholders. This assumption is not, in my view, entirely accurate since MNCs tend to favour operating in countries that are less or even least restrictive when it comes to

social and environmental standards. Further, as discussed in chapter two, MNCs have benefited from favourable foreign investment laws providing guarantees and incentives to them especially by developing countries.

However, in my opinion, Saudi Arabia is a developing country that needs much greater work on the area of balancing its economic development needs and protecting its people and environment, as seen in chapter two. By this I mean Saudi Arabia has to ensure that its need to attract investment capital is not going to come at the cost of relaxing or forgoing regulations on foreign investment. I would argue that the government's should update or reform Saudi national laws and regulations to meet widely recognised international standards as a threshold. From my point of view, the fact that shareholders are predominantly the focus of corporate governance disclosure, and other stakeholders such as employees, environment, and society at large are deemed to be irrelevant in Saudi Arabia, is alarming. This is particularly emphasised when EU MNCs enter into joint ventures with domestic businesses. This is problematic because such joint ventures are incorporated as limited liability companies which by nature does not impose corporate governance disclosure requirements on them. The Saudi Corporate Governance Regulations (SCGR)¹⁰ aim only at public companies listed in the exchange. Article 1 of the SCGR state that “these Regulations include the rules and standards that regulate the management of joint stock companies listed in the Exchange to ensure their compliance with the best governance practices that would ensure the protection of shareholders’ rights as well as the rights of stakeholders”. Stakeholders, according to the SCGR, include “any

¹⁰ Corporate Governance Regulations, pursuant to Resolution No. 1-212-2006 Dated 21/10/1427H Corresponding to 12/11/2006 Based on the Capital Market Law issued by Royal Decree No. M/30 dated 2/6/1424H, Amended by Resolution of the Board of the Capital Market Authority Number 1-10-2010 Dated 30/3/1431H corresponding to 16/3/2010G

person who has an interest in the company, such as shareholders, employees, creditors, customers, suppliers, (and) community”¹¹.

Good Practices in Corporate Governance Disclosure

In order to achieve the objective of engaging corporations with stakeholders, the UNCTAD works to identify and promote good practices in corporate governance disclosure. As a result, at its 21st session in 2004, the Group of Experts on ISAR decided to consider further developments in the area of disclosures and to update its earlier work as needed. Accordingly, the updating work was conducted and reviewed at the 22nd session of the Group of Experts in 2005, where it was decided to prepare the Guidance on Good Practices in Corporate Governance Disclosure (the guidance) for publication and disseminate it as widely as possible. As declared in its introduction, the guidance is a voluntary technical assistance for, among others, regulators and companies in developing countries and economies in transition. What and how organisations disclose will depend considerably on local laws and customs. This is an issue when it comes to a country like Saudi Arabia since there is a lack of regulations for transparency and disclosure particularly by EU MNCs. Furthermore, particular industries may have some industry-specific disclosure requirements. In order to facilitate the general effectiveness of the guidance, the focus is placed upon widely applicable disclosure issues that should be relevant to most enterprises. The purpose of the guidance is to aid the preparers of corporate reporting in producing disclosures on corporate governance which will address the major concerns of investors and other stakeholders. This work would be relevant to corporations keen to

¹¹ Corporate Governance Regulations, Article 2.

attract investment irrespective of their legal form or size. I think this guidance would also be useful for promoting awareness of the need to put in place proper regulations in countries such as Saudi Arabia where transparency and disclosure of non-financial information are still very much in its infancy. In my view, the urgency to regulate transparency and disclosure by companies comes from the fact that companies including EU MNCs in the country that are not sufficiently adhering to international good practices and are consequently failing to satisfy not only investors' expectations regarding corporate governance disclosures but other stakeholders' too.

The guidance draws upon recommendations for disclosure related to corporate governance contained in such widely recognised documents as the revised OECD Principles of Corporate Governance (OECD Principles)¹², the International Corporate Governance Network (ICGN) Corporate Governance Principles, past ISAR decisions on this subject, the Commonwealth Association for Corporate Governance Guidelines (CACG Guidelines), the statements of the European Association of Securities Dealers (EASD), the EU Transparency Directive¹³, the King II Report on Corporate Governance for South Africa¹⁴, the Report of the Cadbury Committee on the Financial Aspects of Corporate Governance (Cadbury Report)¹⁵, the Combined Code of the UK, the United States Sarbanes-Oxley Act, and many others. The guidance reviews the content of major corporate governance codes and regulations with an emphasis on financial disclosures, a range of non-financial disclosures, disclosures in relation to general meetings, the timing and means of disclosures and the disclosure

¹²OECD, I. "OECD principles of corporate governance." *Competition in* (2004).

¹³EU Transparency Directive 88/627/EEC.

¹⁴King Committee on Corporate Governance, and Institute of Directors (South Africa). *King Report on Corporate Governance for South Africa, 2002*. Institute of Directors in Southern Africa, 2002.

¹⁵Cadbury, A. "Cadbury report: The financial aspects of corporate governance." *Tech rept, HMG, London* (1992).

of the degree of compliance with local or other codes of corporate governance. Only non-financial disclosures are considered in this chapter; financial disclosures are not discussed since they are out of the scope of the thesis. In this respect, the objectives of the enterprise should be disclosed. According to the guidance, there are two general categories of company objectives: the first is commercial objectives, such as raising productivity or recognising a sector focus; the second is much more essential and relates to governance objectives: it seeks to answer the basic question, "why does the company exist?" The objectives of enterprises may vary according to the values of society. This has been examined in chapter three which discussed corporate theories and their impacts on shaping corporate governance in their respective jurisdictions. In many countries including Saudi Arabia, but by no means all, the primary corporate objective is to maximize the long-term return to shareholders (shareholder value). This objective appears in many codes throughout the world.

However, despite an increasing awareness throughout the world that shareholders' requirements must be met in order to attract and retain long-term, low-cost capital, the emphasis on shareholder value maximization has not excluded a rising emphasis on other corporate objectives.¹⁶ Many codes now include social, environmental and economic objectives as part of the fundamental objectives of an enterprise. In particular, the codes emphasise the need for enterprises to address the interests of a range of stakeholders in order to promote the long-term sustainability of the enterprise.¹⁷ If an enterprise knowingly damages the interests of its stakeholders, it can risk negatively affecting its own ability to produce long-term shareholder value. This suggests that rather than viewing shareholder value and stakeholder value as

¹⁶United Nations, Guidance on Corporate Responsibility Indicators in Annual Reports. New York and Geneva, 2008

¹⁷ Ibid.

mutually exclusive objectives, there are indications that the opposite is true, and that the two objectives are probably interdependent in the long run.¹⁸ HSBC, for example, stated that “sustainability underpins our strategic priorities and enables us to fulfil our purpose. Our ability to identify and address environmental, social and ethical developments which present risks or opportunities for the business contributes to our financial success”.¹⁹ This emphasis on a broader set of objectives can be found in the Revised OECD Guidelines on Multinational Enterprises, the 2004 edition of the OECD Principles of Corporate Governance, proposed revisions of the UK Companies Act, and the King II Report.

Of course, corporate objectives which include a wide range of aspects including social and environmental ones need to be translated into actions. However, I would argue that leaving the decision on such important matters for companies to deliberate on is a risk that is not worth taking. The best option, from my point of view, is through imposing government regulations on how companies disclose their social and environmental impacts. The board of directors, according to the guidance, should disclose whether there is a mechanism protecting the rights of other stakeholders in a business.²⁰ OECD Principle IV concerns itself with ensuring that the rights of stakeholders protected by law are respected. It is argued that even where no legislation exists, it is considered good practice to make additional commitments, as corporate reputation and performance may require recognition of broader interests. I think that such a suggestion is impracticable especially in Saudi Arabia because of at least two reasons. First, the whole idea of social and environmental responsibilities of

¹⁸Ibid.

¹⁹ <http://www.hsbc.com/citizenship/sustainability>

²⁰United Nations, Guidance on Corporate Responsibility Indicators in Annual Reports. New York and Geneva, 2008

business is not as acknowledged and advanced as in developed home countries of MNCs. Secondly, as a result of the lack of awareness about this topic in Saudi Arabia, there is no reputational pressure on companies, particularly MNCs, from the media, NGOs, or the society. While EU MNCs handle their social and environmental impacts with great care in their home states as can be seen in the websites and annual reports, they do not follow suit in Saudi Arabia, as seen in this chapter. This is not in conformity with the guidance, OECD principles, nor the CACG Guidelines which require that a board identify the corporation's internal and external stakeholders and agree on a policy for how the corporation should relate to them.

The role of employees in corporate governance is very important and therefore should be disclosed. Among member States of the European Union, for example, various practices exist where employees elect some of the supervisory directors, can be given a right to nominate one or more directors or can have an advisory voice on certain issues discussed by the board. This practice is considered by some to dilute the influence of shareholders, and to be a distortion of the connection between investment risk and the decision-making process.²¹ Others consider the strong interest of employees in the enterprise to warrant their special status in the governance process, and view employee involvement as having a beneficial effect on the overall sustainability of the firm. "Regardless of one's views, any mechanisms for employee involvement in the governance of the enterprise should be clearly disclosed".²²

²¹ Pye, Annie. "Corporate boards, investors and their relationships: Accounts of accountability and corporate governing in action." *Corporate Governance: An International Review* 9.3 (2001): 186-195; United Nations, International Accounting and Reporting Issues, 2005.

²² Ibid.

Transparency and Disclosure Requirements For Corporations in Saudi

Arabia

In Saudi Arabia, Article 8 of the SCGR under Part 3 on disclosure and transparency states that “the company shall lay down in writing the policies, procedures and supervisory rules related to disclosure, pursuant to law”. Again, this article applies to public companies listed in the exchange. EU MNCs are forming joint ventures with domestic companies and incorporated as limited liability companies. Thus, unlike public companies, limited liability companies are dealt with differently in which disclosure requirements are not necessitated. The directors of public companies, however, are encouraged to draft corporate governance code for their company in line with the SCGR, supervise and monitor in general the effectiveness of their codes and amend it whenever necessary.²³ The directors’ functions also include the following:

(e) Outlining a written policy that regulate the relationship with stakeholders with a view to protecting their respective rights; in particular, such policy must cover the following:

- 1) Mechanisms for indemnifying the stakeholders in case of contravening their rights under the law and their respective contracts.
- 2) Mechanisms for settlement of complaints or disputes that might arise between the company and the stakeholders.
- 3) Suitable mechanisms for maintaining good relationships with customers and suppliers and protecting the confidentiality of information related to them.
- 4) A code of conduct for the company’s executives and employees compatible with the proper professional and ethical standards, and regulate their relationship with the stakeholders. The Board of Directors lays down procedures for supervising this code and ensuring compliance there with.
- 5) The Company’s social contributions.

²³ Corporate Governance Regulations, Article 10 (3) (c).

(f) Deciding policies and procedures to ensure the company's compliance with the laws and regulations and the company's obligation to disclose material information to shareholders, creditors and other stakeholders.

The SCGR is insufficient since it is a non-binding code aims only at public companies in the Saudi stock exchange so as to ensure their compliance with the best governance practices. Moreover, there is no enforcement mechanism in place and no established process to react to infringements of the SCGR. In my opinion, such shortcomings of the SCGR lead to the conclusion that there has to be a government regulation for transparency and disclosure by companies in Saudi Arabia. Such a regulation should specify that the board must disclose its policy and performance in connection with environmental and social responsibility and the impact of this policy and performance on the firm's sustainability. The environmental dimension of this issue, which is absent in SCGR, is addressed by ISAR in its agreed conclusions on Accounting and Financial Reporting for Environmental Costs and Liabilities. ISAR noted that an enterprise's environmental performance could affect its financial health and hence its sustainability. At its twentieth session, ISAR concluded that the pressure for better reporting on social issues was increasing and that enterprises were producing more information on this topic. However, similar pressure for better reporting by companies including MNCs on social and environmental issues is also needed in Saudi Arabia. This because the fact that reporting on such issues in Saudi Arabia is lacking.

TIMING AND MEANS OF DISCLOSURE

All material issues relating to corporate governance of the enterprise should be disclosed in a timely fashion.²⁴ The disclosure should be clear, concise, precise and governed by the “substance over form” principle. Traditional channels of communication with stakeholders, such as annual reports, should be supported by other channels of communication, taking into account the complexity and globalization of financial markets and the impact of technology.²⁵ In this regards, HSBC discloses non-financial information through its stand-alone sustainability reports since 2012 which are accessible online.²⁶ British Petroleum has made available sustainability reports claiming that such reports look at the impact of our business on the environment, the societies and the economies where they operate²⁷. To achieve maximum transparency, as claimed by Siemens provides information on its sustainability-related activities in sustainability reports, which are available online.²⁸

Reporting on the respective issues by the same EU MNCs in Saudi Arabia is non-existent. The OECD Principles state that the Internet and other information technologies provide the opportunity for improving information dissemination.²⁹ In some countries (e.g. the United States), Internet disclosure is now accepted as legal disclosure and annual reports must indicate where company information can be found

²⁴ United Nations, Guidance on Good Practices in Corporate Governance Disclosure, United Nations Publications, 2006

²⁵ Ibid.

²⁶ <http://www.hsbc.com/citizenship/sustainability/reports-and-documentation>

²⁷ <http://www.bp.com/en/global/corporate/sustainability/about-our-reporting/Sustainability-report/sustainability-report-archive.html>

²⁸ http://www.siemens.com/about/sustainability/en/sustainability/reporting/reporting_overview.htm

²⁹ United Nations, Guidance on Good Practices in Corporate Governance Disclosure, United Nations Publications, 2006

on the Internet.³⁰ The King II Report also emphasizes the need for critical financial information to be made available to shareholders simultaneously and supports the idea that traditional channels of communication be complemented by new means, such as the Internet.³¹ Whatever disclosures are made and whatever channels used, a clear distinction should be made between audited and unaudited financial information, and means of validation of other non-financial information should be provided.³²

GOOD PRACTICES FOR COMPLIANCE

Where there is a local code on corporate governance, enterprises should follow a “comply or explain” rule whereby they disclose the extent to which they followed the local code’s recommendations and explain any deviations.³³ Where there is no local code on corporate governance, companies should follow recognized international good practices.³⁴ EU MNCs do not follow SCGR as they are intended for public companies listed in the Saudi Exchange. The use of “comply or explain” mechanisms in many countries allows investors and other stakeholders greater access to information about the corporation and is to be encouraged. In relation to this “comply or explain” rule, some countries now require companies with foreign listings to disclose the extent to which the local governance practices differ from the foreign listing standards. The enterprise should disclose awards or accolades for its good

³⁰ Ibid

³¹ Ibid

³² Ibid

³³ Ibid

³⁴ Ibid.

corporate governance practices. It is recognized that there is an increase in the number of corporate governance accolades, awards, ratings, rankings and even corporate governance stock market indexes where constituents are selected on the basis of exhibiting good practices in corporate governance. Especially where such awards or recognitions come from major rating agencies, stock exchanges or other significant financial institutions, disclosure would prove useful since it provides independent evidence of the state of a company's corporate governance.

Reporting on corporate responsibility is considered as one of the evolving issues in the area of corporate transparency. Thus, ISAR agreed at its twentieth session to "begin examining existing indicators so that corporate social responsibility reports would be comparable and would not impose unreasonable burdens on enterprises in developing countries", which falls within the framework of its mandate to promote harmonisation of best practices in corporate reporting. The work of ISAR in the area of corporate responsibility reporting takes place within a broader international context of work by other international organizations on various aspects of this subject. Such work includes the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration, the United Nations Global Compact and the Millennium Development Goals, and the Global Reporting Initiative's Guidelines on Sustainability Reporting, among others. The proliferation of global conventions and guidelines on corporate responsibility has led to a growing general awareness of corporate responsibility issues in developed and developing countries.

As a result of these deliberations on corporate responsibility reporting, ISAR produced the publication *Guidance on Corporate Responsibility Indicators* in Annual

Reports. The guidance has been prepared by the UNCTAD secretariat on the basis of discussions at the twentieth to twenty-third sessions of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR), and at several ad hoc consultative meetings in the inter-sessional periods, as well as correspondence with experts, and research into social and economic reporting practices. It provides an overview of the selected core social and economic indicators and detailed guidance for compiling and reporting these indicators. This guidance is a voluntary technical aid for, among others, enterprises, investors and regulators. The purpose of this guidance is to assist preparers of enterprise reporting in producing concise and comparable corporate responsibility indicators within their annual financial reports. In so doing, this publication seeks to address the demand among investors and other stakeholders for more information on the broader non-financial contributions of corporations to society. Among the guiding principles discussed in this document are three key dimensions which evolved during ISAR's deliberations on this subject: the development dimension; performance orientation; and a focus on national reporting.

The Need for National Reporting by MNCs

A broader context in which the issue of corporate responsibility could be addressed has been provided. In particular it was agreed that “such information could also reflect corporate contributions to the economic and social development of host countries, as well as the need for capacity building”³⁵. This would have been true in Saudi Arabia if EU MNCs had disclosed such information. The development

³⁵ At its twenty-first session, the group noted that the São Paulo Consensus of UNCTAD XI had provided (TD/B/COM.2/ISAR/26)

dimension of corporate responsibility reporting was again emphasized at ISAR's twenty-second session, where it was agreed that this work "should continue to reflect corporate contributions to the economic and social development of host countries".³⁶ This emphasis on the development dimension of corporate responsibility has also been complemented by an emphasis on performance-oriented indicators. At ISAR's twenty-third session, the group of experts recognized "the increased interest among corporate responsibility reporters in creating more concise, more useful and more performance-oriented reports".³⁷ A third key dimension of ISAR's work on corporate responsibility reporting arose during deliberations at the twenty-second session of ISAR, where it was emphasized that the indicators should focus on national reporting. It was noted that national reports were more useful for stakeholders interested in specific countries; it was also noted that users could, if they chose, aggregate national reports to a regional or global level. This is really significant since EU MNCs only provide regional and global reports. Reports of their social and environmental activities in Saudi Arabia do not exist. Lack of such reports by EU MNCs in Saudi Arabia contradicts with the principle of transparency which is at the core of many international bodies' discussions and deliberations as seen in this chapter.

The importance of MNCs' disclosure and transparency was also highlighted by the OECD Guidelines for Multinational Enterprises. Under section III on Disclosure, the guidelines state that:

1. Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure

³⁶ (TD/B/COM.2/ISAR/31)

³⁷ (TD/B/COM.2/ISAR/35)

policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

2. Disclosure policies of enterprises should include, but not be limited to, material information on: [...]

g) issues regarding workers and other stakeholders;

h) governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process.

In Saudi Arabia, the examined EU MNCs have failed to implement disclosure recommendations highlighted in the Guidelines. Such failure is because EU MNCs only adhere to the Guidelines in their home states and across EU countries where they operate. It is worth underlining that introducing the disclosure section in the Guidelines is meant to encourage improved understanding of the operations of MNCs. Clear and complete information on corporations is important to a variety of users ranging from shareholders and the financial community to other constituencies such as workers, local communities, special interest groups, governments and society at large. To improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in their operations and responsive to the public's increasingly sophisticated demands for information. The information highlighted in this chapter addresses disclosure in two areas. The first set of disclosure recommendations is identical to disclosure items outlined in the OECD Principles of Corporate Governance. Their related annotations provide further guidance and the recommendations in the Guidelines should be construed in relation to them. The first set of disclosure recommendations may be supplemented by a second set of disclosure recommendations which enterprises are encouraged to follow. The disclosure recommendations focus mainly on publicly traded enterprises. To the extent that they are deemed applicable in light of the nature, size and location

of enterprises, they should also be a useful tool to improve corporate governance in non-traded enterprises; for example, privately held or state-owned enterprises. This will lay the foundation for more disclosure and transparency by EU MNCs in Saudi Arabia where they are incorporated as limited liability companies.

The Guidelines also generally note that information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure. This significantly improves the ability of investors to monitor the enterprise by providing increased reliability and comparability of reporting, and improved insight into its performance. The annual independent audit recommended by the Guidelines should contribute to an improved control and compliance by the enterprise. Disclosure is addressed in two areas. The first set of disclosure recommendations calls for timely and accurate disclosure on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company. Companies are also expected to disclose sufficient information on the remuneration of board members and key executives (either individually or in the aggregate) for investors to properly assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to performance. Related party transactions and material foreseeable risk factors are additional relevant information that should be disclosed, as well as material issues regarding workers and other stakeholders. The Guidelines also encourage a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting. This is particularly the case with greenhouse gas emissions, as the scope of their monitoring is expanding to cover direct and indirect, current and future,

corporate and product emissions; biodiversity is another example. Many enterprises provide information on a broader set of topics than financial performance and consider disclosure of such information a method by which they can demonstrate a commitment to socially acceptable practices. In some cases, this second type of disclosure – or communication with the public and with other parties directly affected by the enterprise’s activities – may pertain to entities that extend beyond those covered in the enterprise’s financial accounts. For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners. This is particularly appropriate to monitor the transfer of environmentally harmful activities to partners. However, the examined EU MNCs have yet to follow such commitments to socially and environmentally acceptable practices.

Many enterprises have adopted measures designed to help them comply with the law and standards of business conduct, and to enhance the transparency of their operations. A growing number of firms have issued voluntary codes of corporate conduct, which are expressions of commitments to ethical values in such areas as environment, human rights, labour standards, consumer protection, or taxation. Specialised management systems have been or are being developed and continue to evolve with the aim of helping them respect these commitments – these involve information systems, operating procedures and training requirements. Enterprises are cooperating with NGOs and intergovernmental organisations in developing reporting standards that enhance enterprises’ ability to communicate how their activities influence sustainable development outcomes (for example, the Global Reporting Initiative). Enterprises are encouraged to provide easy and economical access to published information and to consider making use of information technologies to

meet this goal. Information that is made available to users in home markets should also be available to all interested users, such as stakeholders in Saudi Arabia in this case. Enterprises may take special steps to make information available to communities that do not have access to printed media (for example, poorer communities that are directly affected by the enterprise's activities). While these objectives seemed to be met by EU MNCs in their host countries, the same objectives are not fulfilled by the same corporations across jurisdictions, particularly in Saudi Arabia.

The Need for Environmental Reporting by MNCs

Issues associated with accounting for the environment have become increasingly relevant to MNCs as the pollution of the environment has become a more prominent economic, social and political problem throughout the world. Steps are being taken at the national and international level to protect the environment and to reduce, prevent and mitigate the effects of pollution as will be discussed in chapter five.³⁸ As a consequence, enterprises are now expected, or even required, to disclose information about their environmental policies, environmental objectives, and programmes undertaken, and the expenditures incurred in pursuit of these policies, objectives and programmes, and to disclose and provide for environmental risks. How a corporation's environmental performance affects its financial health and how financial information relating to such performance can be used to assess environmental risk, and the management of such risk, are often matters of concern to investors and their advisers. Creditors have similar needs, but an added factor is the

³⁸ United Nations, *Environmental Financial Accounting And Reporting At The Corporate Level*, 1997.

possibility of having to take on the responsibility for rectifying environmental damage should a debtor default on a loan for which it has pledged land as security; the amount involved may be significantly greater than that of the original loan. Owners and shareholders are particularly interested because of the potential impact environmental costs may have on the financial return on their investment in the enterprise.³⁹ Expanding owners' interest into meeting legal environmental obligations brings an extended audience: consumers, competition, courts/legal system, employees, financial institutions, general public, government, interest groups, media, scientific community, and suppliers/ channels.⁴⁰ This extended audience has a varied appetite for environmental reporting of enterprise activities.⁴¹

Thus, the need for environmental accounting and reporting is absolutely indispensable. Environmental issues, therefore, need to be integrated into corporate accounting for the following reasons. Corporate accounts should reflect firms' attitudes towards the environment and the impact of environmental expenditures, risks and liabilities upon the financial position of an enterprise. Investors need information on environmental performance and expenditures to make investment decisions. Environmental issues are management issues, managers need to identify and allocate environmental costs so that products are correctly priced and investment decisions are based on true costs and benefits. Enterprises may be able to exploit a competitive advantage with customers if they are able to show that goods and services are environmentally preferable. Environmental accounting is a key to sustainable development. Most corporate leaders agree that a main objective for the economy is

³⁹Guidance Manual Accounting And Financial Reporting For Environmental Costs And Liabilities

⁴⁰Freeman, R. Edward. "Stakeholder management: framework and philosophy."*Pitman, Mansfield, MA* (1984).

⁴¹Freeman, 1984.

sustainable development. Sustainability requires companies to strive for eco-efficiency but they can only measure that by producing accurate information on both environmental costs and revenues and environmental performance.

The United Nations' work on transparency and accountability originated in 1975 when the former UN Commission on Transnational Corporations became concerned about the lack of meaningful disclosure by transnational corporations in their financial statements. It found that the financial information provided by transnational corporations was not reliable, transparent or comparable. In order to promote the harmonization of financial information and meaningful disclosure to all users of financial statements, the Economic and Social Council created the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR). In 1989 ISAR took up the topic of corporate environmental accounting. The Group soon discovered in its first survey that there were no national accounting standards specific to environmental information disclosure. Furthermore, some CEOs believed that environmental information was not necessary for a true and fair view of the enterprise's performance or that it was too difficult to obtain. To meet this obvious need for guidance, ISAR issued its first recommendations for environmental disclosure in financial statements in 1991. This guidance was soon followed by intense study and analysis by national standard-setters.⁴²

In 1998 ISAR revisited the issue of environmental disclosure and expanded its recommendations based on emerging best practices. Its objective in issuing a new guideline – Accounting and Financial Reporting for Environmental Costs and

⁴²A Manual for the Preparers and Users of Eco-efficiency Indicators

Liabilities – was to ensure that different standard-setters did not adopt different solutions for the same problems. However, it is clear that the conventional accounting model is not able to assess an enterprise's environmental performance and its impact on financial performance to the degree desired by all stakeholders. This is because the conventional model was developed to provide information only on financial position and performance. However, it is obvious that in the post-Enron era, stakeholders want non-financial information covering the enterprise's environmental and social performance, as well as information on its corporate governance structures and procedures. The environmental world summits in Rio (1992) and Johannesburg (2002) have shown that the business community has become committed to the concept of sustainable development and to improving its environmental performance.⁴³ On the other hand, various stakeholders are demanding that enterprises report on these improvements. In particular, the financial community is concerned about how environmental performance affects the financial results of an enterprise. This concern about sustainable development is now complemented in the post Enron era by corporate concern about "sustainable value" or "sustainable business". To achieve sustainable development, sustainable value or sustainable business, enterprise management must take into account the impact of their performance on their employees, their customers, their suppliers and the community, including its environment.⁴⁴

Disclosure of information relating to environmental costs and liabilities is important for the purpose of clarifying or providing further explanation of the items included in the balance sheet or the income statement. Such disclosures can either be included in

⁴³ More analysis on this issue has been provided in chapter four.

⁴⁴ A Manual for the Preparers and Users of Eco-efficiency Indicators

those financial statements, in the notes to the financial statements or, in certain cases, in a section of the report outside the financial statements themselves. ISAR began to focus on the subject of environmental accounting and reporting in the late 1980s. In 1991, ISAR reached agreement on a number of items that could be reported by enterprises, in order to deal with relevant environmental issues. The Group's thirteenth session in 1995 was devoted exclusively to the subject of environmental accounting. In 1999, at its seventeenth session, ISAR agreed that the Secretariat should "continue to work on environmental and financial accounting and disclosure to promote sustainability reporting."⁴⁵ The objective was to enable member states to gain a better understanding of accounting and reporting issues related to the environment; and to contribute to the harmonization of the approaches that member States are taking on environmental accounting and reporting.

⁴⁵ Ibid.

Transparency and Disclosure within the EU

European corporate responsibility and sustainability reporting requirements European initiatives match wider trend worldwide towards inclusion of social and environmental governance aspects in both voluntary and officially regulated corporate reporting.⁴⁶ For some time, policy and regulatory debate in the EU has progressively sharpened its focus upon enhancing overall corporate responsibility, governance and reporting in general, together with boardroom accountability in particular.⁴⁷ As noted in the preamble to the June 2006 Directive of the European Parliament and of the Council companies operating in the EU 'should be obliged to disclose an annual corporate governance statement as a specific and clearly identifiable section of the annual report', with relevant attention to business-related social and environmental concerns. In enhancing boardroom reporting accountability for a company's business, for example, EU directives accept that relevant disclosure should not be restricted to the financial aspects of the company's business, so that "where appropriate, this should lead to an analysis of environmental and social aspects necessary for an understanding of the company's development, performance or position'. Accordingly, the analysis shall include both financial and, where appropriate, non-financial key performance indicators ...including information relating to environmental and employee matters, at least to the extent necessary for an understanding of the company's development, performance and position. Other directives further enhance collective boardroom responsibility for corporate governance and reporting,

⁴⁶Horrigan, Bryan. *Corporate social responsibility in the 21st century: Debates, models and practices across government, law and business*. Edward Elgar Publishing, 2010; Aguilera, Ruth V., et al. "Putting the S back in corporate social responsibility: A multilevel theory of social change in organizations." *Academy of management review* 32.3 (2007): 836-863; Becker-Olsen, Karen L., B. Andrew Cudmore, and Ronald Paul Hill. "The impact of perceived corporate social responsibility on consumer behavior." *Journal of business research* 59.1 (2006): 46-53.

⁴⁷Horrigan, Bryan, Ibid.

emphasize the importance of disclosing relevant corporate governance information and, in that context, note the relevance of social and environmental information for investors' understanding of the company's success and prospects. Improvements to date in the modernization and harmonization of requirements for financial accounting, business reporting and corporate governance set the scene for a further wave policy and regulatory attention to other aspects of boardroom accountability (e.g. the scope and content of directors' duties) and corporate reporting (e.g. broader corporate sustainability reporting requirements). The European Parliament's 2007 resolution on CSR, for example, signals the future possibility of more expansive corporate responsibility and sustainability reporting requirements, "so that social and environmental reporting is included alongside financial reporting requirements especially in light of the inadequacies of voluntary trends in social and environmental reporting, in which only a minority of the reports use internationally accepted standards and principles, cover the company's full supply chain or involve independent monitoring and verification. While boardroom accountability to companies, investors and regulators for the fairness and correctness of conventional financial corporate reporting is now a standard feature in many jurisdictions non-financial information and drivers of business success constitute a category of information with which many directors are still unfamiliar, uneasy, or both.

As part of the Commission's efforts to improve corporate governance in Europe, the Commission identified "the need to raise to a similarly high level across all Member States the transparency of the social and environmental information provided

by undertakings in all sectors.⁴⁸ This is fully consistent with the possibility for Member States to require, as appropriate, further improvements to the transparency of undertakings' non-financial information, which is by its nature a continuous endeavour.” The European Parliament adopted two resolutions on 6 February 2013, “Corporate Social Responsibility: accountable, transparent and responsible business behaviour and sustainable growth” and “Corporate Social Responsibility: promoting society’s interests and a route to sustainable and inclusive recovery”, acknowledging the importance of businesses disclosing information on sustainability such as social and environmental factors, with a view to identifying sustainability risks and increasing investor and consumer trust. Indeed, disclosure of non-financial information is vital for managing change towards a sustainable global economy by combining long-term profitability with social justice and environmental protection. In this context, disclosure of non-financial information helps the measuring, monitoring and managing of undertakings' performance and their impact on society. Lack of such disclosure made it impossible to examine the activities of EU MNCs in Saudi Arabia as seen in this chapter.

Since it becomes clear that disclosure of non-financial information by corporations is vital, the European Parliament called on the Commission to bring forward a legislative proposal on the disclosure of non-financial information by undertakings allowing for high flexibility of action, in order to take account of the multidimensional nature of corporate social responsibility (CSR) and the diversity of the CSR policies implemented by businesses matched by a sufficient level of comparability to meet the needs of investors and other stakeholders as well as the

⁴⁸ As announced by the Commission in the Single Market Act communication in April 2011, "A renewed strategy 2011–2014 for Corporate Social Responsibility" issued in October 2011

need to provide consumers with easy access to information on the impact of businesses on society. On 16 April 2013, the Commission adopted a proposal to enhance business transparency on social and environmental matters. The European Parliament and the Council reached an agreement on 26 February 2014, which led the European Parliament to adopt Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups on 15 April 2014. It amends the Accounting Directive 2013/34/EU, and requires companies concerned to disclose in their management report, information on policies, risks and outcomes as regards environmental matters, social and employee aspects, respect for human rights, anticorruption and bribery issues, and diversity in their board of directors. This will provide investors and other stakeholders with a more comprehensive picture of a company's performance. This is a legislative initiative with relevance for the European Economic Area (EEA).

However, the new rules will only apply to some large companies with more than 500 employees. This includes listed companies as well as other public-interest entities, such as banks, insurance companies, and other companies that are so designated by Member States because of their activities, size or number of employees. The scope includes around 6000 large companies and groups across the EU. The Directive leaves significant flexibility for companies to disclose relevant information in the way that they consider most useful, or in a separate report. Companies may use international, European or national guidelines which they consider appropriate (for instance, the UN Global Compact, the OECD Guidelines for Multinational Enterprises, ISO 26000, ...). The Directive entered into force on 6 December 2014. EU Member States have two years to transpose it into national legislation. In this

context, the European Commission is organising informal transposition workshops to assist national authorities. The first transposition workshop took place in Brussels on 24 March 2015. The session proved to be a very helpful forum for sharing the state-of-play of the transposition across Member States, and discussing practical implementation issues. Many Member States have already started the transposition process and have concrete implementations plans, while some of them are already in a very advanced stage.

In the United Kingdom, the Companies Act 2006 introduced new reporting requirements on social and environmental matters of UK-based public companies. Pursuant to s. 415 of the Companies Act, the directors of a company must prepare a directors' report for each financial year of the company. Beneficiaries of the reports include members (shareholders) of the company holders of the company debentures (bonds), and every person who is entitled to receive notice of general meetings In the case of all to companies, except small companies, s 417 specifies that the directors' report must contain a business review. The purpose of the business review is to inform members of the company and assist them in assessing how the directors have performed their duty under s 172 of the Companies Act, namely the duty to promote the success of the company. It is within the confines of the business review that directors of public companies are required to report on certain environmental and social matters. The content requirements of the business review are set out in s 417(3)-(6) as replicated below:

Subsections 417(3)-(6) of the Companies Act 2006

The business review must contain– (a) a fair review of the company's business, and
(b) a description of the principal risks and uncertainties facing the company

4) The review required is a balanced and comprehensive analysis of

(a) the development and performance of the company's business during the financial year, and

(b) the position of the company's business at the end of that year, consistent with the size and complexity of the business

(5) In the case of a quoted company the business review must, to the extent necessary for an understanding the development, performance of or position of the company's business, include

(a) the main trends and factors likely to affect the future performance and position of the company's business and

(b) information about—

(i) environmental matters (including the impact of the company's business on the environment,

(ii) the company's employees, and

(iii) social and community issues, including information about any policies of company in relation to those matters and the effectiveness of those policies; and

(c) subject to subsection (11), information about persons with whom the company has contractual or arrangements which are essential to the business of the company.

If the review does not contain information of each kind mentioned in paragraphs (b)(i), (ii) and (iii) and (c), it must state which of those kinds of information it does not contain.

(6) The review must, to the extent necessary for an understanding of he development, performance or position of the company's business, include—

(a) analysis using financial key performance indicators, and

(b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.

“Key performance indicators” means factors by reference to which the development, performance or position of the company's business can be measured effectively.

The new directors' reporting requirements are reinforced by penalties for non-compliance. This overcomes an inherent weakness of similar reporting requirements in other jurisdictions associated with a lack of accompanying enforcement measures.⁴⁹ However, there are two features of the new U.K. reporting requirements

⁴⁹Kerr, Michael, Richard Janda, and Chip Pitts. *Corporate social responsibility: a legal analysis*. LexisNexis, 2009.

that limit their scope and, potentially, their effectiveness.⁵⁰ First, and most significantly, the environmental and social reporting requirements in s. 417(5) are accompanied by the following clarifying statement: If the review does not contain information of each kind mentioned in paragraphs (b)(i), (ii) and (iii) and (c) it must state of those kinds of information which it does not contain. This would appear to suggest that directors do not necessarily have to include information about environmental matters [(b)(i)], the company's employees [(b)(ii)], or social and community issues [(b)(iii)]. In effect, this relegates the environmental and social reporting requirements in s 417(5) to something akin to a legislated form of voluntarism. Second, s. 417(5) only applies to publicly "quoted companies." By definition, this includes U.K.-based public companies listed in Britain, in a European Economic Area state, on the New York Stock Exchange or NASDAQ." In other words, the reporting provisions of s. 417 (5) do not apply to private companies. This is a common limitation of transparency legislation and constitutes a significant gap as private companies and other private entities (e.g., private equity entities begin to play an increasing role in national and global economies.⁵¹

In Germany, pursuant to s.93(2) of the German Stock Corporations Act (Aktengesetz—AktG) members of the management board who violate their duties of care to the company are jointly and severally liable to the company for any resulting damage. Directors are under an obligation to comply with the law and they therefore breach their duty of care to the company where they violate any statutory obligation such as the duty to produce a management report.⁵² The same applies to members of

⁵⁰Ibid.

⁵¹Ibid.

⁵²Du Plessis, Jean Jacques, and Andreas Ruhmkorf. "New Trends Regarding Sustainability and Integrated Reporting for Companies: What Protection Do Directors Have?." (2015).

the supervisory board. Statutory reporting duties that are relevant in the context of discussing sustainability reporting are imposed by the German Commercial Code (Handelsgesetzbuch—HGB). Section 289a of the HGB requires public companies to issue a declaration of corporate governance. It consists of three components⁵³: first, the declaration of past and future compliance with the German Corporate Governance Code pursuant to s.161 AktG which states that⁵⁴

(1) 1 The management board and supervisory board of the listed company shall declare annually that the recommendations of the “Government Commission German Corporate Governance Codex” published by the Federal Ministry of Justice in the official part of the electronic Federal Gazette has been and will be complied with or which recommendations have not been or will not be applied and why. 2 The same shall apply to the management board and the supervisory board of a company which has exclusively issued other securities than shares for trading on an organised market within the sense of § 2 (5) of the Securities Trading Act and the issued shares of which shall, on the company’s own initiative, only be traded via a multilateral trading system within the sense § 2 (3)sentence 1 No. 8 of the Securities Trading Act. (2) The declaration shall be continuously available to the public on the company’s Internet page.

Secondly, relevant information about the company’s corporate governance practices which are applied beyond the statutory requirements, including a note where these can be found; thirdly, a description of the functioning of the management board and the supervisory board as well as the composition and functioning of the committees.⁵⁵ Large corporations are also required to include non-financial performance indicators in their management report such as information about environmental and employee matters to the extent necessary for an understanding of the company’s development,

⁵³Ibid.

⁵⁴§ 161 Corporate Governance Codex Declaration

⁵⁵Du Plessis, Jean Jacques, and Andreas Ruhmkorf. "New Trends Regarding Sustainability and Integrated Reporting for Companies: What Protection Do Directors Have?." (2015).

performance or position of the company's business.⁵⁶ This reporting about non-financial information will be expanded under the proposed EU Directive discussed.⁵⁷

As the duty of care demands directors to comply with the law, incorrect statements about the company's past record in the management report are a ground for liability.⁵⁸

With respect to the liability for future-looking sustainability statements, it is useful to consider the legal situation surrounding the statements that companies are currently required to make in their management report about the expected development and performance of the company in the future, including risks and opportunities.⁵⁹ The existing duty to forecast the expected development and performance of the company requires an assessment of the opportunities and risks that the company faces in the future.⁶⁰ The report must also explain the premises upon which the assessment is based. As the management report has to be accurate, the forecast must be oriented at realistic expectations.⁶¹

The Inadequacy of Regulations for Transparency and Disclosure of EU MNCs in Saudi Arabia

Reporting has become an important issue at the heart of corporate social responsibility; there is growth in demands by stakeholders, including shareholders, for companies to demonstrate greater accountability and transparency – measuring and publicly reporting not only on their financial performance, but also on their wider

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid.

⁵⁹ Ibid

⁶⁰ HGB s.289(1)(4); D. Kleindiek in Münchener Kommentar zum Bilanzrecht (Munich; Beck Verlag 2013), §289 HGB, para.62; Ibid.

⁶¹ Du Plessis, Jean Jacques, and Andreas Ruhmkorf. "New Trends Regarding Sustainability and Integrated Reporting for Companies: What Protection Do Directors Have?." (2015).

social, environmental and governance (ESG) performance.⁶² This trend is being driven by a combination of low trust in large companies, easier access to information via the Internet, more open societies and press freedom, greater public awareness of global issues, increased consumer choice and sophistication, the war for talent, and higher public expectations of the private sector.⁶³ Consequently, “there is a growing demand for publicly-quoted companies to issue CSR or sustainability reports and/or to include information on these issues in their regular annual report. Major institutional investors are also asking more questions about these issues, the Goldman Sachs ESG Framework – GS SUSTAIN – being one good example. The recently launched Transparency Award in Saudi Arabia, which was awarded for the first time in November 2008, offers an excellent example of how government and business can work together to create incentives for greater accountability and transparency, and learn and share what works”.⁶⁴

There is a lack of regulations for transparency and disclosure of nonfinancial information of corporations in Saudi Arabia. For example, the Saudi Foreign Investment Law states that “the foreign investor shall comply with all laws, regulations and directives in force in the Kingdom of Saudi Arabia, as well as international agreements in which the Kingdom is a party.”⁶⁵ Saudi laws, regulations, and directives do not require the disclosure of non-financial information of companies

⁶² Zadek, S & MacGillivray, A. “The State of Responsible Competitiveness 2007”, Accountability with FDC, London.

⁶³ Ibid

⁶⁴ Ibid.

⁶⁵ Saudi Foreign Investment Law, Article 15:

Article 1: (e) Foreign Investor: A natural person who is not of Saudi nationality or a legal person whose partners are not all Saudi.

only financial information is required to be disclosed can be seen from the Saudi Capital Market Law⁶⁶

It would be remarkable if s (a) (4) of Article 45 which states that annual reports should include “any other information required by the rules of the Authority as it deems necessary to assist investors and their advisers in making a decision to invest in the issuer’s securities”, considers non-financial information necessary to investors’ decision-making. Even if that is the case, EU MNCs will be exempted since they are incorporated as limited liability companies in Saudi Arabia. Only public companies are required to provide such information. Financial information of corporations is also the only requirement by Saudi Companies Regulations. Article (89) states that – briefly explain:

Disclosing financial information is also the only requirement of limited liability companies under Article (175):

The managers shall prepare, for each fiscal year, the company's balance sheet and the profit and loss account within four months from the end of the fiscal year. The managers shall send a copy of these documents and a copy of the report of the Supervisory Board and a copy of the auditor's report to the General Administration of companies and to each partner within two months from the date of the preparation of the mentioned documents. Each partner, in the companies that do not have a General Assembly, may ask the managers to call the partners to attend a meeting for deliberation on those documents.

⁶⁶ Capital Market Law, Royal Decree No. M/30 2 Jumada II 1424H / 31 July 2003.

How Do EU MNCs Report on Social and Environmental Issues?

While many companies tend to approach sustainability management and publish sustainability reports, their main focus in this endeavour remains unclear.⁶⁷ Thus it is true that, “(o)ften, it seems that sustainability issues are pursued more coincidentally than with a clear strategy”.⁶⁸ I believe that reporting on human rights, labour rights, and environmental aspects of companies must be made clear, consistent, corresponding to a specific set of standards, and above all compulsory. As with regards to the human right aspect, I think it is essential that companies must operate in ways that, at a minimum, meet fundamental responsibilities in the areas of human rights, labour, and the environment. This is because “responsible businesses enact the same values and principles wherever they have a presence, and know that good practices in one area do not offset harm in another”.⁶⁹ Thus, in my view, all companies must uphold their basic responsibilities to people and the environment by incorporating internationally accepted standards, guidelines, and good practices into their strategies, policies and procedures, and forming a culture of integrity.

This section shows how some selected EU MNCs reported on social and environmental issues. Reviewing the practices of four EU MNCs, which operate as joint ventures in Saudi Arabia, namely: HSBC, Siemens, BP, and Daimler—in 2013 and 2014 regarding transparency and disclosure of their social and environmental impacts has led to surprising results. Clearly, the aforementioned EU MNCs have

⁶⁷ Baumgartner, Rupert J., and Daniela Ebner. "Corporate sustainability strategies: sustainability profiles and maturity levels." *Sustainable Development* 18.2 (2010): 76-89; Milne, Markus J., and Rob Gray. "W (h)ither ecology? The triple bottom line, the global reporting initiative, and corporate sustainability reporting." *Journal of business ethics* 118.1 (2013): 13-29.

⁶⁸ Ibid.

⁶⁹ United Nations, The Ten Principles of the UN Global Compact, at <https://www.unglobalcompact.org/what-is-gc/mission/principles>

failed to report on their non-financial information about their activities in Saudi Arabia. Such failure to report on such important matters is damaging because of the double standard applied by EU MNCs in such case. They failed to uphold social and environmental responsibility in Saudi Arabia as upheld in their respective home states simply by failing to report on such fundamental matters. Moreover, the reports of the companies in question are inconsistent in the provision of human rights data and information. Thus, while they provide the general concepts and claim to meet the Global Compact Principles relating to human rights, they provide different information regarding the details. Further, all the reports generally address some human rights aspects, but without providing definitions to determine the meaning of data or providing data requested by the G4 Sustainability Reporting Guidelines⁷⁰ (G4 Guidelines), thus comparison cannot be made between the reports. For example, the emphasis on human rights in the Siemens 2014 report⁷¹, and similarly the Siemens 2013 report⁷² are on supply chain management. The company has developed a Code of Conduct for Siemens Suppliers based on the ten principles of the UN Global Compact and the Siemens Business Conduct Guidelines. The BP 2013⁷³ and 2014⁷⁴ reports provided information on the company's commitment to conducting business in a manner that respects human rights, focusing on workforce welfare, health and safety. The reports provides data on human rights trainings and attendance. BP's human rights policy is claimed to be based on the United Nations Guiding Principles and applied to their operations, as well as their suppliers.

⁷⁰ Global Reporting Initiative, G4 Sustainability Reporting Guidelines, at

<https://www.globalreporting.org/standards/g4/Pages/Introduction-to-G4-brochure.aspx>

⁷¹ Siemens, Additional Sustainability information to the Siemens Annual Report, 2014, at <http://www.siemens.com/about/sustainability/en/index.php>

⁷² Siemens, Additional Sustainability information to the Siemens Annual Report, 2013, at <http://www.siemens.com/about/sustainability/en/index.php>

⁷³ BP, Sustainability Review, 2013, at <http://www.bp.com/sustainability>

⁷⁴ BP, Sustainability Report, 2014, at <http://www.bp.com/sustainability>

The HSBC 2014⁷⁵ report briefly addresses human rights, but lacks supporting data. The report provides that the company considers human rights in relation to employees, suppliers, and customers. It lists the major human rights concerns including the right for just and favourable conditions of work and remuneration, the right to equal pay for equal work, the right to rest and leisure and prohibition of slavery and child labour, and the right to equal pay for equal work. The company includes these areas in their HSBC Code of Conduct for Suppliers and the HSBC Global Standards Manual. In the HSBC 2013 report⁷⁶, human rights are only listed as part of the company's sustainability initiative—they are not addressed with information on policies or efforts, nor is data provided relating to human rights. The Daimler 2014⁷⁷ report lists human rights and compliance as an ethical responsibility of management and includes these aspects in their Integrity Code. The report provides an overview of the company's human rights efforts and its integration into their systems. The report provides an overview of the human rights risk assessment, program implementation, monitoring, and reporting guidelines. The countries for which human rights assessments were conducted are provided, as well as the results of the assessments, relating training programs, procedures for investigating suspicious behaviour, and how human rights are incorporated into the supplier screening system. Reviewing suppliers for human rights is also included, such as in regard to child labour.⁷⁸

⁷⁵ HSBC, Strategic Report, 2014, at <http://www.hsbc.com/our-approach/reports-and-documentation>

⁷⁶ HSBC, Sustainability Report, 2013, at <http://www.hsbc.com/our-approach/reports-and-documentation>

⁷⁷ Daimler, Sustainability Report, 2014, at <http://sustainability.daimler.com>

⁷⁸ The same focus of information was provided in the Daimler 2013 report, Daimler, Sustainability Report, 2013, at <http://sustainability.daimler.com>

Labour/ Employment and Industrial Relations issues.

The Siemens 2014 report provides: the number of Siemens employees (in total and by region), the proportion of women as a percentage of total employees (in total and by region), and number of employees in management positions as a total and for females. The report provided the average official weekly working hours (in total and by region), and the use of working hour programs at the company (either part-time or employees on leave of absence). Regarding occupational health and safety management, the Siemens 2014 report provides data on accidents worldwide (for employees and contractors), the company's efforts to reduce the number of accidents, how the company defines work-related accidents, and the number of employees excluded from projects (in India) resulting from systematic assessments.⁷⁹ The BP 2014 report provides safety data for fatalities of employees and contractors, day away from work cases, day away from work cases frequency, recordable injuries, recordable injury frequency, hours worked for employees and contractors. Moreover, the report includes information on how the company manages safety, prevents incidents through process safety (including data on process safety events), In addition, the BP 2014 report provides information and data on diversity and inclusion (including sexual orientation alliances)⁸⁰ The HSBC 2014 report provides information on employee development, information on diversity and inclusion, the number of employees by country, gender balance by rank, and overview of efforts to promote health, welfare, and safety. However, the HSBC 2013 report provides more details than those provided in the 2014 report. For example, the 2013 report provides information on employee turnover, on rewarding performance, on employee

⁷⁹ The same information and type of data related to labour and employment as provided in the 2014 report is provided in the 2013 report although specific details vary.

⁸⁰ The same information and type of data related to labour and employment as provided in the 2014 report is provided in the 2013 report although specific details vary.

engagement, on union recognition, on diversity and cultural inclusion, on gender balance, and on health welfare and safety. The 2013 report also provides side-by-side data for 2011, 2012, and 2013 on the number of full-time employees, employee compensation and benefits, employment numbers by region, employment turnover by region, employee turnover by management type, employee turnover by age, gender by management type, gender by region.

The Daimler 2014 report provides information on proportion of women, proportion of women in management, accident rate, sickness figures (for Germany), and provisions for retirement benefits and healthcare. The report covers employment fluctuation rates (for 2012, 2013, and 2014) and information on efforts to include employees' opinions, salaries and minimum wages, equal pay, compensation of managers, company pension plans, diversity in management, promotion of women in management positions, qualifications of German employees, company health promotion, occupational and emergency medicine.⁸¹ Although all the reports of the companies in question were consistent in providing some data relating to the numbers of employees and corporate profile related employment data, they are inconsistent in other important aspects of labour and employment data and information. Moreover, there is not enough information provided to determine if they adhere to the Global Compact Principles as basic guidelines nor is there data to support adherence to most G4 guidelines.

⁸¹ The Daimler 2013 report covers the same topics as discussed for the 2014 report.

Environmental issues

The Siemens 2014 report covers resource efficiency, climate protection, and regulatory requirements in the supply chain. The company collects and publishes data on greenhouse gas emissions resulting from purchased products and services, as well as data on their supply chain relating to water shortage risks. Regarding energy consumption, the Siemens 2014 report provides data on primary energy consumption for natural gas/liquid petroleum gas and fuel, oil, coal, and gasoline/diesel, as well as secondary energy (e.g., electricity and district heating). The report provides data on greenhouse gas emissions, the distribution of greenhouse gas emissions, atmospheric pollutant emissions, waste (including non-hazardous waste, hazardous waste, and construction waste), recycling, water consumption, and wastewater. Finally, the report covers environment-related incidents and penalties. They provide the nature of all 15 incidents, but do not provide details on the fines applied.⁸²

The BP 2014 report provides environment data on oil spills to land and water, volume of oil unrecovered, direct carbon dioxide, direct methane, direct greenhouse gas, indirect carbon dioxide, customer emissions, flaring upstream, environmental expenditure, and environmental and safety fines. The policies related to environmental impact and efforts to decrease such impact are thoroughly discussed within the report. This includes BP's program to manage climate change risk and their carbon policy. It addresses the role of technology and innovation in these efforts. Environmental protection is also the basis of the report's overview of the company's

⁸² The Siemens 2013 report includes the aforementioned data and information on environmental sustainability, as well as research and development figures (for 2011, 2012, and 2013).

involvement in biofuels, the Arctic, unconventional gas and hydraulic fracking, oil sands, energy and natural resources, and deepwater oil and gas. The report provides information how environmental impacts are managed through the life cycle, environmental performance (including adherence to regulations and emissions targets), air quality efforts, water quality efforts (including assessing water risks, water withdrawal, and managing water discharge), oil spill preparedness and response, and biodiversity and sensitive areas (including data on major operations within and around a protected area).⁸³

The sustainability section of the HSBC 2014 report covers the company's forestry policy, agricultural commodities policy, commitment to protecting unique sites in adherence to world heritage guidelines and Ramsar wetlands policies, climate business policies, adherence to the UN Environment Program Finance Initiative Principles for Sustainable Insurance, sustainable leadership programs, renewable energy procurement, paper usage, and carbon emissions. The HSBC 2013 report provides the percent reduction in energy use for their operations. The report discusses the environmental efforts and associated social changes. They support long-term commercial business opportunities that seek to transition to low-carbon economies, directs companies to climate change friendly investments, identifies future potential "green bonds," supports bus rapid transit, and provides data on HCBS climate business by sector and by region. The report outlines the sustainable operations strategy, which includes reduction in waste disposed, training programs, and energy consumption goals. Sustainability goals are also applied to the supply chain.

⁸³ The same information and type of data related to environment as provided in the 2014 report is provided in the 2013 report although specific details vary.

The Daimler 2014 report provides data for 2012, 2013, and 2014 on the operations-related environmental protection (including energy consumption, carbon dioxide emissions, solvents, waste, and water consumption), and product responsibility relating to research and development expenditure on environmental protections and carbon dioxide emissions in the EU. The product focuses heavily on the environmental impact of vehicles under the company. The company claims to invest extensively in environmentally sustainable technology relates to these vehicles. Product responsibility is discussed as the intersection between eco-friendliness and efficiency, safety standards, and customer benefit. Regarding the development of product responsibility, the report provides as overview of how they address the challenges of the future referring to environmental and energy aspects, how they are striving to develop products which are highly responsible to the environment and energy efficiency, how they plan manufacturing for optimal environmental protection and efficient energy utilization, how they provide ecological and energy efficient service and information to customers, how they achieve exemplary environmental and energy performance worldwide, and how they inform employees and the public of these initiatives. The report provides data for energy consumption by type for each year 2008 through 2014, as well as direct and indirect carbon dioxide emissions from production for 1992-1994 and year 2008 through 2014, specific solvent emissions per vehicle, waste volumes for 2008 through 2014, waste volumes for 2008 through 2014, materials used in vehicle production for 2008 through 2014, water consumption for 2008 through 2014, truck shipments of suppliers (in Germany, Hungary, and Spain) for 2010 through 2014, and carbon dioxide emissions from business travel (starting in

Germany). The report also addresses policy and efforts relating to the conservation of nature (including soil and groundwater), land use, and biodiversity.⁸⁴

Country Specific Data

The Siemens 2014 report provides very little country specific data. Most data (on supply chain screening, employment, and corporate citizenship donations) are provided based on three geographical categories based on regional levels: 1) Europe, Commonwealth of Independent States (CIS), Africa and the Middle East, 2) Americas, and 3) Asia and Australia. Data is also provided in aggregate for all Siemens operations. Environmental data is only provided in aggregate. Where applicable, specific countries are discussed. For instance, the report providers that certain suppliers in India did not meet basic criteria and that they were implementing programs in India and China to promote safety. The report also provides that they have about 90,000 suppliers in over 160 countries, but these countries were not specified. Environmental reports were analysed from 46 countries, but again these countries were not specified.

The BP 2014 report does not breakdown the data by country or region. When providing data for employment, the report includes data on people from UK and US racial minorities in group leadership and on people from beyond the UK and US in group leadership. The report directs the reader to the BP website for country reports, which indicates that more country level data is available. Regional (Europe, US and Canada, Asia Pacific, South and Central America, Middle East and North Africa, and

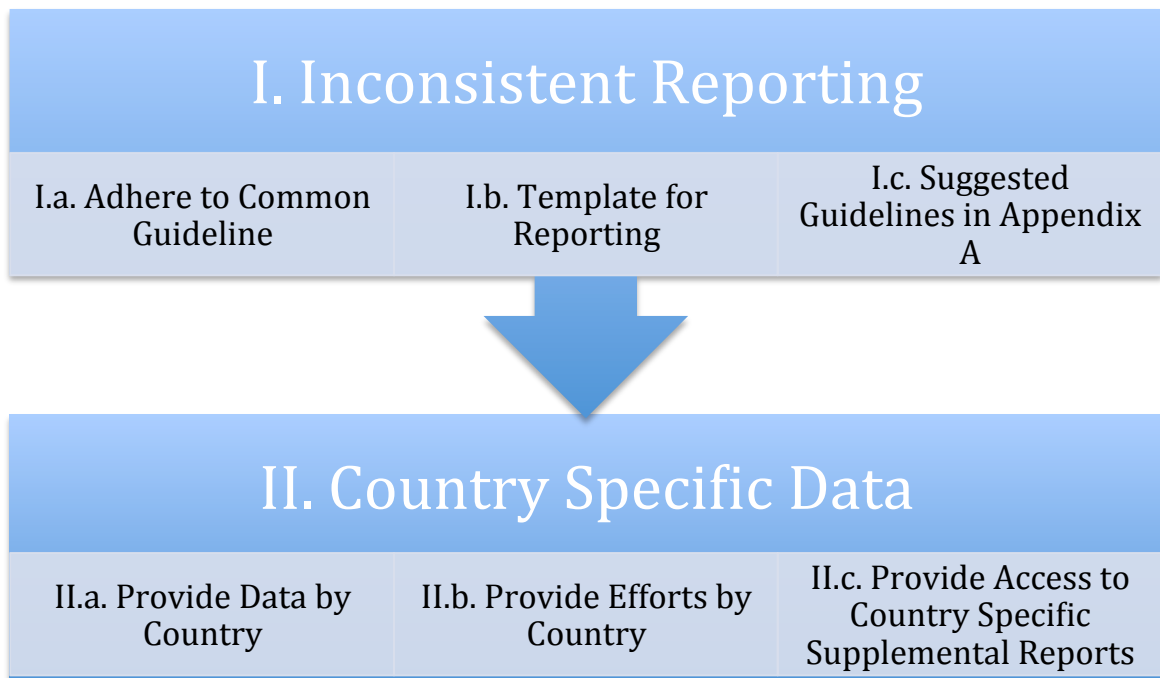
⁸⁴ All topics discussed in regards to the 2014 report are also provided in the Daimler 2013 report.

Sub-Saharan Africa data is available for number of employees. In discussion of working with local suppliers, the report uses the example of the Khazzan gas field in Oman to which BP awarded more than \$259 million to local companies. Similar other examples are provided for single countries, such as the case of train derailment in Canada, crisis management in Algeria, oil spill recovery in the US, etc. The BP 2013 report takes the same approach in providing data in aggregate, citing specific instances in discussion of efforts, and referring the reader to the BP website for country reports which is not available in relation to the company's activities in Saudi Arabia. The HSBC 2014 report is very thorough in listing countries in which different initiatives are active and goals are applied. Data for specific countries, however, are lacking.

The Daimler 2013 and Daimler 2014 reports data in aggregate but uses countries to demonstrate efforts. There is a whole section regarding Daimler in China's automobile market. The reports provide that economic, social, and environmental conditions vary from country to country. The reports also acknowledge that they adhere to local country specific definitions and implementations of human rights. In regards to ethical responsibility, the reports provide the countries for which they have reviewed production sites by year. They also provide that efforts to improve customer satisfaction are country specific, as are company pension plans. Although the report discusses many efforts as country specific, the differences for countries are not provided. For charitable projects, numbers are provided by country. Because Daimler is based on Germany, there are many data that are only available for Daimler's operations in Germany. China, as a major country for Daimler, is commonly focused on in the reports.

The Urgent Need for More Responsible Reporting By EU MNCs

As seen earlier, there two main issues regarding EU MNCs reporting on their social and environmental responsibilities: the inconsistency of reporting and the lack of country specific data. In response to the issue of inconsistent reporting, I think that the following policy has to be taken into account.



:

- I.a. Adhere to a Common Guideline: The information provided by companies and over the years is inconsistent. Therefore, I believe that it is fundamental to establish a common guideline for reporting.
- I.b. Template for Reporting: As the reports examined in this chapter claimed to be adhering to the same guidelines, yet there remained a lack of consistency. Thus, a template for reporting must be introduced. This template will ensure that all available data is reported in the same format, which is essential for comparison across years and across

countries. The template will include the option to indicate for which areas data is not available, for which areas the company met their sustainability goals, and for which areas growth towards their goals were lacking.

- I.c. Suggested Guidelines in Appendix A: As the outlined provided in Appendix A reflects the overlap between three internationally accepted guidelines, it is recommended herein that this outline serve as the basis for the suggested guidelines.

The second issue regarding EU MNCs reporting on their social and environmental impacts, is the fact that such corporations do not provide country specific data. Issues related to human rights, labor, ethics, the environment, and corporate matters likely vary greatly across countries. Moreover, underdeveloped countries and developing countries are more vulnerable to issues in these areas both by companies and in the supply chain. Based on this, I think the following policy has to be implemented:

- II.a. Provide Data by Country: At current, the reports are inconsistent in their address of country specific data. It is important that all data must be provided by country, as well as in aggregate.
- II.b. Provide Efforts by Country: In addition to providing data by country, it is essential that efforts in each country also must be addressed. The report must include all work the company has done in these countries to mitigate risk and promote sustainability both for the company and for the local communities in which the company operates in that country. For instance, if there are initiatives that are specific to select countries or if there is a lack of progress towards

sustainability goals in a specific country or region, that should be directly discussed in the narrative and tied to the data. Details on what the company is doing to improve communities in each country should be included as ethical considerations.

- II.c. Provide Access to Country Specific Supplemental Reports: In addition to yearly sustainability reports for the company as a whole, I believe that it is fundamental that the company use the same template to develop sustainability reports specific to each country. This should be provided in English, the language of the company's headquarters, and the language of the country in which the report is addressing.

A Proposed Template for Corporate Reporting on Non-financial information

I believe that the template for non-financial reporting provided below will effectively serve as a guideline for reporting on corporate sustainability efforts and related data. The template should be completed for the company's aggregate data and efforts, as well as for each country in which the company operates. All quantitative data should be provided for five consecutive years, ended with the reporting year. When data are not available for all five year, notes must be provided to explain the absent data. The template provides a series of prompts and associated directions for the company's to follow in reporting. These prompts are derived from synthesizing the GRI G4 guidelines, the UN Global Compact Principles, and the OECD Guidelines for Multinational Enterprises⁸⁵. I think following these questions—in this order—is both of academic and practical importance. Consistency in reporting, as promoted by the use of a template, will allow researchers to assess the consistency of the companies

⁸⁵ OECD, Guidelines for Multinational Enterprises, 2011.

and know they are reporting on the same data points, in the same manner, and in the same order. Practically, using the report template allows the companies to self-assess progress towards sustainability goals in systematic manner and compare where they stand in relation to comparable corporations. Following this template closely includes providing data in the specified order and providing all data or justification for the exclusion of data. In following this template, companies are systematically adhering to the recommended guidelines for corporate ‘sustainability reporting’. The sustainability report should be a stand-alone report separate from the strategic report. It requests both qualitative and quantitative data to provide a thorough overview of corporate sustainability efforts.

Template:

This sustainability-reporting template provides the data requests and order suggested for corporate reporting. All quantitative data should be provided for five years ending with the reporting year. Reports should be prepared for the company’s aggregate sustainability efforts and data, as well as individual reports for each country in which the company operates.

1. Report Outline
 - a. Provide a report outline with major headings related to Human Rights, Labor and Employment, and Environmental Impact. Include page numbers and subsections.

2. Human Rights

- a. Report policies and efforts aimed at protecting human rights, preventing or mitigating adverse human rights impacts.
- b. Report number and percentage of significant investment agreements that include human rights clauses. Define significant investment agreement.
- c. Report efforts to ensure the company is not complicit in human rights abuses.
- d. Report the percentage of new suppliers that were screened using human rights criteria. Report areas of screening. Report percentage of issues found in each area of screening.
- e. Report the actual and potential human rights impact of the supply chain and company response. Report how these numbers were determined.
- f. Report total number and percentage of operations subject to human rights reviews by country. Report the process and outcome of these reviews.
- g. Report the number of grievances about human impacts filed, addressed, and resolved through formal grievance mechanisms.
- h. Report total number of incidents of violations involving human rights of indigenous peoples and actions taken.

3. Labor and Employment

- a. Report efforts to respect the rights of workers, contribute to the effective abolition of child labor, contribute to the effective abolition of forced or compulsory labor, provide representation for effective collective agreements, meet standards for condition of work, ensure occupational health and safety, and employ local workers.
- b. Report efforts uphold the freedom of association and the effective recognition of the right to collective bargaining.
- c. Report the minimum notice periods regarding operational change, including whether these are specified in collective agreements.
- d. Report operations and suppliers identified in which the right to exercise freedom of association and collective bargaining may be violated or at significant risk and measures taken to support these rights.
- e. Report health and safety topics covered in formal agreements with trade unions.
- f. Report efforts aimed at ensuring the elimination of all forms of forced and compulsory labor, including child labor.
- g. Report operations and suppliers identified as having significant risk for incidents of forced or compulsory labor and measures to contribute to the elimination of all forms of forced or compulsory labor, including child labor.

- h. Report associations and suppliers identified in which the right to exercise freedom of association and collective bargaining may be violated or at significant risk and measures taken to support these rights.
- i. Report efforts to ensure the elimination of discrimination in respect of employment and occupation.
- j. Report the total number and rates of new employee hires and employee turnover by age group, gender (and region for the aggregate report).
- k. Report composition of governance bodies and breakdown of employees per employee category according to gender, age group, minority group membership, and other indicators of diversity.
- l. Report total number of incidents of discrimination and corrective actions taken.
- m. Report type of injury and rates of injury, occupational diseases, lost days, and absenteeism, and total number of work-related fatalities by gender, and by region (for aggregate report).
- n. Report workers with high incidence of high risk of diseases related to their occupation.
- o. Report the number of grievances about labor practices filed, addressed, and resolved through formal grievance mechanisms.
- p. Report the percentage of new suppliers that were screened using labor practices criteria.
- q. Report the significant actual and potential negative impacts for labor practices in the supply chain and action taken.

4. Environmental Impact

- a. Report materials used by weight and volume, energy consumption within the organization, energy consumption outside of the organization, total water withdrawal by source, water source significantly affected by withdrawal of water.
- b. Report how the business is taking a precautionary approach to environmental challenges.
- c. Report policies for maintaining a system of environmental protection, establish measurable objectives for environmental improvement, monitoring impacting regularly, disseminating information on environmental issues appropriately, maintaining contingency plans for environment hazard, seeking to improve corporate performance, adopt environmentally friendly technologies, seeking ways to improve environmental impact, educating

workers on environmental health and safety, and contributing to environmental public policy.

- d. Report the extent of impact mitigation of environmental impacts of products and services.
- e. Report the total environmental protection expenditures and investments by type.
- f. Report the percentage of new suppliers that were screened using environmental criteria and the process and findings of these screenings.
- g. Report the significant actual and potential negative environmental impacts in the supply chain and actions taken.
- h. Encourage the development and diffusion of environmentally friendly technologies.
- i. Report reduction of energy consumption.
- j. Report reductions in energy requirements of products and services.
- k. Report percentage and total volume of water recycled and reused.
- l. Report operational sites owned, leased, managed in, or adjacent to, protected areas and areas of high biodiversity value outside protected areas.
- m. Describe significant impacts of activities, products, and services on biodiversity in protected areas and areas of high biodiversity value outside protected areas.
- n. Report habitats protected or restored.
- o. Report direct greenhouse gas emissions, intensity, and reduction efforts.
- p. Report energy indirect greenhouse emissions.
- q. Report emissions of ozone-depleting substances
- r. Report significant air emissions in kilograms and the source of factors used.
- s. Report total number and volume of significant spills.
- t. Report weight of transported, imported, exported, or treated waste deemed hazardous under the terms of the basel convention and percentage of transported waste shipped internationally.
- u. Report monetary value of significant fines and total number of non-monetary sanctions for non-compliance with environmental laws and regulations.
- v. Report number of grievances about environmental impacts filed, addressed, and resolved through formal grievance mechanisms.
- w. Report significant environmental impacts of transporting products and other goods and materials for the organization's operations, and transporting members of the workforce.

Summary

This chapter has also focused on social and environmental reporting and disclosure and the main driving forces behind this trend, and why it does not exist in Saudi Arabia. Moreover, this chapter considered some of the regulatory initiatives motivating social and environmental reporting in a selection of representative jurisdictions, namely; the United Kingdom, Germany, and Saudi Arabia. Moreover, this chapter shed light on the need for reforming the internal governance structure of MNCs as well as reforming Saudi laws in relation to social and environmental reporting. Finally, a template for reporting on social and environmental issues by EU MNCs have been suggested to overcome the current inconsistency of reporting and the lack of country specific data problems.

Chapter 7:

Conclusion

It was seen in chapter 2 that the significant shift in the trend towards more liberal economic choice is a relatively new era for the Saudi Arabia's foreign investment experience. Therefore, it should reform a very concrete policy that can ensure dignity and prosperity for its people. Such policy must consider a balanced approach to development in which economic development does not come at the cost of the people or the environment in Saudi Arabia. A reflection of such policy on Saudi laws is necessary if the country is to achieve best results in terms of social and environmental protection. The legal instruments in Saudi Arabia must be reviewed in light of the new era the country is experiencing so as to ensure that sustainable economic development is achieved.

Chapter 2 also sought to offer a clear definition of MNCs, their characteristics, and their different types of legal structures in Saudi Arabia. The joint venture structure of MNCs has been proven to be the most preferred form MNCs in the country. Since MNCs are considered as foreign investors, theories on foreign investment have been discussed. Such discussion was offered to show how Saudi Arabia perceived foreign investment. Two main theories of foreign investment have been analysed, namely: the classical theory and the dependency theory. The former embraces the view that foreign investment is totally beneficial to the economy of any host state. This chapter has also shown that the classic theory on foreign investment is supported by the 'neoclassical market perspective' which views the market, as the most efficient allocator of resources, should be allowed to operate with as little regulatory

interference as possible. Hence, this chapter discovered that Saudi Arabia has adopted the classical theory on foreign investment and has also been a supportive of the neo-classical market perspective since the beginning of the twenty first century. The chapter has also examined the dependency theory holds the view that foreign investment will not generate “meaningful development”, categorically opposing the classical theory. This is because MNCs take surplus wealth from host developing states leaving their economic performance suffers to the benefit of foreign capital.

Chapter 3 looked at corporate theories. As MNCs operate in developing countries they tend to enjoy favourable economic conditions as well as other benefits which are fully discussed in chapter two. MNCs’ presence in host countries has come under great scrutiny in terms of the way they operate in such countries. Since MNCs come from different countries that do not necessarily apply the same corporate theory. These theories have resulted in many corporate governance models which are being practiced worldwide. It is widely acknowledged that corporate governance systems vary because of divergent ideologies, histories, political beliefs, and social, economic and other influences. Thus, this chapter examined four corporate theories which have influenced the discourse around corporate governance. Moreover, this chapter argued that the stakeholder theory of the company is the one that should be applied in Saudi Arabia. This is because other stakeholders, such as, labour, the environment, and the community at large, have interests in the company too. Thus, I argued that a stakeholder corporate model that involve all stakeholders of the company will be most beneficial for Saudi Arabia’s both short-term and long-term development plans.

Chapter 4 has shown how the concept of sustainable development and environmental protection have evolved and changed over time. Historically, the concept emerged from people concerns about natural resources and how they can be rationalised so as to ensure the survival of future generations. Over the time, there have been many changes in the discourse about sustainable development. These changes advocate one of two main approaches: the preservationist and the conservationist. The former's primary focus was on nature and how it can be preserved, i.e. to keep nature save from any interference by human. The latter approach was less intense in the way that it considered human entitlement to live on nature. However, themes under this approach varied in terms of their dealing with what is acceptable and what is not from human. This chapter then examined these approaches and themes as to what effects they have had on the international political dialogue on sustainable development. Moreover, this chapter proposed a description of the concept of sustainable development and how it was perceived by Saudi Arabia. Merely economic-focused system is not enough when it comes to the concept of development. In this sense, ecology and economy are becoming ever more interlinked—locally, regionally, nationally and internationally and therefore, the Saudi government must take this into account when seeking economic development.

Chapter 5 explored the concept of social responsibility of business and in particular MNCs. Along with what have been discussed in chapter 3 especially the discussion about the stakeholder theory of the company, this chapter looked at the development of the concept through arguing that business-society relations are central to such emergence of the concept. Therefore, some theories around the concept of social responsibility of business have been examined. Moreover, the subject of human rights

is an integral part to the discussion about the social responsibility of MNCs. Hence, this chapter considered international and regional instruments regarding social responsibilities of MNCs. Such instruments were used as a parameter against which Saudi Arabia's approach towards internationally recognised human rights and freedoms was examined. Since I believe that the conduct of business activities must be in compliance with accepted standards of human rights, employment conditions, and work place health and safety, I proposed that these aspects are to be introduced into law in Saudi Arabia. The proposed law will impose human rights, employment, and health and safety standards on the conduct of companies and will provide for the enforcement of those standard.

Chapter 6 focused on social and environmental reporting and disclosure and the main driving forces behind this trend, and why it does not exist in Saudi Arabia. Moreover, this chapter considered some of the regulatory initiatives motivating social and environmental reporting in a selection of representative jurisdictions, namely; the United Kingdom, Germany, and Saudi Arabia. Finally, this chapter shed light on the need for reforming the internal governance structure of MNCs as well as reforming Saudi laws in relation to social and environmental reporting.

Therefore, in my opinion there is a need for provisions to be introduced into Saudi national laws which clearly states that the government is committed to ensuring that foreign investors' activities have to be socially and environmentally responsible through adhering to widely internationally recognised standards relating to human rights, labour rights and the environment. Of course, these standards must also be reflected in the Saudi Arabian laws in order to ensure compliance and enforceability.

Furthermore, other legal instruments which are likely to have a bearing on regulations of the operation of MNCs in the country have to include provisions for human rights, labour rights, and environmental protection, as I argue throughout this thesis. These regulations include the SFIL, Saudi Companies Regulation, Corporate Governance Regulation, Saudi Labour Law, and Saudi General Environmental Law. Complying with these laws must be made compulsory on foreign investors so as to make sure their activities do not involve abuses of human rights, labour rights, and the environment in Saudi Arabia.

8 Bibliography

- Allan Irou v. Shell BP*, Suit No. W/89/91 Warri HC/26/11/73 (unreported).
- GabcikovoNagymaros Project (*Hungary v Slovakia*) [1997] ICJ Rep. 7.
- Honduras v Velasquez Rodriguez*. Inter-American Court of Human Rights, (ser. C, No 4, judgment of 29 July 1988.
- Lopez Ostra v. Spain*, 303 Eur. Ct. H.R. (ser. A) 38, 303 Eur. Ct. H.R. 41 (1994).
- Nicholson v PermakraftLtd*, (1985) 3 ACLC 453.
- Trustees of Dartmouth College v. Woodward*, (U. S. 1819) 4 Wheat. 518.

Books:

- Abdel Haleem, Harfiyah, ed. *Islam and the Environment*. London: Ta-Ha Publishers, 1998.
- Andriof, J. and M. McIntosh: 2001, *Perspectives on Corporate Citizenship* (Greenleaf Publishing, Sheffield, UK).
- Aissaoui, Ali. Algeria: *The Political Economy of Oil and Gas*, Oxford University Press/Oxford Institute for Energy Studies, 2001.
- Bagader, Abubaker A. et. al., *Environmental Protection in Islam*, IUCN ENVTL POL'Y & L. PAPER NO. 20 REV. (IUCN-The World Conservation Union, 1994).
- Bayulgen, Oksan. *Foreign Investment and political regimes: The oil sector in Azerbaijan, Russia, and Norway*. Cambridge University Press, 2010.
- Barnes, Philip. *Indonesia, the Political Economy of Energy*. Vol. 3. Oxford University Press, 1995. 11-12.
- Berle, Adolf Augustus, and Gardiner Gardiner Coit Means. *The modern corporation and private property*. Transaction Publishers, 1991.
- Bosselmann, K. *The Principle of Sustainability: Transforming Law and Governance* (Ashgate Publishing, 2008).
- BOSELMANN, K., *The principle of sustainability: transforming law and governance* (Ashgate Publishing, 2008).
- Boue, Juan Carlos, *Venezuela: The Political Economy of Oil*. Oxford: Oxford University Press/Oxford Institute for Energy Studies, 1993.

- Dang, Giang, and Low Sui Pheng. *Infrastructure Investments in Developing Economies*. Springer, 2015.
- Comisión Mundial Del Medio Ambiente Y Del Desarrollo et al., *Our Common Future* (Oxford University Press, 1987).
- Cohen, Benjamin J. *International political economy: an intellectual history*. Princeton University Press, 2008.
- Davies, Paul Lyndon. Gower and Davies' principles of modern company law. Vol. 388. London: Sweet & Maxwell, 2003.*
- Dine, Janet, and Marios Koutsias. *The Nature of Corporate Governance*. Edward Elgar Publishing, 2013.
- Dine, Janet. *Companies, international trade and human rights*. Vol. 4. Cambridge University Press, 2005.
- Dine, Janet. *The governance of corporate groups*. Vol. 1. Cambridge University Press, 2000.
- Donaldson, Thomas, and Thomas W. Dunfee. *Ties that bind: A social contracts approach to business ethics*. Harvard Business Press, 1999.
- Downs, Anthony. *An Economic Theory Of Democracy*. Harper, New York , 1957, 260-276.
- Eisenberg, Melvin A. *The structure of the corporation: A legal analysis*. Beard Books Incorporated, 1976.
- El Sheikh, F.R.A. *The Legal Regime of Foreign Private Investment in Sudan and Saudi Arabia* (Cambridge Univ Pr, 2003) .
- Elkan, Walter. *An introduction to development economics*. Penguin, 1973; Ghatak.
- Farrar, John. *Corporate governance: Theories, principles and practice*. Oxford University Press, 2008.
- Freeman, R. Edward. *Strategic management: A stakeholder approach*. Cambridge University Press, 2010.
- Friedman, Milton. *Capitalism and freedom*. University of Chicago press, 2002.
- Gordon, Kathryn, and Maiko Miyake. *Deciphering codes of corporate conduct: a review of their contents*. No. 1999/2. OECD Publishing, 1999.
- Gilpin, Robert, and Jean Millis Gilpin. *The challenge of global capitalism: The world economy in the 21st century*. Vol. 5. Princeton, NJ: Princeton University Press, 2000.

- Hall, Peter A., and David W. Soskice, eds. *Varieties of capitalism: The institutional foundations of comparative advantage*. Vol. 8. Oxford: Oxford University Press, 2001.
- Hindaui, Hasan Ibrahim, *Altaaleem wa Eshkalat Altanmeeah*, Ministry of Awqaf and Islamic affairs, 2004.
- Ibrahim, F. *Ecological Imbalances in the Republic of Sudan*. Bayreuth, Germany: Druckhaus Bayreuth Verlagsgesellschaft. 1984.
- Iqbal, Zamir, Mirakhor, Abbas, *Economic Development and Islamic Finance*, International Bank for Reconstruction and Development / The World Bank, 2013.
- Higgs, Derek. Review of the role and effectiveness of non-executive directors. London: Dtl, 2003. 63.
- Haleem, Harfiyah, ed. *Islam and the Environment*. London: Ta-Ha Publishers, 1998
- Holme, R., Watts, P. and World Business Council for Sustainable Development, *Corporate Social Responsibility: Making Good Business Sense* (World Business Council for Sustainable Development, 2000).
- Mirakhor, Abbas, and Hossein Askari, *Islam and the Path to Human and Economic Development*. New York: Palgrave Macmillan, 2010.
- MEADOWS, D.H., ROME, CLUB OF, and ASSOCIATES, POTOMAC, *The Limits to growth: a report for the Club of Rome's Project on the Predicament of Mankind* (Universe Books, 1974).
- Muchlinski, Peter T. *Multinational enterprises & the law*. Oxford University Press, 2007.
- Morgera, E. *Corporate Accountability in International Environmental Law*, (Oxford University Press, 2009).
- Tricker, Bob., *Corporate Governance: Principles, Policies and Practices*, Oxford University Press, Oxford, 2009.
- Wallace, C.D. *The Multinational Enterprise and Legal Control: Host State Sovereignty in an Era of Economic Globalization* (Martinus Nijhoff, 2002).
- Zadek, Simon, Hojensgard, Niels and Raynard, Peter: *The New Economy of Corporate Citizenship*, *The Copenhagen Centre* (2001).
- Williamson, Oliver E. *The economic institutions of capitalism*. Simon and Schuster, 1985.
- Zerk, J. *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge Press, 2006).

Wilson, R., et al. *Economic Development in Saudi Arabia* (Routledge/Curzon, 2004).

Maw, Nigel Graham, Peter Lane, and Michael Craig-Cooper. *Maw on corporate governance*. Dartmouth Pub Co, 1994.

Meadows, D.L. *Alternatives to Growth-I: A Search for Sustainable Futures : Papers Adapted from Entries to the 1975 George and Cynthia Mitchell Prize and from Presentations before the 1975 Alternatives to Growth Conference, Held at the Woodlands, Texas* (Ballinger Pub. Co., 1977).

Niblock, T. and M. Malik, *The Political Economy of Saudi Arabia* (Taylor & Francis, 2007).

Pettet, Ben. *Company law*. Pearson Education, 2005.

Pinchot, G. *Breaking New Ground* (Island Pr, 1998).

Articles:

Abdel-Rahman, A-M. M. 'The Determinants of Foreign Direct Investment in the Kingdom of Saudi Arabia', (Economic Research Forum for the Arab Countries, Iran & Turkey, 2002).

Abolition of Forced Labour Convention, No. 105, June 25, 1957, 320 U.N.T.S. 291.

Adair, David R. "Investors' Rights: The Evolutionary Process of Investment Treaties." *Tulsa J. Comp. & Int'l L.* 6 (1998): 195.

AFFAIRS, SOUTH AFRICA. DEPT. OF ENVIRONMENTAL and COORDINATION, TOURISM. DIRECTORATE: SUSTAINABLE DEVELOPMENT, Johannesburg Plan of Implementation: Adopted by the United Nations World Summit on Sustainable Development in Johannesburg, South Africa, on 4 September 2002 (Directorate: Sustainable Development Coordination, Department of Environmental Affairs and Tourism, 2003).

Al-Ibrahim, Abdulla Ali. "Excessive use of groundwater resources in Saudi Arabia: Impacts and policy options." *Ambio* (1991): 34-37.

Al-Qaradawi, Y. "Safeguarding the environment in Islamic Sharia." *Al-Khaleej* (2000).

AMAO, O. , 'The Foundation for a Global Company Law for Multinational Corporations', *International Company and Commercial Law Review*, 21/8 (2010).

Amao, O. 'The Foundation for a Global Company Law for Multinational Corporations', *International Company and Commercial Law Review*, 21/8 (2010) .

An Shum, Paul K., and Sharon L. Yam. "Ethics and law: Guiding the invisible hand to correct corporate social responsibility externalities." *Journal of business ethics* 98.4 (2011): 549-571, p 552.

Assembly, 'Resolution. 1733, 23rd Session'.At <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/243/58/IMG/NR024358.pdf?OpenElement>

ASSEMBLY, UNITED NATIONS GENERAL, ' Resolution. 1831, 17th session ', (1962).

AUTHORITY, SAUDI ARABIA GENERAL INVESTMENT, 'Investment climate in Saudi Arabia

Backman, J 'The social responsibility and accountability' New York University press (1975).

Bandelj, Nina. "Embedded economies: Social relations as determinants of foreign direct investment in Central and Eastern Europe." *Social Forces* 81.2 (2002): 411-444.

Baram, Michael S. "Multinational corporations, private codes, and technology transfer for sustainable development." *Envtl. L.* 24 (1994): 33.

Baron, James N., and David M. Kreps. "Consistent Human Resource Practices." *California Management Review* 41.3 (1999).

Basic Law of Governance, Royal Order No. A/90 dated 27 / 8 / 1412 H, 1992.

Basinger, Scott J., and Mark Hallerberg. "Remodeling the competition for capital: How domestic politics erases the race to the bottom." *American Political Science Review* 98.02 (2004): 261-276.

Bottomley, Stephen. "Birds, The Beasts, and the Bat: Developing a Constitutionalist Theory of Corporate Regulation, The." *Fed. L. Rev.* 27 (1999).

Brennan, Michael J. "Corporate finance over the past 25 years." *Financial Management* (1995): 9-22.

Brodley, J.F. 'Joint Ventures and Antitrust Policy', *Harvard Law Review*, (1982), 1521-90.

BRODLEY, J.F., 'Joint ventures and antitrust policy', *Harvard Law Review*, (1982), 1521-90.

Burkart, Mike, Denis Gromb, and Fausto Panunzi. "Large shareholders, monitoring, and the value of the firm." *The Quarterly Journal of Economics* (1997): 693-728.

Burton, I. 'The Quality of the Environment: A Review', *Geographical Review*, (1968), 472-81.

BURTON, I., 'The quality of the environment: a review', *Geographical Review*, (1968), 472-81.

Cairo Declaration on Human Rights in Islam, 1990.

Campbell, John L. "WHY WOULD CORPORATIONS BEHAVE IN SOCIALLY RESPONSIBLE WAYS? AN INSTITUTIONAL THEORY OF CORPORATE SOCIAL RESPONSIBILITY." *Academy of Management Review* 32.3 (2007): 946-967.

Carroll, Archie B. "A three-dimensional conceptual model of corporate performance." *Academy of management review* (1979): 497-505.

Carroll, Archie B. "Corporate social responsibility evolution of a definitional construct." *Business & society* 38.3 (1999): 268-295, p 279.

Carroll, Archie B. "The four faces of corporate citizenship." *Business and society review* 100.1 (2003): 1-7.

Charter of Fundamental Rights of the European Union, (2010/C 83/02).

Chewning, R.C., Eby, J.W. & Roel, S.J. Business through the eyes of faith. San Francisco: Harper and Row. (1990), p 207; Donaldson, Thomas. *Corporations and morality*. Prentice-Hall, 1982, p 36.

Christie, Ian, and Diane Warburton. "From here to sustainability: politics in the real world." *Journal of Environmental Planning and Management* 44.5 (2001): 757-760.

Clacher, Iain, David Hillier, and Patrick Mccolgan. "Agency Theory: Incomplete Contracting and Ownership Structure." *Corporate Governance: A Synthesis of Theory, Research, and Practice* (2010): 141-156.

Clacher, Iain, David Hillier, and Patrick Mccolgan. "Agency Theory: Incomplete Contracting and Ownership Structure." *Corporate Governance: A Synthesis of Theory, Research, and Practice* (2010): 141-156.

Coase, Ronald H. "The nature of the firm." *economica* 4.16 (1937): 386-405;

Williamson, Oliver E. "The economics of organization: The transaction cost approach." *American journal of sociology* (1981): 548-577.

Companies Regulation, (Royal Decree No. M/6 (1965); Saudi Arabia, 1965).

Corporate Governance Regulations, in The Board of Capital Market Authority (ed.), (1/212/2006; Saudi Arabia, 2006).

Correa, Carlos M. "Investment Protection in Bilateral and Free Trade Agreements: Implications for the Granting of Compulsory Licenses." *Mich. J. Int'l L.* 26 (2004): 331.

Council, Financial Reporting. "The UK approach to corporate governance." *London: The FRC* (2006).

Cunningham, S. M. "Multinationals and restructuring in Latin America." *Multinational Corporations and the Third World (RLE International Business)* 11 (2012): 39.

Dahlsrud, Alexander. "How corporate social responsibility is defined: an analysis of 37 definitions." *Corporate social responsibility and environmental management* 15.1 (2008): 1-13.

Dang, Giang, and Low Sui Pheng. "Theories of Economic Development." *Infrastructure Investments in Developing Economies*. Springer Singapore, 2015. 11-26.

Datamonitor, 'Country Analysis Report: Saudi Arabia. (Cover Story)', (September edn., London: Datamonitor, 2011) at 16.

DATAMONITOR. 'COUNTRY ANALYSIS REPORT: Saudi Arabia. (Cover Story)', Datamonitor. 2011.

Davies, Paul L., Board Structure in the UK and Germany: Convergence or Continuing Divergence?, [2001] *International and Comparative Corporate Law Journal (I.C.C.L.J.)* 2, 435-456.

Davis, Keith, 'Five Propositions for Social Responsibility', *Business Horizons* 18,1975, p 23.

Davis, Keith. "Can business afford to ignore social responsibilities?." *California management review* 2.3 (1960): 70-76.

Davis, Keith. "Understanding the social responsibility puzzle." *Business Horizons* 10.4 (1968): 45-50, p 48.

De la Porte, Caroline, Philippe Pochet, and Belgium Graham Room. "Social benchmarking, policy making and new governance in the EU." *Journal of European Social Policy* 11.4 (2001): 291-307.

Declaration of the United Nations Conference on the Human Environment,

Demsetz, Harold, and Kenneth Lehn. "The structure of corporate ownership: Causes and consequences." *The Journal of Political Economy* (1985): 1155-1177.

Denis, David J., Diane K. Denis, and Atulya Sarin. "Agency problems, equity ownership, and corporate diversification." *The Journal of Finance* 52.1 (1997): 135-160.

Devall, B. 'Deep Ecology Movement, The', *Nat. Resources J.*, 20 (1980), 299.

DEVALL, B., 'Deep Ecology Movement, The', *Nat. Resources J.*, 20 (1980), 299.

Dicey, Albert V. "The Combination Laws as Illustrating the Relation between Law and Opinion in England during the Nineteenth Century." *Harvard Law Review* (1904): 511-532..

Dignam, Alan, and Michael Galanis. "Corporate governance and the importance of macroeconomic context." *Oxford Journal of Legal Studies* 28.2 (2008).

Dine, Janet. "Jurisdictional arbitrage by multinational companies: a national law solution?." *Journal of Human Rights and the Environment* 1 (2012): 44-69.

Discrimination (Employment and Occupation) Convention, No. 111, June 25, 1958, 362 U.N.T.S. 31.

Donaldson, Thomas, and Thomas W. Dunfee. "Toward A Unified Conception Of Business Ethics: Integrative Social Contracts Theory." *Academy of Management Review* 19.2 (1994): 252-284.

Dos Santos, Theotonio. "The crisis of development theory and the problem of dependence in Latin America." *Underdevelopment and development* (1973): 57-79;

Dang, Giang, and Low Sui Pheng, 2015.

Duffield, Clare., 'Multinational Corporations and Workers' Rights' in Stuart Rees and Shelley Wright (eds), *Human Rights, Corporate Responsibility: A Dialogue* (2000), 194.

Ekpu, Ambrose OO. "Environmental impact of oil on water: a comparative overview of the law and policy in the United States and Nigeria." *Denv. J. Int'l L. & Pol'y* 24 (1995): 55.

Subrata. *Introduction to development economics*. Psychology Press, 2003.

Equal Remuneration Convention, No. 100, June 29, 1951, 165 U.N.T.S. 303

European Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility', COM(2011) 681.

European Parliament (EP), Resolution on EU standards for European Enterprises operating in developing countries: towards a European Code of Conduct, Resolution A4-0508/98 of 1998. COM(2001)366.

Fact Sheet No.2 (Rev.1), The International Bill of Human Rights

Fama, Eugene F., and Michael C. Jensen. "Separation of ownership and control." *Journal of law and economics* (1983): 301-325.

Fama, Eugene F., and Michael C. Jensen. "Separation of ownership and control." *Journal of law and economics* (1983): 301-325. 385-396; Hopt, Klaus J., and Patrick C. Leyens. "Board models in Europe—recent developments of internal corporate governance structures in Germany, the United Kingdom, France, and Italy." *European Company and Financial Law Review* 1.2 (2004): 135-168.

Ferraro, Vincent. "Dependency theory: An introduction." *The development economics reader* 12.2 (2008): 58-64; Dang, Giang, and Low Sui Pheng, 2015.

Forced Labour Convention, No. 29, June 28, 1930, 39 U.N.T.S. 55.

Foreign Investment Law, *Royal Decree No M/1(2000)* (Saudi Arabia, 2000).

Foster, Nicholas HD. "The Theoretical Background: The Nature of the Actors in Corporate Social Responsibility." *Research Handbook on Corporate Legal Responsibility* (2005): 1.

Freedom of Association and Protection of the Right to Organize Convention, No. 87, July 9, 1948, 68 U.N.T.S. 17.

Friedman, Milton. "The social responsibility of business is to increase its profits." *Corporate ethics and corporate governance* (2007): 173-178.

Frynas, J. George. "Royal Dutch/Shell." *New Political Economy* 8.2 (2003): 275-285.

Frynas, Jędrzej George. "The false developmental promise of Corporate Social Responsibility: evidence from multinational oil companies." *International affairs* 81.3 (2005): 581-598.

Frynas, Jędrzej George. *Oil in Nigeria: Conflict and litigation between oil companies and village communities*. Vol. 1. LIT Verlag Münster, 2000.

Garriga, Elisabet, and Domènec Melé. "Corporate social responsibility theories: mapping the territory." *Journal of business ethics* 53.1 (2004): 51-71.

General Environmental Law, *Royal Decree No. M/34 (2001)* (Saudi Arabia, 2001).

Golbert, A.S. and Wilson, J.J. 'Centralizing the International Operations of Multinationals', *San Diego L. Rev.*, 11 (1973).

GOLBERT, A.S. and WILSON, J.J., 'Centralizing the International Operations of Multinationals', *San Diego L. Rev.*, 11 (1973), 70.

GOVERNMENT, SAUDI, 'Saudi Basic Law of Government', (1992).

Graham, David, and Ngaire Woods. "Making corporate self-regulation effective in developing countries." *World Development* 34.5 (2006): 868-883.

Greenbury, R. "Greenbury Report." *Directors' Remuneration: Report of a Study Group Chaired by Sir Richard Greenbury* 17 (1995).

Hart, Oliver. "Economist's Perspective on the Theory of the Firm, An." *Colum. L. Rev.* 89 (1989): 1775.

Hayek, Friedrich A. "The corporation in a democratic society: in whose interest ought it and will it be run." *Business Strategy. Harmondsworth: Penguin* (1969): 124-146.

Hein, Simeon. "Trade strategy and the dependency hypothesis: A comparison of policy, foreign investment, and economic growth in Latin America and East Asia." *Economic Development and Cultural Change* (1992): 495-521.

Heminway, Joan MacLeod. "Theoretical and Methodological Perspectives." *The SAGE Handbook of Corporate Governance* (2012).

Hertog, Steffen. "Petromin: the slow death of statist oil development in Saudi Arabia." *Business History* 50.5 (2008): 645-667.

Hobson, I. 'Guiding principles for a solution to environmental problems', in Abdel Hopt, Klaus J., ed. "The German two-tier board: Experience, theories, reforms" in *Comparative corporate governance: The state of the art and emerging research*. Oxford University Press, 1998.

Hopwood, Bill, Mary Mellor, and Geoff O'Brien. "Sustainable development: mapping different approaches." *Sustainable development* 13.1 (2005): 38-52.

Human Right Watch, *Empty Reforms*, MAY 1, 1992.

ILO, "Tripartite Declaration Of Principles Concerning Multinational Enterprises And Social Policy." (2006): 8.

Indra, De Soysa, and Oneal. John R. "Boon or bane? Reassessing the productivity of foreign direct investment." *American Sociological Review* (1999): 766-782.

Inglehart, Ronald, and Wayne E. Baker. "Modernization, cultural change, and the persistence of traditional values." *American sociological review* (2000): 19-51.

International Union for Conservation Of Nature, Natural Resources, and United Nations Environment Programme, *World Conservation Strategy: Living Resource Conservation for Sustainable Development* (The Union, 1980).

Ismail, Maimunah. "Corporate social responsibility and its role in community development: An international perspective." *The Journal of International Social Research* 2.9 (2009): 200-209.

Jensen, Michael C. "The modern industrial revolution, exit, and the failure of internal control system." *The Journal of Finance* (1993).

Jensen, Michael C. "The modern industrial revolution, exit, and the failure of internal control system." *The Journal of Finance* (1993). At 831-880.

Jensen, Michael C., and William H. Meckling. "Agency Costs and the Theory of the Firm." *Journal of Financial Economics* 3.4 (1976): 305-360.

Jensen, Michael C., and William H. Meckling. "Theory of the firm: Managerial behavior, agency costs and ownership structure." *Journal of financial economics* 3.4 (1976): 305-360.

Jonghoe, Yang, and Stone, Russell A., "Investment dependence, economic growth, and status in the world system: A test of "dependent development". *Studies in Comparative International Development (SCID)* 20.1 (1985): 98-120.

Joseph, Stieglitz. *Globalization and its Discontents*, PenguinBooks, New Delhi (2002).

Jungmann, Carsten. "The Effectiveness of Corporate Governance in One-Tier and Two-Tier Board Systems—Evidence from the UK and Germany—." *European Company and Financial Law Review* 3.4 (2006): 426-474.

Kamla, Rania, Sonja Gallhofer, and Jim Haslam. "Islam, nature and accounting: Islamic principles and the notion of accounting for the environment." *Accounting Forum*. Vol. 30. No. 3. Elsevier, 2006, at 249.

Kerr, M., R. Janda and C. Pitts, *Corporate Social Responsibility – A Legal Analysis*, (2009), p 71. Vinogradoff, Paul. "Juridical Persons." *Colum. L. Rev.* 24 (1924).

Khalid, Fazlun M. "Islam and the Environment." *Volume 5* (2002): 332-339.

Kinley, David, and Junko Tadaki. "From talk to walk: The emergence of human rights responsibilities for corporations at international law." *Virginia Journal of International Law* 44.4 (2004): 931-1023.

Klein, April. "Firm Performance and Board Committee Structure 1." *The Journal of Law and Economics* 41.1 (1998): 275-299; Davidson, Wallace N., Theodore Pilger, and Andrew Szakmary. "Golden parachutes, board and committee composition, and shareholder wealth." *Financial Review* 33.4 (1998).

Klein, William A. "The modern business organization: Bargaining under constraints." *Yale Law Journal* (1982): 1521-1564; Bainbridge, Stephen. *The new corporate governance in theory and practice*. Oxford University Press, 2008.

- Kolk, Ans, and Rob Van Tulder. "International business, corporate social responsibility and sustainable development." *International Business Review* 19.2 (2010): 119-125.
- Kula, Erhun. "Islam and environmental conservation." *Environmental conservation* 28.1, 2001, at 6.
- Kwamena Acquah, International Regulation of Transnational Corporations: The New Reality (1986) 66.
- Labour Law, *Royal Decree No. M/51 (2005)* (Saudi Arabia, 2005).
- League of Arab States, Arab Charter on Human Rights, May 22, 2004.
- Lee, Min-Dong Paul. "A review of the theories of corporate social responsibility: Its evolutionary path and the road ahead." *International Journal of Management Reviews* 10.1 (2007): 53-73.
- Lewis, Mervyn K. "Islam and accounting." *Accounting Forum*. Vol. 25. No. 2. Blackwell Publishers Ltd, 2001.
- Lucas, Robert EB. "On the determinants of direct foreign investment: evidence from East and Southeast Asia." *World Development* 21.3 (1993): 391-406.
- Ludwig, Donald, Ray Hilborn, and Carl Walters. "Uncertainty, resource exploitation, and conservation: lessons from history." *Science(Washington)* 260.5104 (1993): 17.
- Lynch-Fannon, Irene. "From Workers to Global Politics: How the Way We Work Provides Answers to Corporate Governance Questions." *Governing the Corporation: Regulation and Corporate Governance in an Age of Scandal and Global Markets* (2005).
- Maassen, Gregory, and Frans Van Den Bosch. "On the Supposed Independence of Two-tier Boards: formal structure and reality in the Netherlands." *Corporate Governance: An International Review* 7.1 (1999): 31-37.
- Maassen, Gregory, and Frans Van Den Bosch. "On the Supposed Independence of Two-tier Boards: formal structure and reality in the Netherlands." *Corporate Governance: An International Review* 7.1 (1999): 31-37.
- Main, Brian GM, et al. "The remuneration committee and strategic human resource management." *Corporate Governance: An International Review* 16.3 (2008): 225-238.
- Mallin, Christine. *Corporate Governance: Second edition*. Oxford University Press, New York, 2010.

Marsh, G.P. and D. Lowenthal, *Man and Nature* (Univ of Washington Pr, 1965).

MARSH, G.P. and LOWENTHAL, D., *Man and nature* (Univ of Washington Pr, 1965).

Matten, Dirk, and Andrew Crane. "CORPORATE CITIZENSHIP: TOWARD AN EXTENDED THEORETICAL CONCEPTUALIZATION." *Academy of Management review* 30.1 (2005): 166-179.

Matten, Dirk, Andrew Crane, and Wendy Chapple. "Behind the mask: Revealing the true face of corporate citizenship." *Journal of Business Ethics* 45.1 (2003): 109-120.

Kraakman, Reinier. *The anatomy of corporate law: a comparative and functional approach*. Oxford University Press, 2009.

McPherson, Charles. "9 State participation in the natural resource sectors." *The taxation of petroleum and minerals: Principles, problems and practice* 24 (2010): 263.

Michael C., and William H. Meckling. "Theory of the firm: Managerial behavior, agency costs and ownership structure." *Journal of financial economics* 3.4 (1976): 305-360.

Middleton, Neil, Philip O'Keefe, and Sam Moyo. *The tears of the crocodile: from Rio to reality in the developing world*. Pluto Press, 1993.

Millon, David. "Theories of the Corporation." *Duke Law Journal* (1990): 201-262, pp 201-202.

Minimum Age Convention, No. 138, June 26, 1973, 1015 U.N.T.S. 297 .

Ministry of Economy And Planning, 'The First Development Plan 1390-1395 (A.H) 1970-1975 (A.D)', (Saudi Arabia, 1970).

Mizruchi, Mark S. "Berle and Means revisited: The governance and power of large US corporations." *Theory and Society* 33.5 (2004): 579-617.

Monshipouri, Mahmood Claude Welch Jr and Evan Kennedy, 'Multinational Corporations and the Ethics of Global Responsibility: Problems and Possibilities' (2003) 25 *Human Rights Quarterly* 965, 973.

Mujih, Edwin C. "Co-Deregulation of Multinational Companies Operating in Developing Countries: Partnering against Corporate Social Responsibility." *Afr. J. Int'l & Comp. L.* 16 (2008): 249.

Mumford, L. *The Brown Decades: A Study of the Arts in America, 1865-1895* (Dover Publications, 1971).

- MUMFORD, L., *The brown decades: a study of the arts in America, 1865-1895* (Dover Publications, 1971).
- Mundial, Banco. "Entering the 21st. Century. World Development Report 1999/2000." *Banco Mundial–Oxford University Press–Washington, DC–EUA* (2000).
- Murphy, Sean D. "Taking multinational corporate codes of conduct to the next level." *Colum. J. Transnat'l L.* 43 (2004): 389.
- Myers, Norman, and Jennifer Kent. *Perverse subsidies: taxes undercutting our economies and environments alike* IISD, 1998.
- Naimi, A. I. "[32] 3 Technology Transfer in the Oil Industry of Saudi Arabia." *12th World Petroleum Congress*. World Petroleum Congress, 1987.
- Naseef, Omar A. 'The Muslim declaration on nature'. In Abdel Haleem, Harfiyah, ed. *Islam and the Environment*. London: Ta-Ha Publishers, 1998.
- NATURE, INTERNATIONAL UNION FOR CONSERVATION OF, RESOURCES, NATURAL, and PROGRAMME, UNITED NATIONS ENVIRONMENT, *World conservation strategy: living resource conservation for sustainable development* (The Union, 1980).
- Newell, Peter. "Managing multinationals: the governance of investment for the environment." *Journal of International Development* 13.7 (2001): 907-919.
- NIBLOCK, T. and MALIK, M., *The political economy of Saudi Arabia* (Taylor & Francis, 2007).
- Nicholson, M. "Saudis reap bumper wheat subsidy", *Financial Times*. 21 January 1992.
- O'riordan, T. 'The Challenge for Environmentalism', *New models in geography: the political-economy perspective*, 1 (1989), 77-104.
- O'RIORDAN, T., 'The challenge for environmentalism', *New models in geography: the political-economy perspective*, 1 (1989), 77-104.
- OFFICE, FOREIGN AND COMMONWEALTH, 'Country information: Saudi Arabia', <<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/middle-east-north-africa/saudi-arabia?profile=all>>, accessed 21/04/ 2012.
- Oneal, John R., and Frances H.. "Hegemony, imperialism, and the profitability of foreign investments." *International Organization* 42.02 (1988): 347-373.

Organisation for Economic Co-operation and Development. *OECD Principles of Corporate Governance 2004*. OECD Publishing, 2004.

Pan-Long, Tsai. "Foreign direct investment and income inequality: further evidence." *World Development* 23.3 (1995): 469-483.

Pearce, David. "Economics, equity and sustainable development." *Futures* 20.6 (1988): 598-605.

Pegg, Scott. "World leaders and bottom feeders: divergent strategies toward social responsibility and resource extraction." *Global Corporate Power, Boulder, CO: Lynne Rienner* (2006): 249-269.

PINCHOT, G., *The fight for conservation* (Doubleday, Page & Company, 1910).

PLANNING, MINISTRY OF ECONOMY AND, 'The First Development Plan 1390-1395 (A.H) 1970-1975 (A.D)', (Saudi Arabia, 1970).

Plessis, du, Jean J., et al. "An Overview of German Business or Enterprise Law and the One-Tier and Two-Tier Board Systems Contrasted." *German Corporate Governance in International and European Context*. Springer Berlin Heidelberg, 2012. 1-14.

Porta, Rafael La, et al. *Law and finance*. No. w5661. National bureau of economic research, 1996.

Porta, Rafael, Florencio Lopez-de-Silanes, and Andrei Shleifer. "Corporate ownership around the world." *The journal of finance* 54.2 (1999): 471-517.

PORTER, M.E. and KRAMER, M.R., 'The link between competitive advantage and corporate social responsibility', *Harvard business review*, 84/12 (2006), 78-92.

Postel, S., Facing water scarcity. In: *State of the World*, ed. Lester R. Brown et al., pp. 22-41, 1993, London, UK Earthscan.

Preston, L. E. and J. E. Post: 'Private Management and Public Policy', *California Management Review* 23(3), 1981, 56-63.

Preston, Lee E., and James E. Post. *Private management and public policy: The principle of public responsibility*. Stanford Business Books, 1975.

Prowse, Stephen David. *Corporate governance in an international perspective: a survey of corporate control mechanisms among large firms in the United States, the United Kingdom, Japan and Germany*. No. 41. Bank for International Settlements, 1994.

Quan, Li., and Resnick, Adam. "Reversal of fortunes: Democratic institutions and foreign direct investment inflows to developing countries." *International organization* 57.01 (2003): 175-211.

Ramlogan, R. *Sustainable Development: Towards a Judicial Interpretation* (Martinus Nijhoff Publishers, 2010).

RAMLOGAN, R., *Sustainable Development: Towards a Judicial Interpretation* (Martinus Nijhoff Publishers, 2010).

Ramlogan, *Sustainable Development: Towards a Judicial Interpretation* at 23.

Ramlogan, *Sustainable Development: Towards a Judicial Interpretation* at 12.

Ratner, Steven 'Corporations and Human Rights: A Theory of Legal Responsibility' [2001] *YaleLawJl* 32; (2001) 111 *Yale Law Journal* 443.

Regierungskommission Deutscher Corporate Governance Kodex, 26. February 2002; printed in *NZG* 2002, 75-78; English version: <<http://www.corporate-governance-code.de>>.

Remenyi, J. 'What Is Development?', *Key issues in development*, (2004), 22-44.

REMENYI, J., 'What is development?', *Key issues in development*, (2004), 22-44.

Rhuks. Ako, *Environmental Justice in Developing Countries: Perspectives from Africa and Asia-Pacific*. Routledge, 2013.

Richards, David L., Ronald D. Gelleny, and David H. Sacko. "Money with a mean streak? Foreign economic penetration and government respect for human rights in developing countries." *International Studies Quarterly* (2001): 219-239.

Right to Organize and Collective Bargaining Convention, No. 98, July 1, 1949, 96 U.N.T.S. 257.

Robinson, 'Squaring the Circle? Some Thoughts on the Idea of Sustainable Development', (at 373.

Robinson, J. 'Squaring the Circle? Some Thoughts on the Idea of Sustainable Development', *Ecological economics*, 48/4 (2004), 369-84.

ROBINSON, J., 'Squaring the circle? Some thoughts on the idea of sustainable development', *Ecological economics*, 48/4 (2004), 369-84.

Roelofs, Jeffrey L. "United States-Canada Air Quality Agreement: A Framework for Addressing Transboundary Air Pollution Problems." *Cornell Int'l LJ* 26 (1993): 421.

Rondinelli, Dennis A., and Michael A. Berry. "Environmental citizenship in multinational corporations: social responsibility and sustainable development." *European Management Journal* 18.1 (2000): 70-84.

Ross, A. 'Modern Interpretations of Sustainable Development', *Journal of Law and Society*, 36/1 (2009), 32-54.

ROSS, A., 'Modern interpretations of sustainable development', *Journal of Law and Society*, 36/1 (2009), 32-54.

Rosser, Andrew. "Coalitions, convergence and corporate governance reform in Indonesia." *Third World Quarterly* 24.2 (2003).

Rothgeb, John M. "Investment dependence and political conflict in third world countries." *Journal of Peace Research* 27.3 (1990): 255-272.

Rowlands, Ian H. "Beauty and the beast? BP's and Exxon's positions on global climate change." *Environment and Planning C* 18.3 (2000): 339-354.

Sacharoff, Ariadne 'Multinationals in Host Countries: Can They Be Held Liable under the Alien Tort Claims Act for Human Rights Violations?' (1998) 23 *Brooklyn Journal of International Law* 927.

Sardar, Ziauddin, ed. *The touch of Midas: science, values and the environment in Islam and the West*. Buy this book, 1984; O'Brien, Joanne, ed. *Islam and ecology*. London: Cassell, 1992

Saudi Arabia General Investment Authority, 'Investment Climate in Saudi Arabia, <<http://www.sagia.gov.sa/en/Investment-climate/Some-Things-You-Need-To-Know-/Investment-Incentives/>>', accessed 02/04/ 2012.

Saudi Arabia Intervention, "Intergovernmental Preparatory Meeting for the 13th Session of the Commission for Sustainable Development", 2005.

Saudi Arabia Statement at The World Summit for Sustainable Development, Johannesburg, South Africa, 3 September 2002, available at <http://www.un.org/events/wssd/statements/saudiaE.htm>.

Saudi Arabia Statement at The World Summit for Sustainable Development, Johannesburg, South Africa, 3 September 2002, available at <http://www.un.org/events/wssd/statements/saudiaE.htm>.

Saudi Arabia Statement on Energy for Sustainable Development Intergovernmental Preparatory Meeting for CSD-15 New York – Tuesday, February 27, 2007.

Saudi Government, 'Saudi Basic Law of Government', (1992).Article 1, Majlis Ash-Shura's website at: <http://www.shura.gov.sa/wps/wcm/connect/ShuraEn/internet/Laws+and+Regulations/The+Basic+Law+Of+Government/Chapter+One/>, <last visit 05 December 2013>.

Saudi Government, 'Saudi Basic Law of Government', (1992).Article 22, Majlis Ash-Shura's website at:

<http://www.shura.gov.sa/wps/wcm/connect/ShuraEn/internet/Laws+and+Regulations/The+Basic+Law+Of+Government/Chapter+Four/> , <last visit 12/04/2012>.

Saudi Labour Law, Royal Decree No. M/51 dated 23 / 8 / 1426.

Secchi, Davide. "Utilitarian, managerial and relational theories of corporate social responsibility." *International Journal of Management Reviews* 9.4 (2007): 347-373.

Secchi, Davide. "Utilitarian, managerial and relational theories of corporate social responsibility." *International Journal of Management Reviews* 9.4 (2007): 347-373.

Segger and Khalfan, *Sustainable Development Law: Principles, Practices and Prospects*.

Segger and Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* at 25.

Segger, M.C.C. and A. Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* (Oxford University Press, 2004).

SEGGER, M.C.C. and KHALFAN, A., *Sustainable Development Law: Principles, Practices and Prospects* (Oxford University Press, 2004).

Separate Opinion of Justice Vice-President Christopher Gregory Weeramantry in *Case Concerning The Gabcikovo—Nagymaros Project* (Hungary/Slovakia) (1997), ICJ Rep. 7.

Sethi, S P 'The dimensions of corporate social performance' *An Analytic Framework*, *California Management Review*, (1975), 17, 58-64.

Shannon Lindsey Blanton*, Robert G. Blanton* *What Attracts Foreign Investors? An Examination of Human Rights and Foreign Direct Investment*.

Shleifer, Andrei, and Robert W. Vishny. "A survey of corporate governance." *The journal of finance* 52.2 (1997): 737-783.

Shum, Paul K., and Sharon L. Yam. "Ethics and law: Guiding the invisible hand to correct corporate social responsibility externalities." *Journal of business ethics* 98.4 (2011): 549-571.

Simma, Bruno. "Foreign Investment Arbitration: A Place for Human Rights?." *International and Comparative Law Quarterly* 60.03 (2011): 573-596.

Singh, Ram D. "The multinationals' economic penetration, growth, industrial output, and domestic savings in developing countries: Another look." *The Journal Of Development Studies* 25.1 (1988): 55-82.

Sit, Victor FS, and Chun Yang. "Foreign-investment-induced exo-urbanisation in the Pearl River Delta, China." *Urban Studies* 34.4 (1997): 647-677.

Smith, Adam, Dugald Stewart, and M. Garnier. *The Wealth of Nations*, (1825), p 128.

Smith, Adam, Dugald Stewart, and M. Garnier. *The Wealth of Nations*, (1825).

Smith, Adam. "The Wealth of Nations, Book 1." *London, Methuen & Co* (1776).

Solomon, J., and A. Solomon. "Corporate Governance and Accountability, (2007)." 180.

Solomon, J., and A. Solomon. "Corporate Governance and Accountability, (2007)." 180.

Solomon, J., and A. Solomon. "Corporate Governance and Accountability, (2007)." 180.

Sornarajah, M. *The International law of foreign investment* (Cambridge University Press, 2010).

Sornarajah; Vernon, R. *Sovereignty at Bay*. London: Longman, 1971.

South Africa. Dept. Of Environmental Affairs and Tourism. Directorate: Sustainable Development Coordination, *Johannesburg Plan of Implementation: Adopted by the United Nations World Summit on Sustainable Development in Johannesburg, South Africa, on 4 September 2002* (Directorate: Sustainable Development Coordination, Department of Environmental Affairs and Tourism, 2003) at V. Sustainable development in a globalizing world.

Stephens, Beth 'The Amoralism of Profit: Transnational Corporations and Human Rights' (2002) 20 Berkeley Journal of International Law 45.

Stern, David I., Michael S. Common, and Edward B. Barbier. "Economic growth and environmental degradation: the environmental Kuznets curve and sustainable development." *World development* 24.7 (1996): 1151-1160.

Stopford, John M., Susan Strange, and John S. Henley. *Rival states, rival firms: Competition for world market shares*. Vol. 18. Cambridge University Press, 1991.

Storck, Michel. "Corporate governance à la française—Current trends." *European Company and Financial Law Review* 1.1 (2004): 41.

Strange, Susan. *The retreat of the state: The diffusion of power in the world economy*. Cambridge university press, 1996.

Taylor, Michael, and Nigel Thrift. *Multinationals and the Restructuring of the World Economy (RLE International Business): The Geography of the Multinationals*. Vol. 2. Routledge, 2013.

Temitope, Rhuks. "Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India, The." *NUJS L. Rev.* 3 (2010): 423.

The Rio+20, *The Future We Want*, available at: <http://www.un.org/en/sustainablefuture/>

The United Nations Conference on Sustainable Development, Rio+20, available at: <http://www.uncsd2012.org/about.html>

The World Bank, World Development Indicators at: <http://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD/countries/CN-4E-XT-SA?display=graph>

Trzyna, T.C. *A Sustainable World: Defining and Measuring Sustainable Development* (International Center for the Environment and Public Policy for the World Conservation Union (IUCN), 1995).

TRZYNA, T.C., *A sustainable world: defining and measuring sustainable development* (International Center for the Environment and Public Policy for the World Conservation Union (IUCN), 1995).

Tuman, John Peter, and Craig F. Emmert. "The political economy of US foreign direct investment in Latin America: a reappraisal." *Latin American Research Review* 39.3 (2004): 9-28.

U.N. Doc. A/CONF.48/14 (1972).

Udall, S.L. and J.F. Kennedy, *The Quiet Crisis* (Holt, Rinehart and Winston, 1963).

UDALL, S.L. and KENNEDY, J.F., *The quiet crisis* (Holt, Rinehart and Winston, 1963).

Ulen, Thomas S. "Coasean Firm in Law and Economics, The." *J. Corp. L.* 18 (1992).

UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, 2003, E/CN.4/Sub.2/2003/12/Rev.2

Unilever press releases, 'Binzagr and Unilever celebrate 75 year partnership in Saudi Arabia' [2007] available at: <http://www.unileverme.com/aboutus/newsandmedia/pressreleases/2007/binzagr-and-unilever-celebrate-75-year-partnership.aspx>

United Nations Conference on Environment and Development: Framework Convention on Climate Change, May 9, 1992, 31 I.L.M. 849 [hereinafter FCCC].

United Nations General Assembly, 'Resolution. 1831, 17th Session ', (1962). At <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/193/39/IMG/NR019339.pdf?OpenElement>

United Nations General Assembly, 'Resolution, 199, 55th Session', (2001). At <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/571/15/IMG/N0057115.pdf?OpenElement>

United Nations General Assembly, 'Resolution. 1733, 23rd Session', (1968). At <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/243/58/IMG/NR024358.pdf>

United Nations General Assembly, 'Resolution. 2997 (Xxvii), 27th Session', (1972). At <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/270/27/IMG/NR027027.pdf?OpenElement>

United Nations General Assembly, *United Nations Millennium Declaration: Draft Resolution* (United Nations, 2000). <http://www.un.org/millennium/declaration/ares552e.htm>

United Nations General Assembly, World charter for nature: Resolution 37/7, (1982).

United Nations, "60th Anniversary Special Edition 1948-2008".

Van den Berghe, Lutgart AA, and Abigail Levrau. "Evaluating boards of directors: what constitutes a good corporate board?." *Corporate Governance: An International Review* 12.4 (2004): 461-478.

Votaw, D., 'Genius Became Rare: A Comment on the Doctrine of Social Responsibility', *California Management Review*, 1972, 15(2), 25–31.

Waddock, Sandra. "The multiple bottom lines of corporate citizenship: Social investing, reputation, and responsibility audits." *Business and Society Review* 105.3 (2002): 323-345.

Walker, David M. "Restoring trust after recent accountability failures." *Governing the Corporation: Regulation and Corporate Governance in an Age of Scandal and Global Markets* (2005): 21-34.

Wallace, Cynthia Day. "The multinational enterprise and legal control." *The Hague: Martinus Nijhoff* (2002).

Walt, Nicholas, and Coral Ingley. "Board dynamics and the influence of professional background, gender and ethnic diversity of directors." *Corporate Governance: An International Review* 11.3 (2003).

Wawryk, Alexandra S. "Adoption of international environmental standards by transnational oil companies: Reducing the impact of oil operations in emerging economies." *J. Energy & Nat. Resources L.* 20 (2002): 402.

Wawryk, Alexandra S. "International environmental standards in the oil industry: improving the operations of transnational oil companies in emerging economies." *Oil, Gas & Energy Law Intelligence* 1.1 (2003).

Weiss, Andrew R. "Cracks in the foundation of stakeholder theory." *Electronic Journal of Radical Organizational Theory* 1 (1995): 1-12,

Weiss, B. 'In Fairness To Future Generations And Sustainable Development', *U. J. Int'l L. & Pol'y* 19 (1992-1993).

Wildes, F.T. 'Recent Themes in Conservation Philosophy and Policy in the United States', *Environmental conservation*, 22/02 (1995), 143-50.

WILDES, F.T., 'Recent themes in conservation philosophy and policy in the United States', *Environmental conservation*, 22/02 (1995), 143-50.

Williamson, Oliver E. "The modern corporation: origins, evolution, attributes." *Journal of economic literature* (1981): 1537-1568.

Windsor, Duane. "Corporate citizenship: Evolution and interpretation." *Perspectives on corporate citizenship* (2001): 39-52.

Wood, D. J and J. M Logsdon:, 'Theorising Business Citizenship', in J. Anriof and M. Mcintosh (eds.), *Perspectives on Corporate Citizenship* (Greenleaf Publishing, Sheffield, UK, 2001), pp. 83–103.

Wood, Donna, and Jeanne Logsdon. "Business citizenship: from individuals to organizations." *Ethics and entrepreneurship* 3 (2002): 59-94, p 86.

Worst Forms of Child Labour Convention, No. 182, June 17, 1999, 38 I.L.M. 1207.

Wouters, Jan, and Leen Chanet. "Corporate Human Rights Responsibility: A European Perspective." *Nw. UJ Int'l Hum. Rts.* 6 (2007).

Appendix A

- A. Human Rights (include countries mentioned and context)
 - a. Support/ protection of internationally claimed human rights (GCP1; OECD ChIV; G4-HR1, HR2)
 - b. Not complicit in human rights abuses (GCP2; OECD ChIV; G4-HR10, HR11)
 - c. Organization governance role in protecting human rights (G4-43,44, 45,46, 47; G4-HR7, HR9, HR10, HR11, HR12)
- B. Labor/ Employment and Industrial Relations (include countries mentioned and context)
 - a. Uphold of freedom of association/ Recognition of the right to collective bargaining (GCP3; OECD ChV; G4-LA4, HR4, LA8)
 - b. Elimination of forced/ compulsory labor (GCP4; OECD ChV; G4-HR6)
 - c. Abolition of child labor (GCP5; OECD ChV; G4- HR4, HR5)
 - d. Elimination of discrimination in employment/ occupation (GCP6; OECD ChV; GA-LA1, LA12, LA13, HR3; G4-EC5, LA3)
 - e. Support of local community and indigenous peoples (G4-EC6, EC9; G4-HR8)
 - f. Treatment of employees (G4-LA2, LA4, LA5, LA6, LA7, LA9, LA10, LA11)
 - g. Screening of suppliers (G4-LA14, LA15)
 - h. Labor practice grievances (G4-LA16)
- C. Environment (include countries mentioned and context)
 - a. Support of precautionary approach to environmental challenges (GCP7; OECD ChVI; G4-EN27)
 - b. Initiatives to promote greater environmental responsibility (GCP8; OECD ChVI; G4-EN2, EN28, EN31, EN32, EN33)
 - c. Development and diffusion of environmentally friendly technologies (GCP9; OECD ChVI, ChIX)
 - d. Risks posed by climate change (G4-EC2)
 - e. Reduction of energy consumption (G4-EN6, EN7, EN10)
 - f. Protection of bio-diversity (G4-EN11, EN12, EN13, EN14)
 - g. Greenhouse gas and ozone depleting substances emissions (G4-EN15, EN16, EN17, EN18, EN19, EN20)
 - h. Water and waste discharge (G4-EN22, EN23, EN24, EN25, EN26)
 - i. Environmental sanctions and grievances (G4-EN29, EN34)
 - j. Transportation impact (G4-EN30)
- D. Ethics (include countries mentioned and context)
 - a. Anti-Corruption (GCP10; OECD ChVII; G4-SO3, SO4, SO5)
 - b. Combatting Bribery, Bribe Solicitation, Extortion (GCP10; OECD ChVII)
 - c. Organization code of ethics (G4-56, 57, 58)
 - d. Local community engagement and impact (G4-SO1,SO2, SO9, SO10, SO11)
 - e. Health and safety impact (G4-PR1, PR2, PR3, PR4, PR6, PR7, PR8, PR9)
- E. Corporate Issues (include countries mentioned and context)
 - a. Competition (OECD ChX; G4-S07)
 - b. Taxation and Financial components (OECD ChXI; G4-17; G4-EC1)
 - c. Management Approach (G4-DMA)
 - d. Stakeholder Engagement (G4-24-27)
 - e. Standard Disclosure (OECD ChIII)
 - 1. Strategy and analysis (G4-1,2)
 - 2. Organizational profile (G4-3-13)

3. Reporting period (G4-28-31)
 4. Governance structure (G4-34,35, 38, 40)
 5. Communication of critical concerns (G4-49,50)
 6. Total materials and energy used (G4-EN1, EN3, EN4, EN8, EN9)
- f. Economic Impact (G4-EC7, EC8)
 - g. Anti-competitive behavior (G4-SO7)
 - h. Disclosure of sanctions (G4-SO8)
 - i. Customer satisfaction (G4-PR5)
 - j. Consumer interests (OECD ChVIII)