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Corporate Human Rights Accountability:

Contextualising the United Nations
Guiding Principles on Business and Human
Rights in Multinational Corporation
Supply Chains in China

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Thesis Summary

Corporate Human Rights Accountability:

Contextualising the United Nations Guiding Principles on Business and Human Rights in Multinational Corporation Supply Chains in China

Guodong Cheng (Doctor of Philosophy, September, 2019)

This study sets out to examine the contextualisation of a particular United Nations (UN) human rights instrument, called the UN Guiding Principles on Business and Human Rights (UNGPs), in the supply chain of a multinational corporation (MNC, Alpha). In doing so, special attention is given to the contextualisation of these principles in China, where some of the main suppliers of Alpha are located (such as a company which will be called Beta). The contextualisation is mainly approached from an accountability perspective, which is conceived as expressions of the quality of human relatedness. Through the theoretical lens of Edward Said's concepts of *authority* and *molestation*, this research aims to address the question of how the *text* of UNGPs with respect to human rights accountability is *authored* and *molested* by several (inter)national actors including the UN, the Chinese government, Alpha and its supplier Beta, and finally by several important local actors: workers and managers who are employed by Beta. Data is collected in the form of Said's notion of "*text*" as both writings, utterings and inscriptions through qualitative research methods. These include document analysis of UN interpretive reports, several Chinese government documents, Alpha's and Beta's codes of conduct (CoC), and posters collected within Beta's factories relating to human rights. Spoken *texts* are collected as well, through semi-structured interviews with workers and managers, as well as through participant observation in one Beta factory. By analysing these *texts*, this research sketches the process in which the *text* of UNGPs is cascaded down and made practical (or not) through *molestation* by the aforementioned actors. The examination of formal written *texts authored* by UN, the Chinese government, Alpha and Beta suggests that the *text* regarding human rights accountability in the UNGPs are interpreted in a particular way, which demonstrates both the enabling and constraining functions of *molestation*. That is to say, these interpretive *texts* will never be the faithful copy of the UNGPs, but are *intentionally* (or sometimes *unintentionally*) reconstructing UNGPs in a way that deviates

from its original meanings by adding, deleting, selecting and re-shaping certain ideas. In this way, they constrain the *text* of UNGPs. However, the *molestation* is also enabling by giving the *text* of UNGPs a reality check, thereby rendering them more practical in the actors' contexts. The informal *texts* uttered by local workers and managers display a larger extent of *molestation*. While it is understandable that the *text* of UNGPs will not be fully presented on the ground level, this study revealed that the *molested* version of UNGPs—the corporate CoCs and onsite posters are further *molested* by workers as largely void promises or symbolic practices, while they are often held in high regards by managers. This study also explores the cultural, social and economic sources that give rise to these *molestations*. Such *molestation* can be enabling as it makes abstract human rights principles actionable and brings them closer to the local actors' context. However, it is also constraining as it impedes the way that accountability works in the UNGPs.

Key words: Guiding Principles on Business and Human Rights, Human rights, Accountability, MNCs, China

Dedication

For my wife, my future girl and my parents.

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List of Abbreviations

AAAJ	Accounting, Auditing & Accountability Journal
ACoC	Alpha code of conduct
BCoC	Beta code of conduct
BGSC	The Chairman of the Beta Global SER Committee
BHR	Business and human rights
BLIHR	Business Leaders Initiative on Human Rights
CAQDAS	Computer-assisted qualitative data analysis software
CAT	Convention Against Torture
CCCMC	China Chamber of Commerce of Metals Minerals & Chemicals Importers & Exporters
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CEO	Chief Executive Officer
CoC	Code of conduct
CPA	Critical Perspectives on Accounting Journal
CRBF	China Responsible Business Forum
CRC	Convention on the Rights of the Child
CSCIO	China's State Council Information Office
CSO	Civil society organisation
CSR	Corporate Social Responsibility
EMS	Electronics manufacturing services
ETI	Ethical Trading Initiative
EU	European Union
FAQs	Frequently Asked Questions About the Guiding Principles on Business and Human Rights
FDI	Foreign direct investment
GB/T 36000	GB/T 36000 Guidance on social responsibility
GBI	Global Business Initiative

GDP	Gross Domestic Product
GPRF	UN Guiding Principles Reporting Framework
GRI	Global Reporting Initiative
HRNAP	Human Rights National Action Plan
IBHR	International Bill of Human Rights
ICC	International Chamber of Commerce
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IMF	International Monetary Fund
IOE	International Organisation of Employers
ISO	International Organisation for Standardisation
ISO 26000	ISO 26000 Guidance on social responsibility
JIT	Just-In-Time
MNC	Multinational corporation
NGO	Non-governmental organisation
NHRAP	National Human Rights Action Plan
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OHS	Occupational health and safety
PCSR	Political corporate social responsibility
PRR	“Protect, Respect and Remedy” Framework
RBA	Responsible Business Alliance
SAC	Standardisation Administration of China
SACOM	Students and Scholars Against Corporate Misbehaviour
SEA	Social and environmental accounting
SER	Social and environmental responsibility
SME	Small and medium-sized enterprise
SOE	State-owned enterprise
SOI	Sphere of influence

SRSG	Special Representative of the Secretary-General
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCTAD	UN Conference on Trade and Development
UNDP	United Nations Development Programme
UNHRC	UN Human Rights Council
UNIDO	United Nations Industrial Development Organisation
UNGC	UN Global Compact
UNGPs	UN Guiding Principles on Business and Human Rights
UN Norms	UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises
UNWG	UN Working Group on Business and Human Rights

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Chapter 1

Introduction

1.1 Research background

Walk into any high street fashion retailer store like Zara and Primark or (second hand) electronic stores like CeX or Apple, you will be surprised by the number of products labelled “Made in China”. It is no exaggeration to say that we cannot maintain the luxuries of our lives without the labour of millions of Chinese workers. But what are their lives like? How are these products made? It is a question that has already attracted the attention of the media, scholars, and civil society organisations (CSOs), as well as international institutions like the United Nations (UN). Most of their investigations reveal a dim picture of the goings-on in Chinese organisations, which often have a harsh management discipline (Lucas, Kang, & Li, 2013, p. 98; Lüthje, Hürtgen, Pawlicki, & Sproll, 2013, p. 186; Ngai & Chan, 2012, p. 397; Pun et al., 2016, pp. 172-174; Xu & Li, 2013, p. 375), where workers have to put in excessive overtime (Chan, Ngai, & Selden, 2015, p. 89; Lucas et al., 2013, p. 97; Müller, 2016, p. 166; Ngai & Chan, 2012, p. 399; Ngai et al., 2014, pp. 217-218), are confronted with low wage levels (Chan & Siu, 2010; Chan & Pun, 2010, p. 5; Chan & Selden, 2014, p. 605; Froud, Johal, Leaver, & Williams, 2014; Ngai & Chan, 2012, p. 399), and compulsory student labour (Chan, 2017; Chan, Pun, & Selden, 2016; Ngai & Chan, 2012, p. 391; Su, 2011; Yang, 2017). The concern in the literature over working conditions, especially in the Chinese electronics industry, reached its peak in 2010, after a string of suicides of Foxconn workers in Shenzhen, with 18 reported suicide attempts and 14 deaths (Barboza, 2010; Merchant, 2017).

Intuitively, one would blame the organisations in question for these conditions, but responsibility often extends beyond the factory level. This responsibility is usually situated in the complex interrelationships between states (the Chinese government), multinational corporations (MNCs) and the (supplier) organisations themselves. It is claimed that many

powerful MNCs dominate their relationships with suppliers by dictating the purchase price, setting tight delivery schedules, and imposing strict requirements (Chan et al., 2015, p. 79; Harris, 2014; Lüthje et al., 2013; Ngai et al., 2014, p. 216). It is these relationships which have dragged several brands into the spotlight of condemnation, accused of complicity with, and benefiting from, the working conditions found in their supplier firms. The most significant cases include Apple (Clarke & Boersma, 2017; Froud et al., 2014; Guo, Hsu, Holton, & Jeong, 2012; Satariano & Burrows, 2011) and Nike (Lim & Phillips, 2008; Locke, Kochan, Romis, & Qin, 2007; Locke, Qin, & Brause, 2007), just to name a few examples.

The situation is that MNCs have been (and to some extent still are) largely operating in a regulatory vacuum with respect to labour conditions. The international human rights legal system is state-centred, with national governments being seen as important bearers of the responsibility to protect human rights (Cragg, 2012, p. 19; Muchlinski, 2001, p. 32; Wettstein, 2009, p. 156). It has been alleged that governments (especially in developing countries) are often unwilling or unable to hold MNCs accountable, either because of the inducement of foreign investment, or from both lack of resources and the capacity to do so (Frankental, 2011, p. 672; Giuliani & Macchi, 2013, p. 480; Jerbi, 2009, p. 303; Sikka, 2011, p. 814). Then what about MNCs? Of course the baseline for these companies principally is to uphold local legal requirements, but there is more to it than just the rigid box of legal principles or articles (Campbell & Miller, 2004; Ruggie, 2013a; Sen, 2005, 2009). Regardless of legal requirements, the nature of human rights as the basic human dignity has the implication of universality¹ (Chan, 1999; Cragg, 2012, p. 16; Griseri & Seppala, 2010; Sen, 2004; Wettstein, 2012a, p. 741), and exists above the law and beyond the state's ability to regulate (Donnelly, 2013; Fasterling & Demuijnck, 2013; Pikalo, 2007, p. 34; Pogge, 2000). A human right represents an overriding value which trumps all excuses for infringement (Arnold, 2010, p. 386).

To institutionalise a possible solution for these problems, to widely engage with various stakeholders, to establish a new regulatory dynamic, to mobilise the mutually reinforcing roles of different actors and to build a global platform to share experience and knowledge,

¹ But in practice cultural relativism (Lewis, 1999) often plays a crucial role too, and sets the tone of this thesis and is further discussed in Section 3.2.2.3.1. It means that what morally constitutes human rights differs from culture to culture, and that their realisation can only be based on the criteria of the local context *per se* (Donnelly, 1982a; Ip, 2009a, p. 219; Peerenboom, 2003).

the UN Secretary-General's Special Representative for Business and Human Rights (SRSG), Professor John Ruggie and his team tried to accomplish this goal by issuing the groundbreaking 2011 UN Guiding Principles on Business and Human Rights (UNGPs, see, e.g., Gray & Gray, 2011; Li & Mckernan, 2016; Rodriguez-Garavito, 2017a; Ruggie 2013a, 2017a). This document is expected to have far-reaching influence on a variety of stakeholders and lead to positive changes at the ground level. It is against that background that this research sets out to explore the contextualisation of UNGPs in the context of MNCs Chinese supply chains, from the perspective of human rights accountability.

1.2 UNGPs and human rights accountability

In July 2011, the UNGPs were unanimously endorsed by all eleven countries (including China) on the UN Human Rights Council (UNHRC), and have received wide support from business enterprises and civil society organisations (Li & McKernan, 2016, p. 569). Since then, they have become the centrepiece around which corporate human rights issues have been discussed (Rodriguez-Garavito, 2017a, p. 17; Ruggie 2013a; Whelan & Muthuri, 2017). The UNGPs² are grounded in extant UN human rights instruments, such as the 1948 Universal Declaration of Human Rights (UDHR), the 1996 International Bill of Human Rights³ (IBHR), business initiatives like the UN Global Compact (UNGC), and the International Labour Organisation's (ILO) 1998 "Declaration on Fundamental Principles and Rights at Work" (Brenkert, 2016; Ruggie, 2013a; Siddiqui & Uddin, 2016, p. 681; UN, 2011). Subsequent international standards have aligned markedly with the UNGPs, such as 2011 version of the Organisation for Economic Co-operation and Development's Guidelines for Multinational Enterprises (OECD Guidelines), and the 2010 International Organisation for Standardisation 26000 Guidance on social responsibility (ISO 26000,

² The UNGPs are the operational guidance from the SRSG's 2008 report *Protect, Respect and Remedy: A Framework for Business and Human Rights* (PRR). Although there are minor changes of text from the 2008 PRR to the 2011 UNGPs, this study tends to employ the UNGPs as the representative of the entire framework.

³ The IBHR consists of the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols (Office of the United Nations High Commissioner for Human Rights, OHCHR, 1996).

Addo, 2014, p. 143; Adler, 2011; Buhmann, 2015, p. 417; 2016, p. 702; Fine, 2011; Gray & Gray, 2011, p. 784; Nolan & Taylor, 2009, p. 444; Wood, 2012, p. 70).

The value of the UNGPs lies in the way they frame the mechanism for realising corporate-related human rights on three separate but mutually reinforcing principles: that states have the duty to protect human rights; that corporations have the responsibility to respect human rights; and that the victims of human rights violations shall have access to remedy (McPhail & Adams, 2016, p. 651; Muchlinski, 2012, p. 145; UN, 2011). For the first time the complex and sometimes elusive interplay between the state and corporate human rights responsibilities is articulated in detail and situated in an authoritative and coherent framework (McPhail & Adams, 2016; McPhail & McKernan, 2011; Methven O'Brien & Dhanarajan, 2016, p. 544). Also, the tough questions of the scope, degree and nature of corporate human rights responsibility have been addressed, particularly the corporate responsibility within business relationships, which is applicable in the context of this research (Backer, 2012, p. 134; Muchlinski, 2012, p. 162; UN, 2011, Principle 13, 19; Wood, 2012). Even more importantly, the question of how corporations shall be accountable for adverse human rights impacts, either actual or potential, is addressed through the due diligence mechanism (Bijlmakers, 2018, p. 81; Fasterling & Demuijnck, 2013; Li & McKernan, 2016, p. 588; Mares, 2018; McPhail & Adams, 2016, pp. 666-667; Ruggie, 2013a; UN, 2011, Principle 17-21).

The notion of accountability is located at the heart of the UNGPs (Hazelton, 2013; Li & McKernan, 2016, p. 569). Enquiries into corporate accountability in the broader sense beyond financial accounting, have a long history, especially in the social and environmental accountability (SEA) discipline (Bebbington & Larrinaga, 2014, p. 397; Burchell, Clubb, & Hopwood, 1985; Gray, 2000, pp. 249-250; 2002, p. 690; Owen, 2008, p. 243). From the very beginning, the issue of human rights (also discussed as “labour practice”) is one of the central topics in SEA research (Gray, 2002, p. 695; Mathews, 1997, p. 496; Owen, 2008, p. 243; Parker, 2005, p. 847; 2011, p. 4). At the core of SEA is “the duty to provide an account (by no means necessarily a financial account) or reckoning of those actions for which one is held accountable” (Gray, Adams, & Owen, 2014, p. 50). Following this line of reasoning, one significant contribution of the UNGPs is that they represent a normative attempt to institutionalise the internationally agreed norms of human rights by setting the benchmark, and implementing corporate human rights

responsibility through the due diligence mechanism (McCorquodale, 2009, p. 392; Methven O'Brien & Dhanarajan, 2016, p. 545; Nolan & Taylor, 2009, p. 443). The reporting and auditing practices envisage a crucial role in this framework (UN, 2011, Principle 21), which has been widely reflected in the mainstream human rights accountability research (Cooper, Coulson, & Taylor, 2011; Gray & Gray, 2011, p. 786; McPhail & Adams, 2016, p. 654; McPhail & Ferguson, 2016, p. 528; see also, Backer, 2012, p. 135; Buhmann, 2018, p. 35; Ruggie, 2013a, p. 100; UN Working Group on Business and Human Rights, UNWG, 2018, p. 13). However, as has also been captured in the extant research, the complex nature of corporate human rights responsibility cannot be fully reflected in a variety of human rights disclosures such as corporate reports, which often degenerate into public relations management “green-washing” (Brown & Fraser, 2006, p. 111; Gallhofer & Haslam, 2003, p. 126; Hazelton, 2013, p. 269; Laufer, 2003) or “blue-washing” techniques (Melish, 2017, pp. 82-83; Nolan, 2005, p. 446; Utting, 2005, p. 18). This is exacerbated in developing countries with weak governance mechanisms, and by the favourable stance towards MNCs by governments eager to attract foreign investment (Belal, Cooper, & Khan, 2015; Lauwo & Otusanya, 2014).

Hence instead of following the traditional approach by focusing on corporate disclosure, this research takes the approach of perceiving accountability as the expression of the quality of “human relatedness” with ethical implications (Letiche & Lightfoot, 2014). The core idea is that we are consistently living in an interaction with others through the process of giving (or demanding) accounts, by which our identity is formed (McKernan & MacLulich, 2004; McPhail & Adams, 2016; Roberts, 2001; Schweiker, 1993). This process ineluctably evokes the moral dimension of accountability, as that identity needs to be demonstrated not only within the network of interdependence with others, but also subject to ethical norms and social expectations (Shearer, 2002, p. 543, see also, Arrington & Francis, 1993; Cooper & Owen, 2007; Joannides, 2012, p. 245; Messner, 2009, p. 919; Sinclair, 1995, p. 221). That approach is particularly applicable in this research, as it is argued that the accountability is depicted as a form of human relatedness through the demanding (and providing) of accounts in the UNGPs. More specifically, the moral dimension of corporate human rights responsibility underpins the UNGPs and is congruent with the ethics of accountability (Arnold, 2016, pp. 260, 267; Cragg, 2012, p. 25; Mayer, 2009, p. 574; Werhane, 2016; Wood, 2012, p. 82). Moreover, the UNGPs underscore human relatedness by carefully evaluating the business impacts on human

rights (rather than the impacts on economic interests) across business relationships (e.g., supply chains), and by focusing on the local needs of potentially marginalised stakeholders (Bijlmakers, 2018, p. 104; UN, 2011, Principle 13, 18, 19; Wood, 2012, p. 75). Therefore this research draws on the accountability as an expression of the quality of human relatedness is consistent with the UNGPs.

1.3 Research objective and question

Despite the fact that the UNGPs have opened up rich possibilities to “reinvigorate accounting, corporate governance and CSR (corporate social responsibility) research” (Sikka, 2011, p. 825), accounting academics are only just starting to pay attention to their potential within the accounting (especially SEA) discipline (Gray & Gray, 2011, p. 788; McPhail & Ferguson, 2016, p. 530; Sikka, 2011, p. 824). The power of the human rights argument has been “strangely overlooked” within the critical accounting literature (McPhail & McKernan, 2011, p. 736). The empirical evidence on implementation is just beginning to accumulate (Islam & McPhail, 2011; Lauwo & Otusanya, 2014; Sinkovics, Hoque, & Sinkovics 2016, 18 p. 645). More specifically, research within the Chinese context remains very much underdeveloped, despite the spread of unethical business practices (Whelan & Muthuri, 2017; Wright, 2015). To my best knowledge this is the first work of research to explore the role and functioning of the UNGPs in the Chinese supply chains.

More specifically, the research aims to explore the implementation and contextualisation of the UNGPs in the MNCs’ supply chains in China from the human rights accountability perspective. It investigates the human rights conditions in Beta—one of the major electronic giant Alpha’s suppliers in China—and seeks to understand how the UNGPs are contextualised within it. In order to provide a comprehensive picture of the roles of the various actors within the UNGPs framework (i.e., UN, Chinese government, Alpha, Beta, local actors of workers and managers), this study employs a multilevel analytical model to tease out a variety of the interpretations and implementations performed by these actors. This model has been widely used in SEA research (Brown, 2009; Denedo, Thomson, & Yonekura, 2017; Gallhofer, Haslam, & Yonekura, 2015; McPhail & Adams, 2016; Thomson, Dey, & Russell, 2015), especially the studies on China (Li & Belal, 2018; Whelan & Muthuri, 2017). It emphasises the interaction between the actors and their plurality of interest,

both of which are particularly relevant to this research (Gallhofer et al., 2015, pp. 858-859).

The research questions are:

1. How and to what extent is the meaning of UNGPs *text*, as it cascade down, interpreted, contextualised and *molested* in the form of formal written *texts* from the UN level through the national and Alpha, to the ground level of Beta?
2. After a series of *molestations* of the *text* of UNGPs, how and to what extent is it interpreted, contextualised and further *molested* in the form of spoken *texts* by local actors (Beta employees)?

1.4 Research rationale: *texts* and Said's work

In order to address these research questions, a clear line of reasoning needs to be established to navigate through the complex interplays between the various actors. Edward Said's theoretical notions of *beginning*, *text*, *authority* and *molestation* is utilised to explain the contextualisation process of the UNGPs (Cooper & Ezzamel, 2013; Said, 1975/1997). Specifically, Said's notion of "*text*" is employed as the fundamental element, since it is inscribed or uttered by these actors, and formulates a "family tree" of *texts*, including both written *texts* like the UNGPs as well as spoken words by workers and managers (Buhmann, 2016, p. 703; Cooper & Ezzamel, 2013, p. 291; Ruggie, 2017b, p. 15; Said, 1975/1997, pp. 145-146). The core idea is that the adaptation of UNGPs is entangled in a web of individuals and institutions, which have *intentions* for *authoring* their own *beginning* with the UNGPs, in the form of *texts*. Meanwhile the activity of *molestation* is embedded in this process, with a dual function: it constrains, as the local context can never be fully captured by *texts*, and hence hinders the efficiency of UNGPs (Cooper & Ezzamel, 2013, p. 291; McCarthy, 2010, p. 63; Said, 1975/1997, p. 83); but it also enables, as the credibility and applicability of the *text* of the UNGPs are both enhanced by the "reality-check" conducted by local recipients, bringing the UNGPs closer to the local context. Furthermore, it is argued that accountability as human relatedness is compatible with Said's work, by highlighting the provision of and demand for accounts as an intersubjective activity, which is reflected equally by language and action; at the same

time the ethical identifies of the actors are disclosed during this process (McKernan & MacLulich, 2004; Messner, 2009; Ruggie, 1982, p. 380).

1.5 Contribution of the thesis

This research contributes to the existing literature from two aspects. First, by applying Said's work of *authority* and *molestation* to the human rights accountability and the wider SEA field, this research answers the call for introducing new theoretical framework to the SEA research (Gray, Kouhy, & Lavers, 1995; Gray, Owen, & Adams, 2009; Parker, 2011; Unerman & Chapman, 2014). Said's theoretical framework is particularly helpful to explain the process of re(interpretation) of the *texts* across different levels of analysis, and sheds light on the ethical relativism underlying this research (Lewis & Unerman, 1999). Second, from the angle of SEA literature, this research joins the early endeavours of introducing UNGPs into the SEA and especially human rights accountability literature (Gray & Gray, 2011, p. 788; McPhail & Ferguson, 2016, p. 530; Sikka, 2011, p. 824). It is claimed that the accounting scholarship is remained on the "sidelines" despite the centrality of accountability in the UNGPs (McPhail & Ferguson, 2016, p. 533). The lacunae in the literature is even more salient considering the prominent position of UNGPs in developing the existing business and human rights (BHR) context (Li & McKernan, 2016; McPhail & Ferguson, 2016). This research aims to contribute to the filling of the void. From the empirical perspective, this research aims to fill the gap in the extant literature to examine the current status of contextualising the UNGPs in the Chinese context of MNCs supply chain, which, to my best knowledge, is the first study within this discipline (similar studies include Li & Belal, 2018; Whelan & Muthuri, 2017).

1.6 Structure of the thesis

This section provides an overview of the thesis structure. While interpreting that structure Said's notion of *text* will consistently be recalled. That is, the entire thesis revolves around *text(s)*: Chapters 3 and 4 (context chapter and literature review chapter) examine the *beginning* and *authority* of a series of *texts* inspiring, consisting or promoting the *text* of the UNGPs, while Chapters 6 and 7 (empirical chapters) explore the *molestation* of the *text* of the UNGPs by actors on a number of levels.

Chapter 2

Theoretical chapter

Chapter 2 introduces the theoretical framework for this research. Said's work on *authority* and *molestation* is utilised to structure the discussion of *texts* disseminated by a variety of actors and to interpret the findings. Based on elaborating Said's work, Chapter 2 also attempts to situate it within this research by applying it to the UNGPs.

Chapter 3

Context chapter:
Human rights and Chinese
context

Chapter 3 examines the notion of human rights within the contexts both of China and of Western countries. It also brings out the recent challenges to human rights in the context of globalisation. It lays the foundation for further discussions on human rights in this thesis. It is realised by demonstrating four dimensions of human rights, namely: legal duty/moral responsibility; universalism/relativism; civil-political rights/social-economical rights (and rights to development); negative/positive duty. Moreover, the human rights are located within the global governance system accompanied by the emerging challenge of corporate-related human rights impacts, with special attention to the challenges in China. It is argued that all these *beginnings* contribute to the *beginning* of the UNGPs.

Chapter 4

Literature review chapter:
Accountability for human
rights

Chapter 4 reviews the literature on human rights accountability, with special attention to the accountability mechanism in the UNGPs. Accountability is perceived as a form of human relatedness through the process of giving (and demanding) accounts. Ethical implications underpin this process in which the moral identity is formulated. Then the literature on the UNGPs is systematically reviewed, with reflections upon the accountability relationship (who, by whom, for what and how). The UNGPs make a significant contribution to clarifying the accountability relationship. Furthermore, the idea of accountability as human relatedness is integrated into the UNGPs, which produces a workable concept of accountability in this research. The *authority* of the UNGPs is established during this process, which is marked by purposefully uttering the *text* in a characteristic way.

Chapter 5

Methodology and method chapter

Chapter 5 provides an overview of the research methodology and the methods employed in the research. The ontological and epistemological assumptions underpinning this study are introduced, and associated with Said's work, and with the nature of accountability and human rights as well as with the position of the UNGPs. The case study approach is discussed, as is the background information on the case of Alpha and its Chinese supplier Beta. Then the research methods of document analysis, interview and participant observation are elaborated with special focus on the local challenges in China.

Chapter 6

First empirical chapter:
Document analysis

Chapter 6 represents the first empirical chapter analysing the documents (written *texts*) inscribed by the UN, the Chinese government, Alpha and Beta. Through the theoretical lens of Said, this chapter addresses the question of how the international human rights context articulated in the *text* of UNGPs is reinterpreted and *molested* at the international, national and business levels.

Chapter 7

Second empirical chapter:
Interview and observation analysis

Chapter 7, as the second empirical chapter, extends the discussion to the *molestation* of UNGPs on the ground level by looking into the *texts* mainly uttered by workers, managers and local officials (but the onsite posters and employee handbook are also examined as *texts* and discussed in this chapter). A chain of *molestations* has been observed, in which the *texts authored* by the local actors register the greatest extent of *molestation*. The empirical evidence supports both the enabling and constraining functions of *molestation*.

Chapter 8

Conclusion

Chapter 8 summarises the findings of this research. It highlights the limitations of this study from both theoretical and empirical perspectives. Suggestions for further research are thereby proposed.

Chapter 2

Contextualising *texts* in local reality: Said's concepts of *authority* and *molestation*

2.1 Introduction

Beginnings: Intention and method (hereafter “Beginnings”) is the first major work of Edward Said that sets out a number of themes and interests for his later work on postcolonialism (McCarthy, 2010). In *Beginnings*, Said primarily provides a discussion on the interrelationship between reality and *texts* (as both spoken and written language). The related notions of “*intention*”, “*authority*” and “*molestation*” generate debates about the nature of reality and *texts*, and the complexities involved in relating the two (Cooper & Ezzamel, 2013, Said, 1975/1997). Said's notions will be used in this thesis to articulate the study of human rights accountability and enrich the insights of the empirical fieldwork in later chapters.

This chapter starts with a brief discussion of the basic concept of “*text*”, which is significant not only because it provides the ground of this research, but also because it lays the foundation for the elaboration of other key elements of Said's work. Upon the clarification of the importance of “*text*” as a fundamental element, I move to a discussion of other useful concepts while elaborating on the meaning and relationships between Said's notions of “*authority*” and “*molestation*”.

At the later sections of the chapter, I will introduce a discussion on the implementation of the UN initiative on BHR: the UNGPs devised by the SRSB through the theoretical lens of Said's work on *authority* and *molestation*. This is followed by a demonstration of the

suitability of Said's work in this research through examining three streams of literature. Finally, the implications of Said's work on the research study in question will be explicated.

2.2. Text

This thesis revolves around the notion of "*text*", which is the main subject in *Beginnings* (Said, 1975/1997). This section sets out to examine the core ideas relating to the notion of "*text*" as in Said's work, which prepares for the introduction of other key elements such as "*beginning*", "*intention*", "*authority*" and "*molestation*".

2.2.1 Said's notion of *text*

The nature of *text*, in Said's sense, is elusive, and there remain varied approaches to construing its meaning (White, 1976). Whilst it is not the purpose of this research to overview these arguments, this section aims to illuminate Said's notion of *text* by underscoring two aspects which characterise Said's approach: *text* as displacement; and the connections between writing and reading *texts* (Cooper & Ezzamel, 2013, Said, 1975/1997). In any case, the concept "*text*" relates to all the verbal statements that can be made, and which may be put in writing. A *text* is uttered or written up to communicate something between its creator/author and one or more listeners/readers (Cooper & Ezzamel, 2013, p. 291).

2.2.1.1 *Text* as displacement

Said begins with the contention that the main reason for expressing a *text* is the preservation of thoughts, meanings, experiences, insights and/or viewpoints. Putting (mainly, written) *texts* in the *author's* context, Said argues that we can never be truly or fully privy to the *author's* mind and ideas, and/or of his time and society—all of which are inscribed in the form of textual information when preservation occurs (Said, 1975/1997, p. 196). During such inscription processes a *text* displaces other things, be they speech, silence or chaos (Said, 1975/1997, pp. 197, 205). From Said's perspective, the *text* is nothing but a "product of an *intention* to produce meaning by writing" (Said, 1975/1997,

p. 5), whereas the *authority* of *text* derives more from the capacity to displace a reality rather than to represent it (White, 1976). Stated differently: *texts* can never fully represent reality. Hence a *text* can be seen as “the *beginning* of a series of substitutions which altogether comprise the formal object we call a *text*” (Said, 1975/1997, p. 218).

However, new *texts* formed cannot be simply reducible to what they have replaced, since, as he points out, the writing of the *text* is an activity in which the composition, transmission, reception, editing and interpretation of information (and reality) are enmeshed and take place simultaneously. Hence the notion of a primal *text* does not exist (Said, 1975/1997, p. 218). Another way to perceive this is to regard the *text* not as an isolated entity, but as within a family of copies, more like a “*family tree*” of *texts*. Therefore its paternal source is always inaccessible and the *beginning* of the *text* is only but the first faithful copy of this original source (Said, 1975/1997, pp. 206-207).

2.2.1.2 Writing and reading

Said further discusses *text* from the perspective of the relations between writing and reading. Adhering to the argument that the absolute origin of the *text* is inaccessible, he contends that we always acquaint ourselves with *texts* by reading them. The pitfall in this approach is that we will miss the writing and rewriting of the *text*, which breed variegated activities before the reading takes place. This process has its own genealogy (Said, 1975/1997, p. 202). In addition, writing is by no means a solitary personal act, but is immersed in certain cultural and social contexts (as stated above, see Said, 1975/1997, p. 205). Hence the understanding of *texts* can never be fully realised by reading, which is isolated from the writing experience.

2.2.2 ‘Text(s)’ in this research

While studying *texts* as literary works, Said does not confine himself to novels or poetry but embraces a broad range of writings, such as Freud’s *The Interpretation of Dreams* (Said, 1975/1997, p. 197), which might all be called “textual forms” (McCarthy, 2010, p. 58; Said, 1975/1997, p. 16). As stated, he is very much focused on seeing *texts* as displacements, and in so doing, pays considerable attention to the “*beginning*” of *text*

(Said, 1975/1997, p. 197; White, 1976). This research draws on those merits of Said's work in order to study the *texts* not only as inscriptions of regulatory frameworks (e.g., UNGPs, corporation codes of conduct CoCs, international human rights documents), but also as utterings in the form of interview transcripts as well as the texts generated from participant observation.

2.3. *Beginning and text*

2.3.1 *Beginning as a two-dimensional concept*

"*Beginnings*" may be regarded as a concept which pervades everyday life, yet which, according to Said, had lacked systematic interest by researchers at the time his book was published. He deconstructs the notion of *beginning* by probing both its pragmatic and theoretical dimensions. He refers to it as existing in both one's activity and one's mindset:

"Beginning is not only a kind of action; it is also a frame of mind, a kind of work, an attitude, a consciousness. It is pragmatic—as when we read a difficult text and wonder where to begin in order to understand it, or where the author began the work and why. And it is theoretic—as when we ask whether there is any peculiar epistemological trait or performance unique to beginnings in general." (p. xxi)

Although he points out the double-edged nature of the dimensions underlying *beginning*, he constructs his discussion upon the connections between the two through the notion of "*text*" (Said, 1975/1997, p. xxi). According to him, while the *beginning* as an activity is inevitably associated with a particular period of time and social reality, within this circumstance a *beginning* is always able to achieve internal "coherence or even a history of [its] own" (Said, 1975/1997, p. 19), which is embedded in the notion of *text*. Hence, *texts* not only reflect, but also create, reality.

2.3.2 *Intentions underlying the beginnings*

What does it mean to "*begin*" a *text*? It seems in many cases that the meaning of "*beginning*" to produce a *text* is straight-forward. For example, when people say "Jonathan Swift began to write the *Gulliver's Travels* in (a certain year)", intuitively people

would be inclined to define the starting point of the *text* as the moment when the writer starts to put his/her thought on paper. Said disagrees with this, as he finds this definition “too restricting” (Said, 1975/1997, p. 18). He argues that:

“For any writer, to *begin* is to embark upon something connected to a designated point of departure. Even when it is repressed, the *beginning* is always a first step from which something follows.” (p. xxii)

Said emphasises the active nature of *beginnings* by comparing *beginnings* with origins. A *beginning* is not possible without the constant sustained and reworked *intention* to continue the development of a *text* (Miller, 1976), which is not the case for origins. By doing so, a *beginning* represents a desire to achieve discontinuity within a flowing continuity, to break away from the past to establish a new order, to pass on new knowledge through *text*. Therefore, Said provides a fuller definition:

“A *beginning* suggests either (a) a time, (b) a place, (c) an object, (d) a principle, or (e) an act—in short, detachment of the sort that establishes distance and difference between either a, b, c, d, or e on the one hand, and what came before it on the other...The *beginning* is the first point (in time, space, or action, of an accomplishment or process that has duration and meaning. *The beginning, then, is the first step in the intentional production of meaning*” (Said, 1975/1997, p. 42, 45, emphasis added).

This *intentionality* does not represent a single, linear or unequivocal process of *beginning*, rather the production of *beginning* is located in a complex process of repetition and interplay with other *beginnings*. The very argument that *beginning* manifests a departure from all other works implies the relationship between them (Said, 1975/1997, p. 3). This characteristic is also demonstrated by the metaphor of “family tree” as mentioned above.

2.4. Authority

2.4.1 The concept of authority

In *Beginnings*, Said is also concerned with “*authority*” in writings, which he defines as one of the conditions under which a *beginning* generates discontinuity through the production of meaning (McCarthy, 2010, p. 61; Said, 1975/1997, p. 83). The power of *authority* here

concerns someone's ability to invent, or to *authorise* a *beginning* which creates difference through the production of meaning (Cooper & Ezzamel, 2013, p. 291). In this definition, Said departs from the more obvious meaning of *authority* as "power to enforce obedience" or "a person whose opinion is accepted" (Said, 1975/1997, p. 83). He constructs the *authority's* linkage with the *author* who initiates a *beginning*; who develops from the previous foundations and other *texts*; who has the right of possession of what he/she produces; and finally, who has the ability to maintain the ability to hold to this direction. He summarises these as the four elements of *authority*: "...(1) That of the power of an individual to initiate, institute, establish—in short, to *begin*; (2) that this power and its product are an increase over what had been there previously; (3) that the individual wielding this power controls its issue and what is derived there from; and (4) that *authority* maintains the continuity of its course" (Said, 1975/1997, p. 83).

One of the novelties in Said's approach towards explaining *authority* is that he observes its dual function—that is, *authority* enables as much as it limits (Said, 1975/1997, p. 34). There are both explicit and implicit rules embedded in the writing process, which he calls "rules of pertinence". According to him such rules determine the permissibility of the writings contained in a *text*. He emphasises the dialectical relationship between reality and *texts*. He argues that absolute reality does not exist in words: "All voices are assumed ones...for behind the voice is the truth, somehow and always un-apprehendable, irreducible to words..." (Said, 1975/1997, p. 86). Therefore, there is no absolute "correct" understanding of reality. This is exactly where *authority* comes in: the writer *intentionally* determines what is permissible and what is not permissible, using "rules of pertinence" and his/her own thoughts and viewpoints.

He argues that no *author* has the absolute power to write down whatever he/she wishes. This reveals the complexity of the *authority* that resides in writing. In this regard, Said argues that: "*Authority*—or the specific power of a specific act of writing—can be thought of as something whole and as something *invented*—as something inclusive and made up, if you like, for the occasion" (Said, 1975/1997, p. 23).

Said further explores *authority* in writing through the notions of "distortion" and "displacement". For him, a *text* is a discontinuous series of subtexts, and hence "(Reading and writing) ... are particular distortions of general realities" (Said, 1975/1997, p. 59). Therefore, it is the writer's *intention* to judge or decide what is his/her *beginning*, but is

not entirely up to him/her what constitutes this *beginning*, as *beginnings* may also be attributed by others with hindsight. The *authority* of the writer in this process is reflected in the meaning *intended* in writing as much as in the meaning NOT *intended* in writing. This, again, is because reality is so vastly dispersed that it cannot be fully captured by words. Hence, the composition of a *text* is always accompanied by a series of substitutions departing from reality. In this case, Said states, we can “understand language as an *intentional* structure signifying a series of displacements. Words are the *beginning* sign of a *method* that replaces another *method*.” (Said, 1975/1997, p. 66, 197). Said utilises Freud’s *Interpretation of Dreams* to further demonstrate this idea, by arguing that the original experiences of a dreamer are distorted, or displaced, during the translation from dream-thoughts to words (Said, 1975/1997, p. 178, 180).

Before we move to the discussion of “*molestation*”, I would like to contextualise Said’s arguments regarding the *beginning* and *authority* in the discussion of UNGPs, especially in relation to the approach the SRSB took to construct UNGPs.

2.4.2 UNGPs: *beginning* and *authority*

2.4.2.1 UNGPs as the *beginning*: based on a historical review

It is believed that the notion of human rights in the West received little systematic attention until the twentieth century, and peaked after the Second World War (Svensson, 2002). However, this does not mean that discussion on human rights before the twentieth century is irrelevant. On the contrary, the intellectual heritage from the seventeenth and eighteenth century Enlightenment provided soil for the Western-liberal perception of the natural rights as a response to political and economic centralisation (Donnelly, 2011). The spirit of “natural rights” was reflected in the *texts* of the 1776 *American Declaration of Independence*, and the 1789 *French Declaration of the Rights of Man and of the Citizen* (Kent, 1991). The notion of human rights has been approached by countless *authors* from distinct cultural backgrounds spanning the entire history of mankind. Each has depicted them in their own language. This language reflects their own *intentions*, which in turn have consolidated their *beginnings*. As Said argues, such *beginnings* do not exhibit a linear process but are located in a complex process of repetition of, and interplay with other *beginnings*. The UDHR and related treaties and conventions promulgated by the UN may

be seen as an attempt to achieve some kind of convergence of these *beginnings* (Gray & Gray, 2011; Svensson, 2002). However, such convergence does not have to impair a government's *authority* over the human rights discourse at the local level. Every sovereign state has manifested its own *beginning* to the human rights in a variety of documents (*texts*). They are also allowed, and actively encouraged, to interpret the UNGPs through their own local views, which constitutes an important layer of analysis in this study⁴.

There has been a shift in the context in which human rights are discussed as a consequence of the rising force of neo-liberal economic principles and the proliferation of multinational business corporations (see, e.g., Campbell & Miller, 2006; Frynas & Pegg, 2003; McPhail & Adams, 2016; Orentlicher & Gelatt, 1993). In particular, the role of MNCs in the human rights domain represents another *beginning*, as they have sought to relocate (some of) their activities to countries with conditions favourable to them such as lax regulations and low labour costs (Belal et al., 2015; Wettstein, 2009). This *beginning* is reflected in organisational *texts* such as strategy plans, meeting minutes and official reports. Parallel to this *beginning*, MNCs have begun to undertake CSR initiatives which aim to encompass human rights issues and communicate the information in the *texts* of CoC, social responsibility reports (Banerjee, 2008; Gallhofer & Haslam, 2003; Jamali & Karam, 2018). However, such initiatives have been criticised as business-driven, and as corporate voluntarism (Bijlmakers, 2018).

There are other controversies and criticisms around the nature, scope and mechanisms for MNCs to fulfil their human rights obligations (Clarke & Boersma, 2017; Hamilton & Knouse, 2001; Lin, 2007). The institutionalisation of human rights at the international level also generates a mixed picture. On the one hand, UN-based human rights *texts* such as treaties and conventions are neither designed for, nor capable of providing a coherent mechanism to account for corporate human rights responsibility (Ruggie, 2013a). Other UN initiatives that explicitly target businesses, such as UNGC, are criticised for lacking sufficient enforcement and monitoring mechanisms, providing a vehicle for "bluewashing" (Blitt, 2012; Cragg, 2012; Rasche, 2009; Seppala, 2009; Utting & Zammit, 2009). On the other hand, attempts to transfer state legal liabilities related to human rights directly onto businesses have received enormous resistance from the private sector. The failure of the 2003 UN Norms on the Responsibilities of Transnational Corporations

⁴ For the full discussion on the multi-layer analysis of the UNGPs, please see Section 4.4.

and Other Business Enterprises with Regard to Human Rights (hereafter UN Norms) demonstrates the complexity of applying binding legislations on human rights to businesses (Arnold, 2010; Bijlmakers, 2018; Ramasastry, 2015; Seppala, 2009).

The *beginning* of the UNGPs is situated in this shifting discourse over the role of (multinational) businesses in the effectuation and safeguarding of human rights. The framework of the UNGPs is built upon the *intention* to elaborate the implications of the above *beginnings*, to identify and improve ineffective rules and procedures and provide an authoritative, coherent and comprehensive template for handling human rights issues (Ruggie, 2013a). It is not a weak and passive supplement to previous *texts* by simply adding a business dimension, as was the case with the UN Norms, nor it is a document with a limited list of requirements that businesses can choose to endorse or not, like the UNGC (Li & McKernan, 2016; McPhail & Adams, 2016). Rather, UNGPs represent an *intentional* act aiming to distribute human rights duties between states and businesses by formulating a feasible framework that integrates various streams of argument and causes changes from the ground level across many nations around the world, especially in developing countries like China. Considering all these *intentions*, the UNGPs represent a promising *beginning* in my research on the human rights accountability issues in MNCs' supply chains in China. The UNGPs establish the *beginning* of addressing the challenges of globalisation and the drawbacks of previous initiatives (e.g., UNGC, UN Norms) by articulating the separate yet interrelated role of states and businesses in the safeguarding of human rights, and mapping the nature of the scope of corporate human rights responsibility. This *beginning* has overlaps (repetitions of) with former UN *beginnings*, as stated above, but also has the *intention* to address the new issues in a characteristic way.

The UNGPs' *beginnings* can be characterised by the 2008 "Protect, Respect and Remedy Framework" (hereafter "PRR"). This framework is distilled from the UNGPs focus on three interrelated aspects of safeguarding human rights against corporate infringements (Chetty, 2011; McPhail & Ferguson, 2016; Ruggie, 2013a; Seppala, 2009). They are: the state duty to protect human rights, the corporate responsibility to respect human rights and the need for both judicial and non-judicial remedy (UNHRC, 2011). The PRR partially reinforces the well-established legal duty of states to protect human rights from corporate impacts (typically manifested in UN human rights treaties and conventions), and to try to avoid impediments caused by long-lasting debates on the direct applicability of

international legal instruments to (multinational) businesses. While observing the corporate duty to comply with local laws, the UNGPs draw on the social dimension of human rights responsibility to accentuate the “do not harm the employees” principle, and the correlative responsibility to address harms caused by business activities. Through the application of the UNGPs, states and businesses are assumed to redress the corporate-related abuse of rights through judicial, administrative, legislative or other means. The *beginning* of the UNGPs, therefore, is also situated in their way of portraying corporate human rights responsibilities which are built upon the foundation of international instruments that intend to avoid endless debates on the corporate legal duties by bringing in due diligence mechanisms.

It is argued here that the *beginning* of the UNGPs does not represent a linear top-down process, rather, the adaptation of UNGPs is entangled in a web of players such as international institutions (UN), states and business enterprises (MNCs and suppliers). Based on Said’s concepts, they all have *intentions* for *authoring* their own *beginning* with the UNGPs, in the form of *texts*. Correspondingly, given the focus of this research on China, the first pillar of the PRR is targeted at the Chinese national level, whilst the second pillar aims at the company level. As the Chinese government endorsed the UNGPs in 2011, it is presumed that the government has embraced the convergence of business and human rights discourse initiated by the UNGPs, and evidence of integration is expected to be seen at the national government level. Within this line of reasoning, one objective of this research is to examine the operation of the UNGPs in the form of governmental *texts* at the Chinese national level, using Said’s theoretical framework. The Chinese government communicates its human rights policies and developments regularly through *texts* such as National Human Rights Action Plans (NHRAP), guidelines, policies and reports. All these *texts* have their own *intentions* and use their own language, which constitutes the *beginning* of UNGPs at the national level. Thus it is important to analyse these materials in order to understand the contextualisation of the UNGPs in China. This will be reflected in the in the first empirical chapter on documental analysis in Chapter 6.

Since the UNGPs have received unanimous support from both states and businesses, it would be expected that the meaning of the UNGPs has begun to penetrate the daily operations and management of corporations. Again, such penetration may manifest itself in the form of *texts* and corporate language—but also in the daily goings-on in these

organisations (cf. Cooper & Ezzamel, 2013). UNGPs require businesses to “know and show” (UN, 2011, Commentary of Principle 15) that they respect human rights. This is an open invitation for corporate accountability which is operationalised through corporate social reporting (specifically human rights reporting) practices. It can be imagined that the most evident *beginning* of the UNGPs at the company level will probably be the implementation of due diligence and the “do not harm” principle. The second object of my research draws from this observation to explore integration of the UNGPs’ *beginning* at the company level, which forms the second empirical chapter of Chapter 7 in this thesis.

2.4.2.2 The *authority* of UNGPs

An *intention*, according to Said (1975/1997), marks the *authoring* power to purposefully utter a *text* in a characteristic way. He argues that such *authority* is inevitably constrained by the *author’s* ability to understand reality and put this down in words. In this sense the utterance of a *text* is naturally accompanied by distortions of reality, with substitutions and displacements, as has been explained above. Ruggie (2013a) draws certain lines to define the nature of the human rights duty on states and businesses separately, through articulating what is (not) permissible on particular occasions. The *authority* of UNGPs, therefore, lies in their *intention* to bring currently prevailing discourses closer to reality by setting certain parameters. The UNGPs are not legally binding documents; instead they can be interpreted as a set of normative social expectations and norms that derive legitimacy from key actors such as states. They constitute an authoritative, normative baseline, and a common platform which states, businesses and civil societies can apply to create common understandings and good practices surrounding human rights issues.

At the international level, UNGPs have become the pivotal reference point for other standards such as the OECD Guidelines for Multinational Enterprises (hereafter OECD Guidelines, see, e.g., Addo, 2014; Buhmann, 2012; Faracik, 2017; Gray & Gray, 2011; Ruggie, 2013a) and International Organisation for Standardisation 26000 Guidance on Social Responsibility (hereafter ISO 26000, see, for example, Adler, 2011; Ruggie, 2013a). Both the Chinese government and Chinese industrial associations are *beginning* to integrate the UNGPs into documents such as the GB/T 36000 Guidance on Social Responsibility (hereafter GB/T 36000). Many (multinational) corporations have started to

embed the notions of the UNGPs in their corporate responsibility codes of conduct and social responsibility reports (Bijlmakers, 2018; Haines, Macdonald, & Balaton-Chrimes, 2012; McPhail & Adams, 2016; Ruggie, 2013a). The analysis of such *texts* constitutes the first empirical chapter.

The UNGPs represent the utterance of the *texts* in particular language which has universal applicability in different countries, which is also the expression of UNGPs' *authority*. However, the local contexts within each country will exhibit great diversity, which might lead to totally different meanings from the original text of UNGPs. The UNGPs strive to build connections with local reality. Such integrations may enhance or constrain the *beginning* and *authority* of UNGPs in the Chinese context. Meanwhile each of these integrations represents a *beginning* and an *authority* of their own, in the form of *texts* such as government documents and company CoCs. These lead to certain actions on the ground level, which will be the focus of the second empirical chapter (Chapter 7).

2.5. Molestation

In his discussion of *authority*, Said notes that it is a “borrowed concept”, that encompasses displacements and suppressions of reality through *texts* (Hussein, 2004, p. 107). It is precisely this nature which brings in a counter-force he refers to as “*molestation*” (Hussein, 2004, p. 107; Said, 1975/1997, p. 83). This section gives the *molestation* a more comprehensive introduction, introduces both its constraining and enabling functions, and argues that *molestation* manifests itself in different forms at different levels of analysis in my research.

2.5.1 Molestation's constraining function

Following the discussion of the distance between reality and *texts*, Said contends that complete *authority* does not exist, even if it is claimed. No matter how complete the *authority* of a writer/*author* seems, and no matter how much effort the writer/*author* puts into inventing the *beginning* of an alternative reality in *texts*, and discontinuing what has come before, he/she will always find himself/herself sequestered in the realm of *texts*, which are always distant from reality and are bound by linguistic conventions, but frame

the *authors* nevertheless (Cooper & Ezzamel, 2013, p. 291; McCarthy, 2010, p. 63; Said, 1975/1997, p. 83). *Molestation* is then used to describe the consciousness of such duality, realising that the *text* is always coming up short in comparison with reality, and therefore is partially an illusion (Hussein, 2004, p. 107; Said, 1975/1997, p. 84). As Hussein (2004, p. 107) puts it, *molestation* constitutes the “potentially debilitating challenges of initiation, the anxiety which follows autonomy, the uncertainty about legitimacy that accompanies transgression.” The result, Said points out, is a “series of collisions and compromises” which are embedded in processes of *molestation* (Cooper & Ezzamel, 2013, p. 291). This highlights its constraining function.

2.5.2 *Molestation's* enabling function

Said argues that, paradoxically, *molestation* also plays an enabling role which starts with acceptance that the *authority* is never final (Said, 1975/1997, p. 84). It is exactly because of this enabling function that *molestation* has the ability to produce its own additional discourse, and in turn augments *authoring* through the eyes of a reader (Cooper & Ezzamel, 2013, p. 293). Hence there are two dimensions to *molestation*. One is related to *authors* and *authorship*, the other is associated with the reader of *texts*. The relationship between *author* and reader is dynamic, which allows the reader to become an *author* too, by *molesting* the original *texts* and adding his/her own significance. In both cases the identities of the *author* and reader are not fixed, but transform one another in the exchange of *texts*. The enabling function of *molestation* reinforces the *authority* of both the *author* and reader during this process. That is, the *author* is capable of demonstrating his/her *authority* in *texts* by way of perceiving or *molesting* reality. At the same time a reader initiates their own *beginnings* over the original *texts* by bringing in experiences and values of their own, which impact on how the *author* is viewed. This means that by *intentionally* comparing, extending, retaining, removing, modifying and in short, *molesting* the *texts*, readers conduct their own “reality check”, which re-examines the *texts* in the light of local understandings and bridges the gaps between *texts* and local reality. By conducting this “reality check”, *molestation* plays an enabling role in rendering a more meaningful and relevant *text* (and *authority*) within the recipient’s local and personal context (Cooper & Ezzamel, 2013, p. 298; Said, 1975/1997, p. 137), which may enhance the *author's* status (or not) – at least, from the reader’s perspective.

Local reality can also be *molested* by businesses and suppliers in accordance with the UNGPs; this is performed in corporate *texts* and speeches. As it will be indicated in Chapters 6 and 7, the target corporations in this research tend to describe and justify their local human rights practices through certain narratives which feature both their economic interest and the management risks. Corporate *texts* are confined by the fact that there is always something more authentic at ground level, to which the corporate *texts* are only secondary. Whilst the UNGPs seek to define the corporate human rights responsibilities in a pragmatic way (as the SRSG terms it “principle pragmatism”, see Section 4.4.5), in fact it means they invite the role of *molestation* in the process of implementation, and it needs to be further explored how the *molestation* enables or constrains the validity of the UNGPs. In the implementation guide *authored* by the UNWG which accompanies the UNGPs, the UN already *molests* its own *texts* by suggesting how certain principles ought to be interpreted. This will be illustrated in Chapter 6. As stated, further *molestation* is accepted from whomever decides to use and adopt the UNGPs.

2.5.3 Why “*molestation*”: the rationale of Said

Based on the discussion of *molestation* above, this section synthesises both the enabling and constraining functions of *molestation* and explains the rationale of Said behind choosing this particular term.

Indeed, it is a bit of strange why Said uses the word of “*molestation*” instead of other more commonly used word such as (re)interpretation, considering the negative meaning *molestation* implies. The short answer is, *molestation* represents a more nuanced understanding of the “injustice” that has been done to the original text. The (re)interpretation is a play on words. This word points to the broad meaning of reading the texts in a certain way. For instance, the texts of UNGPs intentionally leave space for open interpretations, which means that different readers can perceive the UNGPs in a certain way tailored for their interests and contexts (Backer, 2012; Bijlmakers, 2018; Ruggie, 2013). Therefore, as we will see in Chapter 6 and 7, the Chinese government, Alpha and Beta can all interpret the UNGPs from their own perspectives, it is certainly a kind of reinterpretation.

However, *molestation* goes further. It reveals a more grave understanding of (re)interpretation, that it is a haunted sense of reality. When interpreting a text, the readers will pull it out of the context and will always make sense of it based on their own reality. This is injustice to the original text. Hence according to Döring & Stein (2012, p. 39, see also, Miller, 1976), the general meaning of *molestation* hints at its original meaning with concerns the sexual harassments of children by women and men. This explains Said's logic of choosing this word: the text is victimised and stained in a way because the readers' understanding is inevitably twisted, traumatised and superficial.

Back to the study of UNGPs. The readers at various levels (UN, Chinese government, Alpha, Beta and local workers) find themselves interpreting and *molesting* the *texts* of UNGPs based on their own realities and *intentions*. As the findings have shown, even at the UN level, within which the UNGPs are drafted, the Working Group members *molest* the UNGPs by providing additional explanations which inevitably twist the original *texts* of the UNGPs. This, according to Said, is "injustice" imposed on the *texts*. Such *molestations* are more evident at government and corporate levels, the GB/T 36000 published by the Chinese government and the company codes molest the UNGPs by contextualising the texts in the local reality. As Section 6.4 and Section 6.5 demonstrate, the *texts* of several key concepts and mechanisms are twisted, or even removed from the texts *authored* by the government and companies. This leaves a more significant "stain" on the *texts* of UNGPs.

However, it would be wrong to perceive *molestation* only from the negative sense as Said points out that the enabling and constraining functions of molestation often happen simultaneously (Said, 1975/1997, p. 84). It is disabling to the extent that resistance, refusals, sacrifices, collisions, doubts and compromises occur when the texts face the local reality—certain meaning of the original texts is twisted and traumatised as demonstrated above. But *molestation* is also enabling in giving discourse a reality check, in helping rescue discourse from being a dream by bringing it back to its status as trying to be believable (Said, 1975/1997, p. 24; Cooper & Ezzamel, 2013, p. 291). This might look odd at first, how can the twist and the haunted sense be enabling and positive? The contextualisation of UNGPs after the suicides is useful to demonstrate this point. As the findings suggest, it is inevitable for the local actors to twist (molest) the UNGPs. However, it is based on their *molestations* that the local context is reflected in the *texts* (e.g.,

government regulations and company codes). This invites the international attention on the working conditions in China, in the way that it helps people to understand and monitor the human rights conditions and only based on which improvements can be made. On the other hand, it is neither possible nor necessary to make the UNGPs directly applicable to every possible scenario. Therefore the enabling role of *molestation* is vital for the reader to localise the *texts* based on their reality, experiences and values. Hence make the *texts* more believable (Cooper & Ezzamel, 2013). In fact, the *texts* of UNGPs explicitly recognise this and are drafted at certain level of flexibility and open-endedness (Bijlmakers, 2018; Ruggie, 2013).

2.5.4 *Molestation* and the UNGPs at different levels

In this section, I attempt to evaluate the role of UNGPs in *molestation* at a number of levels articulated in Section 3.2 based on two dimensions: the *author* and the reader of the UNGPs. This research is conducted on the proverbial platform on which numerous actors interact through the means of *texts* and languages under the “grand” *texts* of the UNGPs. Certainly, the content of the UNGPs is subject to *molestation* by whoever operationalises the *texts*. Meanwhile the field of analysis is complicated by the dynamic relations between *author* and reader who also *molests* the *texts*. Hence the categorisation of the interpreters of the UNGPs into different levels of analysis helps to single out the subject for discussion in a logical and sensible way.

To begin with, the *texts* of the UNGPs are intended to be embedded at the national government level. Upon clarifying the state duty to protect human rights, the UNGPs invite the signatory governments to conceptualise human rights duty in the form of official *texts* such as regulations, guidelines and reports, with reference to the UNGPs. As the readers of the UNGPs, the national governments have diverse cultural and social backgrounds involving various interests, and using their own languages. Therefore they will *molest* the UNGPs in accordance with their own *intentions*, which renders the *texts* (hopefully) more practical. At the same time governments automatically become the *authors* of their adaptation of the UNGPs, whose *authority* stems from the dominance of the *beginning* of the UNGPs at the national level. For instance, for some time now, the Chinese government has been emphasised the importance of considering the local human rights reality before uncritically accepting all UN human rights standards (Davis, 1995b;

Potter, 2007; Sceats & Breslin, 2012; Whelan & Muthuri, 2017). The *beginning* of integrating the UNGPs at the national level, therefore, is characterised by the Chinese government's perception of the human rights issues. To be specific, while interpreting and integrating the notions in the UNGPs into the Chinese national level *texts*, such as the NHRAP and the GB/T 36000, the government may challenge the *authority* of the UNGPs by emphasising the local human rights reality, which in turn produces its own *authority* at lower levels.

The same situation can be seen at the corporate level. While the UNGPs set out the parameters and mechanisms of corporate human rights responsibility, businesses in particular contexts will *molest* the requirements in line with their own *intentions*, through the utterance of *texts* such as CoCs and social responsibility reports or human rights reports. Such *intentions* may be distinct from the state *intentions* in a way that may bring the discourse closer to the business reality. While observing the *authority* of UNGPs, MNCs are likely to have their own *beginnings*, which might be characterised by “selective compliance” or reflected in other practices such as flawed or superficial grievance or due diligence mechanisms (Backer, 2012, p. 150; Jochnick, 2017, p. 131; Rodriguez-Garavito, 2017a, p. 176). Such *molestation* is reflected in *texts* like company social responsibility reports and codes of conduct, or posters articulating the company's human rights regulations. With regard to reality, evidence from both practitioners (e.g., non-governmental organisations, NGOs; see Shift, 2017) and academia (Belal et al., 2015; Lauwo & Otusanya, 2014; Ruggie, 2006; Sikka, 2011; Simons, 2004; Spence, 2009) reveals the large extent of *molestation* of the reality in the corporate *texts*, which is mostly *intentional* and therefore indicates the *authority* of business in this regard. This will be further discussed in Chapters 6 and 7.

So far the *molestation* is rendered between *texts*—that is, the *text* of the UNGPs will be *molested* by states and businesses in writing, and through perspectives which are more relevant to their own reality. Meanwhile on the ground level, there is another kind of *molestation* between *texts* and practice. Since, as Said underlines, the writing itself has the ability to influence the reader's perceptions and behaviour, the UNGPs have the *intention* of impacting the behaviour of both workers and managers (Cooper & Ezzamel, 2013, 292; Said, 1975/1997), in order to create change at ground level by operationalising corporate human rights accountability in specific ways. China is a country with its own

cultural and social backgrounds which are distinct from those of Western countries. This creates a unique reality on the ground level regarding the language and *methods* of human rights. During this process the readers of the UNGPs become the *authors* of (further) adaptations of them at ground level by the dissemination of *texts* and by putting these *texts* into concrete action, as will be highlighted in Chapter 7.

Finally, the workers remain as the bottom level audience of the UNGPs. They also project their reality upon the *texts* of higher level *authors*. Workers rarely (or never) receive the *texts* directly from the international actors like UN. Rather they are more impacted by the *beginnings* of the UNGPs at the national and corporate level. It is at the bottom level where the *molestation* is registered to the greatest extent, when the readers (workers) are bound by their reality filled with cultural, social and economic factors. Such *molestation* can be studied in the form of spoken language, which is collected in this study through interviews with workers, as will be further discussed in Chapters 5 and 7. Table 2.1 summarises these insights.

Table 2.1 The *molestation* of business and human rights between different levels of analysis

Author—Reader of UNGPs	The <i>molestation</i> of business and human rights
UN—States	The first pillar of the UNGPs demonstrates the state duty to protect human rights against corporations. While re-conceptualising the meaning of the UNGPs, governments with diverse social, economical, political and cultural backgrounds have the <i>intention</i> of projecting their realities onto the interpretation of the UNGPs. Hence the <i>texts</i> of the UNGPs are <i>molested</i> , which is manifested in the national documents in Table 6.2. While such <i>molestation</i> hampers the original meaning, it also renders the UNGPs actionable.

Continued Table 2.1 The *molestation* of business and human rights between different levels of analysis

Author—Reader of UNGPs	The <i>molestation</i> of business and human rights
UN—MNCs	<p>The second pillar of the UNGPs elaborates the corporate duty to respect human rights. Similar to the <i>molestation</i> by nations, corporations operating in varied geographic locations have the <i>intention</i> of incorporating their interpretations and practices into the UNGPs, which might lead to “selective compliance”. The dialectical relation between the enabling and constraining functions of <i>molestation</i> can be observed. That is, while it is possible for corporations to only adopt favourable provisions and to have legitimate purposes, the abstract language can be rendered more practical at the corporate level through the combination of local reality with the <i>texts</i>.</p>
MNCs—Supply chains	<p>The complexity of this research is augmented by the involvement of local supply chains. The UNGPs highlight the human rights issues related to the actors in “business relationships”, and articulate that MNCs have the responsibility to hold suppliers accountable. This is often reflected in the corporate <i>texts</i>, including CoC. Such <i>texts</i> are often <i>molested</i> by local suppliers who are offered a certain level of discretion and attempt to bring in their own <i>intentions</i>, which may demonstrate the potential both to operationalise certain principles and meanwhile to conflict with/obfuscate others. This will be reflected in the supplier <i>texts</i> such as onsite posters, interviews, etc.</p>
States—Local factories	<p>Both MNCs and local factories operate within the jurisdiction of national governments, therefore are obligated to adhere to the national human rights regulations. Normally these obligations are in the form of binding legal duties which rise above the UNGPs. While similarly the corporations <i>molest</i> relevant regulations, such <i>molestation</i> occurs to a lesser extent. Also, corporations are consistently in the position of balancing the somewhat conflicting requirements from national and UN levels, which are caused by the <i>molestation</i> of the UNGPs by local governments. This builds obstacles to the implementation of the UNGPs.</p>

2.6 Locating Said's work within existing research

For the sake of clarity, this section sets out to locate Said's work within the existing literature on accountability, which further enhances its applicability in this research. The core idea of Said's theory revolves around the act of disseminating textual information to differing audiences, converting it in the process (usually across physical distance, Cooper & Ezzamel, 2013). This has significant implications for accountability. On the nature of accountability, Roberts & Scapens (1985, p. 448) elaborate that "the intended and actual impact that the use of accounting information has in shaping and maintaining particular patterns of accountability within organisations," especially in the case of "more distanced forms of accountability". Based on this, they highlight the limits of accountability as a "partial, selective and potentially distorted reflection of the flow of events and practices that constitute organisational life", which can lead to distortions in the interpretation of reality (Roberts & Scapens, 1985, p. 454). Such distortions provide soil for both *molestation* and *authority*. Butler (2005) defines the nature of accounts as narratives which "[depend] upon the ability to relay a set of sequential events with plausible transitions...(it) draws upon narrative voice and *authority*, being directed toward an audience with the aim of persuasion" (Butler, 2005, p. 12). Thus she questions the possibility of rendering specific behaviours through language, which hinders the effectiveness of accountability. The incompetence of language to communicate meaning accurately is also discussed in relation to financial accounting practices (Cooper & Ezzamel, 2013; see, e.g., Courtis, 1995; Rutherford, 2003). Said's work on *texts* contributes to the existing research by introducing an alternative perspective for explaining the role of language in accounting research. From his point of view, the distortion of *texts* is a natural process which does not necessarily lead to the misinterpretation or derogation of the original meaning, whether *intentionally* or *unintentionally*. Instead, *molestation* is used to describe the inevitable distance between *text* and local reality. It has the enabling function of bringing in local perspectives to give the original *text* a reality check (Cooper & Ezzamel, 2013; Said, 1975/1997), and a constraining function in that all *texts* necessarily deviate from reality. That may be particularly relevant in this research, which investigates the diverse local interpretations of accountability mechanisms within UNGPs. Said's framework highlights the *authorship* of actors from many layers, who have the *authority* to challenge *texts* by injecting their own ideas, rules or mechanisms based on local

considerations (Cooper & Ezzamel, 2013, p. 292). This is applicable in the study of UNGPs, considering the influences of actors from various levels (international, national, corporate and ground levels) on the implementation of the accountability mechanisms sketched out in UNGPs.

2.7. The implications of Said's work for the current study

Given my interest in exploring the role of UNGPs as the guiding framework in the local context of China, and the role of accountability mechanisms within these guidelines, I draw upon some of Said's key concepts to construct the theoretical framework for organising the discussion on UNGPs, and to further analyse the empirical data. The UNGPs are said to represent the state-of-the-art development, at the international level, of BHR issues (McPhail & Ferguson, 2016; Ruggie, 2013a). The value of Said's work is partly reflected in its guidance on interpreting the development and use of UNGPs as a complex process of repetition and interplay with other *beginnings* at both the international and local level. Moreover, the notion of *molestation* sheds light on the implementation or contextualisation of the UNGPs—that is, where the *text* meets the reality (at different levels of analysis, as stipulated in Section 3.4). One appealing feature of Said's work is that it allows us to construct the production of *texts* as the enabling process for enhancing and changing perception and behaviour (Cooper & Ezzamel, 2013, p. 292). It is argued that this potential is deeply embedded in the *intention* of UNGPs—according to the SRS, the ultimate goal of UNGPs is to achieve the improvement of human rights conditions at ground level by altering people's perceptions and behaviours. However, considering today's diverse human rights discourses and the often large distance between UNGPs and local contexts, such an approach is inevitably challenged by local reality and subject to *molestations* from actors at different layers. Said's work therefore offers valuable guidance for navigating this complex situation.

A further appeal of Said's work goes back to the notion of *text*, and the *intention* entailed in uttering a *text*. Said's emphasis on this issue urges us to trace people's *intentions* behind the *texts* they utter to further analyse the implementation of UNGPs, in order to understand whether their *authority* over the issue of BHR have rendered the UNGPs more practical (or not).

Based on this introduction of Said's work, the next chapter sets out to examine the extant literature on the topic of accountability, BHR, with special attention to the UNGPs.

Chapter 3

Contextualising human rights: A multi-actor perspective

3.1 Introduction

The merit of Said's theoretical framework stems from its wide applicability to all the research on the dissemination of *texts*, which provides a useful rationale for clarifying and structuring the complex interplays between human rights, the accountability mechanism and the various actors disseminating and interpreting relevant *texts* (both through inscribing and uttering a *text*). Drawing on this aspect of Said's theory, this chapter aims to contextualise the concept of human rights among the *texts* produced by multiple actors. Through the theoretical lens of the notion of *beginning* and *intention*, the various streams disseminating the notion of human rights across the actors at the local (supply chain, Beta), state (Chinese government), business (MNC, Alpha) and international (UN) levels will be examined. It is hoped that by looking at *beginning* and *intention* as the tools for constructing the heterogeneous contexts within complex interrelations, the core elements of human rights can be teased out in each context, and the way they engage with the context explicated.

This chapter is structured as follows: Section 3.2 attempts to provide a concept of human rights applicable in the context of this thesis, based on the examination of both the human rights heritage in China and in Western countries. Section 3.3 coalesces the two streams of *texts* in the coherent UN framework which is called the IBHR (especially the UDHR), in which the state-centred international human rights system is formulated. The stance of the Chinese government is also explained, which sheds light on the analysis of Chinese government documents in Chapter 6. Section 3.4 brings in the business regime, in which the rise of MNCs as quasi-states is reviewed against the backdrop of globalisation.

As important channels for communicating the UNGPs, the CSR and CoC are particularly scrutinised, which lays the foundation for the document analysis of the Alpha and Beta CoCs in Chapter 6.

3.2 Defining human rights

The notion of human rights is an elusive concept. Considering that this study focuses on the contextualisation of an international document in China, it is necessary to demonstrate the two approaches with which China and Western countries perceive human rights. It is based on this mixed perception that the concept of human rights is constructed.

3.2.1 *Beginnings* of human rights: a historical review of the West

The notion of human rights, as we see it today articulated in authoritative *texts* like the IBHR, is by no means a static concept which has been readily accepted by people from different contexts. Instead, the history of human rights is a history of compromise, conflict and reconciliation, which all reflect the concerns and interests of its interpreters (Angle, 2002, p. 19; Svensson, 2002, p. 4). This in turn invokes the traits of the social contexts which influence a way of thinking. Following this line of reasoning, Said's focus on the *text* as the spine of study, and the concepts of *beginning* and *intention* are heuristic here, offering insights into the somehow elusive process of human rights development. It should be noted that Said depicts the *beginning* not as a linear and unequivocal process, but located in a complex web of relationships with other *beginnings*, which features repetitions and interplays. Based on that rationale, this section broadly identifies two *grand beginnings* for human rights within China and the Western cultures respectively⁵. This section mainly fleshes out the Western perceptions of human rights, which influence

⁵ It should be noted that the dualism of "China-West" or "East-West" in the human rights doctrine has been criticised for its ambiguity and the simplistic solutions it offers (see, e.g., Goodhart, 2008, p. 193; Muchlinski, 2004, p. 93; Svensson, 2002, p. 48). However the concept also helps to tease out the core ideas of a variety of *beginnings* for human rights, and assists us to stay focused on the essential contentions. It has been widely employed in human rights studies examining the differences between China and Western countries, including Bell (1996) and Roetz (2012). Since this research shares the same purpose, I intend to simplify the discussion here by removing the peripheral debates of the "China-West" dichotomy.

the development of international human rights doctrine, especially in the UN. The Chinese stance on human rights will be discussed later in Section 3.2.2 and Section 3.3.4, although we shall also come across it during this section.

It is considered that the *beginning* of human rights in the West received little systematic attention in *texts* until the twentieth century, and peaked after the Second World War (Svensson, 2002), which is most significantly manifested in the *text* of the UDHR (Cragg, 2000; Gray & Gray, 2011; Sikka, 2011). However, this does not mean that *beginnings* before the twentieth century are irrelevant. On the contrary, the intellectual heritage from the seventeenth and eighteenth century Enlightenment provided fertile soil for the Western-liberal perception of the *natural rights* as a response to the political and economic centralisation of that period (Donnelly, 2011). Later in the nineteenth century Marxism established its *beginning* for the concept of human rights, partially by refuting the legitimacy and practicability of natural rights in the sense of individual rights, and emphasises the importance of relationships with others and the harmony between individual and collective rights (Angle, 2002, p. 201; Svensson, 2002). It is argued that the Marxist *beginning* of human rights directly contributes to the *beginning* of contemporary human rights in China (Weatherley, 1999).

3.2.1.1 Beginning of natural rights

Enshrined in the legacy of the Enlightenment, the *beginning* of natural rights is materialised in the *texts* of the 1776 *American Declaration of Independence* and the 1789 *French Declaration of the Rights of Man and of the Citizen* (Kent, 1991). It is argued that the this *beginning* inherits some of merits from other *beginnings*, in the idea of the notion of *natural law* which is *intentionally* grounded in God's will (Donnelly, 1982b; Perry, 2006; Weatherley, 1999; Werhane, 2016, p. 11). Although that was largely discarded later, its kernel can still be seen in notion of the universality of human rights, which underpins several prominent human rights bills and regulations today (Angle, 2002; Wettstein, 2009). Furthermore, it provides the common ground for the convergence of Eastern and Western notions of human rights, most conspicuously at the UN level (Whelan, Moon, & Orlitzky, 2009). We will come back to this in Section 3.3.3. Therefore it is evident that these *beginnings* show a pattern of nonlinear development, in which the knowledge of human rights is accumulated through the repetition and augmentation of previous

beginnings. Meanwhile, *intentionality* is embedded in each *beginning*, based on the observation its own local context.

The traditional *beginning* of natural rights, seen as emerging from the divine *authority* encountered strong criticism during the eighteenth century and later. The works of John Locke, Thomas Hobbes, Jean-Jacques Rousseau and Immanuel Kant were among the first ones with the *beginning intention* of embracing a secular dimension for human rights (Werhane, 2016, p. 11; Wettstein, 2009). The human rights *texts* have by then acquired strong political meaning, *intentionally* for the purposes of the emancipation and freedom of the individual (Ferrone, 2017). Hence the *beginning* of liberal traditional civil/political rights is conceived with the *intention* of valuing individual freedom in the face of state power, and is chronologically called the “first generation of human rights” (Burgers, 1992; Donnelly, 1998; Rosemont, 2004; Svensson, 2002). This category of rights can be construed as the right to participate in civil and political life, and to be free from the infringements of states and other private actors⁶ (McPhail & Adams, 2016).

3.2.1.2 Beginning of Marxist human rights

Later, in the nineteenth century, political thinkers such as Edmund Burke, Jeremy Bentham and Karl Marx all criticised the concept of natural rights from diverse perspectives, by initiating their own *beginnings* concerning human rights. Among them the propositions of Marx are especially relevant here, as they constitute one of the ideological bases for the *beginning* of contemporary human rights practice in China (Lu, 2016; Svensson, 2002; Weatherley, 1999). Marx attacked the idea of natural rights as highly abstract, without concrete empirical backing, hence, he maintains, they are by nature illusions which serve the purpose of legitimising the role of the and the economic order and maintain the dominance of both (Li & McKernan, 2016; Lu, 2016; Peerenboom, 1993; Svensson, 2002). Also, he points out that the tendency of this argument is to encourage people to project themselves as self-centred individuals, with the aim of pursuing their private interests (Kent, 1991; Weatherley, 1999, p. 34). This contradicts Marx’s fundamental belief that as “species beings”, humans will only flourish within the network of relations with others (Angle, 2002, p. 201). Further expanding this view, Marx argues that in a future society

⁶ The civil/political rights will be discussed at greater detail in Section 3.2.2.3.2.

people would have the sense of belonging to the community, whose will they would voluntarily submit to, and so harmony between personal and collective rights would be realised (Svensson, 2002). As has been stated above, the Marx's *beginning* has significant influence in this research, as Chinese understanding of human rights is deeply influenced by Marxism and Socialist thinking (Weatherley, 1999). Hence the "web of *beginnings*" becomes formulated as the discussions move on. That is, the various *beginnings* in the West present a complex pattern of repetition and relatedness—each is constituted *intentionally* to break away from the previous *beginnings*, and yet they all demonstrate some connections with each other. In Section 3.2.2 it will be elaborated that this pattern is applicable to the *beginnings* of human rights in China. It is the outcome of the interplay between the *beginning* of traditional Confucianism (Bell, 1996; Davis, 1995b; Kim, 2014; Svensson, 2002), the changing landscape of society after the Qing Dynasty, the introduction of Marxism and the more recent notion of harmony in society (Lin, 2010; See, 2009).

3.2.1.3 Defining human rights: two debates

Continuing the historical review of human rights from the Western perspective, this section discusses two debates out of four around the nature of human rights, namely the idea of human rights as a legal duty or moral responsibility, and that of human rights as a negative or positive duty. The two debates draw from the human rights *beginnings* enshrined in the Western heritage as we discussed above, and which are still at the heart of international human rights agenda today. Hence this section illustrates the background information of the formulation of the UNGPs.

3.2.1.3.1 Legal duty & moral responsibility

As stated in Section 3.2.1.1, the concept of natural rights which underlies the idea of human rights essentially implies a moral quality, which is substantiated in the form of human dignity (Campbell, 2006; Donnelly, 1982a, 1982b, 2013; Svensson, 2002, p. 33). That is, the fundamental nature of human rights is that they are the rights people have *qua* people, whose realisation is independent of any governments or official institutions (Donnelly, 2013; Fasterling & Demuijnck, 2013; Pogge, 2000). It is on these basic rights

that other rights can be built (Shue, 1996). Shue (1996) has further persuasively defended three categories of basic rights: (1) liberty of physical movement; (2) physical security and (3) subsistence.⁷

It is normative and tempting to claim that human rights are by nature moral rights which have wide applicability, however it is unrealistic in practice to hold the perpetrators accountable by merely referring to their moral responsibilities. Therefore it is crucial to institutionalise human rights in the form of both international and domestic legislation (e.g., IBHR, China's Labour Law), which give them an institutional face and enhances their credibility and enforceability (Campbell & Miller, 2004, p. 12; Duruigbo, 2007, p. 253). Some legal theorists even doubt the possibility of human rights existing without approval by government bodies (Cranston, 1983). Whilst the current order of state-centred international human rights doctrine is derived from, and also contributes to, the dominant role of legislation to protect human rights (McCorquodale, 2009, p. 386), the shifting discourse caused by the significant impact of business enterprises calls for an extension of human rights responsibilities (both legal and moral) to corporations (Mayer, 2009; McPhail & Adams, 2016; Ratner, 2001; Santoro, 2015). It is against that background that this study sets out to explore the role of business in upholding human rights⁸.

Nevertheless, the power of human rights is by no means limited to the rigid box of legal rights (Campbell & Miller, 2004; Ruggie, 2013a; Sen, 2005, 2009). First of all, neither international nor domestic legislation are capable of fully institutionalising universal human rights⁹ (Campbell & Miller, 2004). Hence the merit of considering human rights as based on human dignity is to some extent lost during the legislation process (Pikalo, 2007, p. 249). Also, after witnessing the widespread violations of human rights, especially those conducted by private sector organisations such as corporations, it is questionable whether the traditional state-centred legal system is effective in holding business accountable (Bishop, 2012, p. 124; Buhmann, 2012; Ramasastry, 2015; Ruggie, 2013a; Venkatesan,

⁷ "Subsistence" here implies "unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, minimal preventive public health care." Shue (1996, p. 23)

⁸ For more discussion on the moral/legal human rights responsibilities within the business sphere and the shifting order of discourse from state to business, see Section 3.4.1.2.

⁹ While there are controversies around the universalism and relativism of human rights, this research tends to take the middle approach. That is, while observing the local practice of human rights, this study does not derogate the universal sense of basic human rights which contributes to the power of human rights arguments. This will be further discussed in the following section.

2019)¹⁰. Furthermore, just as Svensson (2002, p. 31) states, “If the only rights that exist are those laid down in the law, people would be left without moral support in the face of totalitarian and despotic regimes that control and dominate the legal system.” Therefore the moral imperative to respect human rights should be invoked as an over-riding value which trumps all other reasons to protect them (Arnold, 2010, p. 386).

3.2.1.3.2 Negative duty & positive duty: the blurred boundary

Another dimension of the discussion concerns the dichotomy of negative and positive duty. Here we move from right to duty, which is deeply embedded in the human rights concept (Griffin, 2008; Kolstad, 2009). This section does not intend to provide a full discussion on the broad topic of right and duty, instead it is a rather brief introduction to the significance of the duty-talk in this research, which leads to the discussion of both the duty transfer from state to the business sector in Chapter 4, and the nexus between negative and positive duty. On the other hand, the topic of negative-positive duty is particularly useful here to facilitate the understanding of human rights in the context of the UNGPs.

The nexus between right and duty is straightforward: the rights argument implies that individuals shall have access to the substance of all kinds of human rights, which means that the corresponding duties should be assigned to bearers. In other words, human rights will be illusory and unachievable without the existence of duties (Griffin, 2008, p. 97; Kolstad, 2009, p. 571). The definitions of negative and positive duty are simple. According to Shue’s (1988) succinct words, “A duty is either negative or positive. If it is negative, it requires us not to deprive people of what they have rights to. If it is positive, it requires us to do or provide things.” Negative duty is universal, whilst positive duty is assigned to specific agents (see also, Wettstein, 2012a, p. 755). In a similar vein, Kolstad (2009, p. 572, see also, Festerling & Demuijnck, 2013, p. 803; Scheffler, 2002) defines *negative duty* as the duty to “refrain from acting in a way that deprives people of their rights, i.e., duty to respect the rights of others”, whilst *positive duty* implies “to perform certain actions to secure the rights for others, i.e., the duty to protect the rights of others”. It should be noted that the separation of the terms “respect” and “protect” here

¹⁰ See Section 3.4.3 for more explanations.

is vital to understand the SRS's approach to defining state duty and corporate responsibility¹¹. To put it in context, Griffin (2008) approaches the argument of negative and positive duty from the point of view of the right to life. As the most basic human right, he contends that the duty to protect this right is negative in nature—it is a right of which human beings cannot be deprived.

This typology, however, must not be confused with the similar concept of passive and active duties. *Passive duty* requires us to merely restrain from doing certain harmful things, whereas *active duty* commands us to perform certain actions actively (Wettstein, 2012b, pp. 41-42). It is argued that these two duties isolate the actions from the *consequences*. After all, one's passive duty is fulfilled if one simply doesn't do something, regardless of the result. While it is beyond the scope of this research to investigate consequentialist/utilitarian territory, only the implications of negative duty (and further, of corporate human rights responsibility as negative duty) will be reflected upon here. That is, negative duty can be either passive or active. This is because the negative duty emphasises the consequences (impacts) of certain actions on human rights, the core of which is to avoid infringing them. But in order to achieve this, certain actions have to be performed to eliminate the risks to the human rights of others. For instance, a construction company has the duty to actively secure the surroundings of building sites and eliminate the possible harm or danger to local communities and pedestrians, even if no actual harm has yet been caused. This negative duty to do no harm to others incorporates an active duty to ensure its realisation. The boundary between negative and positive duties is not always clear and beyond debate. This complicates the process of identifying, assessing and implementing the human rights duties in many real life scenarios in which the subject of duty-bearers extend from state to the corporations (Campbell & Miller, 2004; Ruggie, 2013a; Wettstein, 2009). Several scholars contend that in some cases the negative duty is not "purely" negative, and contains the elements of positive duties (Griffin, 2008, p. 96; Raz, 1984, p. 212; Shue, 1996). For instance, to guard the right to liberty requires the provision of courts, police, etc by the state. Fasterling & Demuijnck (2013, p. 804, see also, Lane, 2004, p. 150; Wettstein, 2012b, p. 41) exemplify that positive action to avoid certain outcomes is sometimes the prerequisite for fulfilling negative duties, in the case of business complicity. They state that if the corporation is

¹¹ See Section 4.4.1 for the discussion on the "duty" and "responsibility" in the UNGPs

benefiting unethically from a contract or relationship with the state which is causing adverse impacts on local human rights, it has the positive duty to proactively terminate this relationship in order to mitigate the negative impacts¹².

However, in practice we often face the thorny issue of how to define and justify the extent of positive duty. Surely we all have the right to education and health, and the state has a positive duty to observe this duty—but to what extent? In the case of the right to life, Griffin (2008) suggests that one possible limit of positive duty is to view life “as a normative agent—that is, to characteristic human existence. It is not a right to that ultimate human goal: a good, fulfilled, flourishing life...The right to life is merely to survival as an agent”. Nevertheless, he also agrees that even this seemingly low bar is still quite demanding—whilst one has the duty to aid mortal distress, there are millions starving around the world. If, as we have discussed, corporations are entitled to positively influence the working practice in hosting countries in order to fulfil the negative duty—say, the duty not to hamper the right to freedom of association—then it might be required to take actions to make this happen. In a country where the freedom of association is restricted, then normatively the corporation should influence the state. However this poses significant challenges, as corporations, as private institutions, cannot legitimately influence or interfere with political choices (Macdonald, 2011a, p. 560). It is argued that the attempt to clarify, institutionalise and contextualise such ethical dilemmas contributes to the importance of the SRSG’s framework as articulated in the UNGPs¹³.

3.2.2 *Beginnings of human rights: a historical review of China*

Parallel to the *beginnings* of human rights in Western culture, during its enormously extensive history China also bred its own notion of human rights. Indeed there are studies questioning the compatibility of traditional Chinese culture and human rights (Donnelly, 1982a). However several cogent arguments have been made that different cultures should be entitled to their own perceptions of human rights, rather than merely to adhere to the human rights as constructed under Western ideology (Chan, 1999; Cmiel, 2004; Foot, 2000; Nathan, 1994; Peerenboom, 1993; Peerenboom, 2005; Weatherley, 1999; Wen &

¹² See more discussion on the positive duty and complicity in the business sphere in Section 4.4.3.

¹³ More discussion in the business discourse and the SRSG’s approach in Section 4.4.3.1.

Akina, 2012b), and especially with regard to business-related human rights issues (Graafland & Zhang, 2014; Ip, 2009a; Miska, Witt, & Stahl, 2016). This invokes the important discussion on the universality of human rights which I attempt to address in Section 3.2.2.3.1. This research values both approaches, but tends to emphasis the local contexts, and it is based on this argument that I extend my discussion on the contextualisation of the UNGPs in China. Nevertheless, as it is not realistic to include everything in the Chinese intellectual heritage regarding human rights in this section, the topic will be approached from two avenues: the *beginning* of the classical understanding of human rights enshrined in Confucianism and the *beginnings* of the construction of human rights in contemporary Chinese society, assimilating different ideological streams such as Marxism, Asian values and Western interpretations of human rights.

3.2.2.1 Beginning of Confucian human rights

Before we delve into the inception of the idea of human rights in Confucianism, it should be made clear that this is not an ideology exclusively related to human rights. The reason for construing it as the representative of the *beginning* of traditional Chinese human rights thinking is not only because Confucianism demonstrates a strong humanistic sense, and contains human rights ingredients (Bell, 1996; Chan, 1999; Davis, 1995b; Rosemont, 2004; Svensson, 2002; Weatherley, 1999; Wen & Akina, 2012ab), but also because Confucian thinking is still prevalent in Chinese society today, including the business sector (Chan, 2008; Gao, 2009; Ip, 2009ab; Kim, 2014; Shafer, Fukukawa, & Lee, 2007).

Confucianism was developed by the Chinese philosopher Kongzi (孔子) (551-479 BC), who was renamed by the Jesuit missionaries as Confucius. Surrounded by his disciples, his teachings were recorded by them and then distilled as a set of pragmatic rules for everyday life (Hofstede & Bond, 1988), which take material form in the *texts* named Four Books and Five Classics (Sishu wujing, 四书五经). It is through this process that the *beginning* of Confucian human rights was established. Though scholars have attempted to explore the correlations between Confucianism and human rights from different perspectives, this section focuses on three of its key interrelated principles or credos, which underpin the examination of the reception of human rights by both workers and managers at Chinese workplaces. It is argued that the *intentionality* of Confucian human

rights is embedded within those principles. The three key principles are: the hierarchical concept of *Wulun* (五伦), the idea of familial collectivism and the notion of harmony.

First, the notion of *Wulun* (the Five Basic Relationships) and the ethics of hierarchy in Confucianism will be examined here. According to Confucian thinking, the stability of society is grounded on five hierarchical social relations: ruler/subject, father/son, older brother/younger brother, husband/wife, and older friend/younger friend. The obligations embedded in the relationships highlight respect and obedience from below, and protection and consideration from above (Hofstede & Bond, 1988; Peerenboom, 1993). Rather than being an obscure ideology detached from real life, these social relations are still observed in the modern era, and uphold the Chinese (or Asian) social structure (Wen & Akina, 2012a). In this system all the individuals are assigned certain roles and positions, corresponding to which they are entitled to certain rights and bear certain duties (Weatherley, 1999). Therefore the Confucian context precludes the idea that human rights pertains to individuals; rather the rights and duties arise solely from a web of social relations (Chan, 1999). To some extent, this is distinct from the Western liberal ideology's emphasis on the autonomy of individuals (Ip, 2009b; Rosemont, 2004; Wen & Akina, 2012a), a fact which arguably builds obstacles to the implementation of international human rights instruments in China. On the other hand, while the hierarchy might be benign, in that it stabilises the social order, nevertheless it breeds domination and submission (Ip, 2009b). This is transferrable to the situation the workplaces, where Chinese workers involved in paternalistic relationships are coerced to unconditionally obey the orders given by managers (Krueger, 2008; Pun et al., 2016). As can be seen, all the relationships are familial in nature (Ip, 2009b). This leads to the second aspect of Confucianism.

Based on the five hierarchical relationships, the familial relations and collectivism are the backbone of the Confucianism. The Confucian "family" extends beyond its traditional sense in the West, which refers only to the basic unit in society, normally consisting of parents and children. Rather, it implies the prototype of all social organisations, including business organisations (Hofstede & Bond, 1988). People within the five relationships are primarily not independent, and should place collective values above their own. Hence their rights are socially shaped and constrained within the relationships and interactions within the family (Ip, 2009a, 2009b; Weatherley, 1999). From this line of reasoning many

scholars contend that Confucianism entails collectivism and paternalism. That is, people are from birth integrated into cohesive groups in which they exchange their loyalty and commitment for protection and resources (Hofstede & Bond, 1988). As a consequence, individual needs are subordinated to the collective rights (Chan, 1999; Earley, 1989; Peerenboom, 1993; Shin, Ishman, & Sanders, 2007; Wen & Akina, 2012b). In other words, self-interest is silenced in the presence of the collective interest. Based on this point, many Western scholars criticise the collectivist view of human rights in Confucianism, and some even doubt the existence of any Confucian idea of human rights (Peerenboom, 1993; Rosemont, 2004). Furthermore, these differences between Confucianism and Western human rights ideology provides fertile ground for *molestation* during the implementation of the UNGPs in China. That is, as workers are routinely required to sacrifice their rights in favour of the collective rights, the liberal thinking in the UNGPs is likely to get lost or *molested* (Hofstede & Bond, 1988; Ip, 2009b).

Third, another dimension of human rights in Confucian thinking is harmony, which is a *beginning* both enshrined in Confucianism and revived more recently in top level political discourse (Delury, 2008; Lu, 2009; Marquis & Qian, 2013; See, 2009). It is not surprising that the collectivism highlighted in Confucianism fosters a partiality for harmony in both ancient and contemporary Chinese society (Ip, 2009b; Shin et al., 2007). According to Chan (1999, p. 227), the Confucian ideal of a harmonious society highlights “the virtues of concession and yielding rather than competition and self-assertion”. Achieving harmony is the common goal for familial, organisational and political lives and should be practiced in both personal and social activities (Ip, 2009b).

Now let’s quickly forward to modern times, especially after the Fourth Plenum of the 16th Communist Party of China (CPC) Central Committee in September 2004. During this plenum the notion of the “harmonious society” was officially put forward by the central committee (Ip, 2009a). Later, in 2006, the committee of the Sixth Plenum of the 16th CPC Central Committee issued the Communiqué on the “Resolutions of the CPC Central Committee on Major Issues Regarding the Building of a Harmonious Socialist Society”, stating that:

“(We must) follow the overall requirement of building a democratic society under the rule of law, a society based on equity and justice, an honest and caring society, a society full of vigour, and a stable and orderly society in which humans live in harmony with nature,

strive to develop social services, promote social equity and justice, foster a culture of harmony, improve public administration, enhance the creativity of the society, pursue the road of common prosperity, and push forward coordinated development of social construction, economic construction, political construction and cultural construction with the emphasis on solving issues people care about most and issues that concern their most immediate and most realistic interests” (Xinhua, 2006)

By upholding the notion of harmony, an important *beginning* can be witnessed from the *texts* disseminated by the Chinese government. The *intentionality* is quite explicitly expressed in the *text*, which is that the government is expanding its perspective from the traditional emphasis on economic development to a renewed focus on achieving a balance between social and environmental harmony (Lu, 2009; See, 2009; Woo, 2007). This is perceived by scholars as the response to the widening gap between the development of urban and rural areas, the deficient social security system, poor accessibility to social security, etc—all of these are undermining the stability and development of the society (Lin, 2010; See, 2009). Within the business regime, the propagation of a harmonious society has led to the burgeoning literature on CSR in China, as business and government are seen to share common goals (Ip, 2009b; Marquis & Qian, 2013; See, 2009). By the time the works just cited were published, many Chinese business managers were aware of the notion of CSR¹⁴.

Many scholars argue that the notion of harmony in contemporary China is deeply rooted in Confucianism and therefore its *beginning* can be regarded as a revival of the *beginning* of traditional Confucian thinking in China (Angle, 2002, 2008; Chan, 1999; Delury, 2008; Ip, 2009b; Shin et al., 2007a; Weatherley, 1999). Angle (2008) contends that the notion of harmony (*hexie*, 和谐) is an apt translation of the notion *he* (和) in Confucianism, which implies balance, peace and connectedness among all the entities in a society. Delury (2008) argues that the Confucian harmony is associated with “prosperity, solidarity, and consensus”. At this point of the discussion, “harmony” refers to the hierarchical social relationships we discussed above. This means that in order to achieve a state of harmony, it is necessary for each person to adhere to clearly predefined positions, as is articulated in the *Wulun* (Weatherley, 1999). Thus the underlying meaning of harmony also involves locating the perception of one’s self-interest and rights within the net of relations with

¹⁴ The CSR and human rights will be discussed in Section 3.4.4.

others, which itself leads to the respect for legitimate authorities throughout society, including within workplaces (Angle, 2008). As a consequence of this line of reasoning, scholars worry about the possibility that personal rights might be suppressed or even sacrificed in the name of harmony or the collective rights of the company (Ip, 2009b; Westwood, 1997). This trend constitutes another possible source of *molestation* of the UNGPs in the Chinese context.

3.2.2.2 Beginning of human rights in China after late Qing Dynasty

While there is no doubt that Confucianism exerts tremendous influence on these *beginnings* of human rights in the Chinese context, one should not ignore the transformation of the discourse stimulated by the radical social and political changes after the period of the late Qing Dynasty around the 1900s (Svensson, 2002; Weatherley, 1999). The catastrophic consequences caused by foreign aggression, and the incompetence of the Qing government made Chinese intellectuals realise that a social and economic reform was needed to save the country (Lam, 2003). Many scholars, prominently Kang Youwei (康有为), Liang Qichao (梁启超) and Sun Yat-Sen (孙中山) were among the first group of reformers to turn their gaze to Western culture on the topic of human rights, hoping to find a path forward. However, what they did was not to take a monolithic view and accept Western thinking without critical evaluation. Rather, they attempted to assimilate it into traditional Confucianism, for the sake of their political needs (Svensson, 2002; Weatherley, 1999). Due to the suffering caused by the invasions, and thereafter the immediate threat to the national security, their primary concern was to safeguard the sovereignty of China (Svensson, 2002). Against this background, the notion of collectivism in Confucianism was invoked in their *beginning* regarding human rights. Their argument was that people have the duty to respect collective rights with regard to the entire country, without which individual rights cannot be guaranteed (Svensson, 2002, p. 109). In fact, nationalistic concerns dominate the Chinese national discourse and are manifested in the postures the government takes towards the UN human rights regime (Angle, 2002; Chen, 2009; Nathan, 1994; Orentlicher & Gelatt, 1993; Peerenboom, 2005; Sceats & Breslin, 2012; Weatherley, 1999; Whelan & Muthuri, 2017), including the UNGPs as the findings of this research reveal in Section 6.4.

Parallel to the exploration of how to integrate Western ideology with Confucianism, the Chinese human rights discourse is also shaped by the *beginnings* of Marxist and socialist perceptions of human rights (Svensson, 2002; Weatherley, 1999). Both Kang Youwei and Sun Yat-Sen believed that capitalism could not bring about equalisation between the wealthy and the poor, and therefore is incapable of fulfilling Confucius' dictum that the eradication of poverty depends on equality. Hence the embryonic form of capitalism failed to gain legitimacy in China (Lam, 2003). Also, the superiority of collective rights can be found in the congruence between Confucianism and Marxism. For instance, Marx conceives individuals as "species being", which are the intrinsic part of the society, and the realisation of their rights depends on the collective interests (Svensson, 2002; Weatherley, 1999). Therefore the endorsement of Marxism reinforced traditional collectivism in China.

3.2.2.3 Defining human rights: another two debates

Continuing the historical review of human rights from the Chinese perspective, this section now discusses another two debates out of four around the nature of human rights, namely on human rights as universal or relative rights, and the categories of civil/political rights and social-economic rights. These two debates are greatly influenced by the *beginnings* of human rights in China, which in turn are rooted in the Chinese stance towards the international human rights regime and the UNGPs.

3.2.2.3.1 Universalism & Relativism

Considering the moral argument around human rights, it is tempting to conclude that human rights are a universal idea that encompasses the same meaning for every country and culture in the world. However this is not the case. There is a long-lasting debate over the universal understanding of the concept of human rights. The traditional proponents for "universality" mainly rest their argument on the moral dimension, which they argue to have universal applicability regardless of class, sex, religion and nationality (Chan, 1999; Cragg, 2012; Donnelly, 1982b; 2013, p. 94; Griseri & Seppala, 2010; Sen, 2004; Wettstein, 2012a, p. 741). They point out that the concept is also enshrined in international

instruments such as UDHR and IBHR, which have been endorsed by almost all countries (Donnelly, 2013; Orentlicher & Gelatt, 1993, p. 102; Whelan et al., 2009, p. 370).

However, this approach is questionable. The late 1980s witnessed the rise of the notion of cultural relativism, which holds that moral beliefs and values (e.g., human rights) of different cultures are often incompatible in various ways, and judgements regarding them can only be made based on the cultural criteria specific to each society (Ip, 2009a, p. 219; Peerenboom, 2003). By focusing on the notion of human dignity, Donnelly (1982a) contends that not all societies approach the realisation of human dignity through invoking human rights in the way that most Western cultures do. Thus while the Western idea of human rights might be alien to cultures like the Islamic, African or Chinese, this does not necessarily hamper the understanding of human rights in these cultures. What is more important is that we should move beyond the demonstration of differences between Western and non-Western approaches to human rights, and start to assess the merits of each, in order to achieve pragmatic progress¹⁵. Gallhofer et al. (2011, p. 766) challenge the universality approach by arguing that the claims proposed in the name of human rights are defective in relation to legitimisation. For instance, it is hard to justify the argument that the moral weight of each human right is equal in all societies, and there is the possibility that the language of the moral nature of human rights will be abused and manipulated. In a similar vein, Mutua (2013) warns of the possibility of applying human rights from the perspective of western liberalism in other countries can take the form of neocolonialism or imperialism. In the business sphere, this is also a legitimate argument, which poses tough questions about the boundary between respecting human rights in the host country and interference in its internal affairs—a point repeatedly highlighted by the Chinese government (Haines et al., 2012, pp. 111-112; Orentlicher & Gelatt, 1993, p. 102; Werhane, 2016, p. 18).

Over the past twenty years, most scholars both of the human rights doctrine and of the BHR regime have attempted to move beyond the universalism/relativism dichotomy. It is commonly agreed that relying on either end of the continuum can be dangerous and counterproductive to the BHR discipline (Brown, 1997; Donnelly, 2007; Gallhofer et al., 2011). Gallhofer et al. (2011, 768) state that: “A universality respecting cultural differences is pursued—respect for difference itself is recognised as a universal principle”. They

¹⁵ This rather pragmatic approach is also embedded in the UNGPs, see Section 4.4.5.

further contend that it is vital to foster openness to local particularities and treat them with respect—a new form of universalism which reconciles the difficulty. Gray & Gray (2011, p. 783) refute the claim that isolating the discussion of human rights from the local context is a “potential nonsense”, at least in the practical sense. They argue that this exists because of the ambiguous relation between our rights (individually or collectively) and the obligations we need to bear for the realisation of such rights (see also, Whelan et al., 2009). Lewis & Unerman (1999) employ the term of “universal prescriptivism” to describe that while extreme antisocial behaviour is universally wrong, but the judging of many behaviours shall be based on local context. Respectively in the human rights domain, Donnelly (2007, p. 105) puts forward the phrase “relative universality of human rights”. This notion is constructed upon the observation that while the implementation of human rights is relative with regard to the local contexts (e.g., social, cultural, political, etc), at the conceptual level it has a universal implication which is enshrined in authoritative documents such as the UDHR. Therefore the description of “*relative universality*” is apt. Chan (1999) also elaborates an approach for achieving relative universalism by seeking an “overlapping consensus” on human rights, which has originated from different cultures, through exercising dialogue and communication (Rawls, 2005; see also, Uvin, 2004, p. 22). Angle (2002, p. 11) employs the dichotomous concept of “thick and thin” to demonstrate that the universal “thin” human rights can be integrated with the local “thick” concepts and interpretations of what they constitute (see also, Walzer, 1994). To summarise, by refusing to be confined to the universal/relative divide, these scholars take a dialectical perspective for examining the evolution of a malleable concept of human rights in local contexts (Cmiel, 2004, p. 126). By asking how the universalistic notion is localised and made practical, their ideas shed light on the approach taken by this study and the selection of Said’s theoretical framework as appropriate to express this feature of the human rights question. That is to say, Said’s thought is useful here because of the high value it explicitly places on pluralism in the perceiving and understanding of a single *text*, which is manifested in his notion of *molestation*.

After this rather brief overview of the universalist/relativist arguments on human rights, it is important to reflect on the implications of these diverse arguments for this study. As it has been stated above, few (if any) scholars classify themselves as extreme universalists or relativists. Thus it is appropriate to locate the approach this study takes at a certain point in that spectrum. That is, it cannot be denied that all human beings are entitled to

the basic rights which should have universal meaning and applicability across different countries and cultures. However, when it comes to the realisation of these rights, significant variations apply. For many occasions there are no simplistic “right” or “wrong” scenario, rather the reality requires that much work should be done to contemplate the local context, the nature of the problem and the most pragmatic way to tackle the issue. This is especially the case in BHR where there are many “grey areas” in between for corporations to manoeuvre around. Furthermore, sometimes applying the “right way” to mitigate human rights impacts in a different context might prove to be counterproductive. Also one must bear in mind that stereotyped thinking, especially in relation to human rights, should not be intuitively imposed on other countries with significant backgrounds without justification and adaptation. This also sheds light on the theoretical framework adopted in this research, which focuses on the discursive nature of the reinterpretation of the authoritative *text* of the UNGPs by different levels of actors.¹⁶

3.2.2.3.2 Civil/political rights & Social/economic rights

The discord and contestation around the universality of human rights can be distilled into the debate on two clusters (or generations) of human rights.¹⁷ They are the first generation, of civil/political rights, and second generation, of social/economic rights. As it has been discussed in Section 2.2, whilst both rights are inscribed in the *texts* of the UDHR and the following IBHR, which represent the official recognition, the understandings and interpretations of the nature of these rights are divided. Such division is still ingrained in international society today. Consider just one example: whilst China is still in the process of officially ratifying the ICCPR¹⁸, the US has not yet ratified the ICESCR. This means each of the two major human rights covenants has not been ratified by one of the two major economies in the world, which cover 25% of the global population (Peerenboom, 2005, p. 78; Sceats & Breslin, 2012, p. 33; Whelan et al., 2009, p. 370). This section aims to discuss the contentions behind the two categories of human rights from the angle of the

¹⁶ This is discussed in detail in Chapter 2.

¹⁷ A “third generation”, of the right to development, has been put to the fore by many developing countries including China. This will be further discussed in the third sub-section below and further in Section 6.4.2.2.

¹⁸ It should be noted that Chinese government signed the ICCPR on 5 October 1998, and has already initiated the policy review process with the aim to its ratification (Chen, 2009, p. 404; Potter, 2007, p. 709).

universality of human rights. Furthermore the “third generation”, of rights to development, will be contemplated and the attitude of Chinese government explained.

Civil/political rights

To take a quick review of the history of human rights, the traditional emphasis on civil/political rights in Western countries stems from its origin in Ancient Greece, which underscores the idea of “natural rights” (Kent, 1991, p. 171). Recall the Western liberal philosophers’ (e.g., John Locke) contention that human rights (i.e., civil and political rights) are gifts from the Creator (Ferrone, 2017; Rosemont, 2004, p. 58; Werhane, 2016, p. 11; Whelan et al., 2009, p. 369). While it is true that people today seldom justify human rights by referring to God, the belief that people are entitled to civil and political rights is deeply rooted in the view that human beings are essentially autonomous individuals, with such a thing as human nature (Angle, 2002; Donnelly, 1982b; Hart, 1955; Rosemont, 2004, p. 58; Sen, 2004; Svensson, 2002, p. 21; Wettstein, 2012a, p. 741). This underlies the sense of universality which is independent from the social, economic and political contexts of a society (Rosemont, 2004; Wettstein, 2012a, p. 741). Several scholars argue that this is why civil/political rights are fundamental rights while social/economic rights are not. For example, Rosemont (2004) contends that the proponents of the notion that social/economic rights should have the same status as civil/political rights will find themselves in a problematic position, as the realisation of social/economic rights is dependent upon the diverse standards of social development, and cannot be justified based on the premise of the autonomy of individuals¹⁹. While acknowledging the value of this approach, this research holds that not every culture shares the same notion of natural rights, and the guarantee of civil/political rights requires the active role of states (Ruggie, 2013a; Scherer, Palazzo, & Baumann, 2006, pp. 505-506). This complicates the situation, considering the heterogeneity of the world’s political systems.

I now attempt to define the meaning of civil/political rights in the context of this study on BHR. One way to approach the concept is to dismantle it into civil rights and political rights (Weatherley, 1999, p. 24). “Civil rights” confer the “right of immunity” on individuals, which implies the baseline of non-interference from other individuals or

¹⁹ See more on positive and negative duties in Section 4.4.3.

organisations, regardless of the general social conditions (Kamenka, 1985; Kent, 1991, p. 172). The core elements here include “non-interference” and “detachment from social conditions”. But whereas the former writers categorise civil rights as “negative rights”²⁰ (Alston & Quinn, 1987, p. 159; Peerenboom, 2005, p. 153; Weatherley, 1999, p. 24) the latter demolish the argument that a certain level of social-economic standards is the premise for their realisation. Both these authoritative documents, the UDHR and the ICCPR, provide an exhaustive list of civil rights. Instead of providing a complete account of rights, some of those relevant to the human rights at the workplace are listed here: freedom of expression and association, freedom from torture or mistreatment, and equality before the law (McPhail & Adams, 2016, p. 665; UN, 1948). On the other hand, the term “political rights” refers to the rights of individuals to participate in political life, to “take part in the government of [their] country, directly or through freely chosen representatives” (UN, 1948, art 21). At the corporate workplaces these also include the right of access to public services (Kent, 1991, p. 172; Weatherley, 1999).

Social/economic rights

Regardless of the priority that Western states give to civil/political rights, it cannot be denied that the authoritative international human rights treaties (e.g., the UDHR) cover the whole spectrum of human rights, which includes both social, economical and cultural rights and the so called “third generation”, of the right to development (Kent, 1991, p. 171). This section adheres to the legal positivist approach taken by the UN, which is expressed through the demonstration of written consent, such as treaties and conventions (Felice, 2010). Thus social/economic rights (also referred to as welfare rights) can generally be seen as the combination of social and economic rights. That is, the former implies an adequate standard of living, which includes the rights to food, housing, health and education (UN, 1948, art 25), and the latter refers to the right to property (art 17), work (art 23) and social security (art 25). Labour rights, as a subset of social/economic rights, are of particular interest here (Ratner, 2001, p. 479). In the context of this study, such rights include the right to a standard of living, the well-being of the individual and the family, the right to equal pay for equal work, the right to reasonable

²⁰ The positive/negative rights argument has significant implications for elucidating the scope and nature of corporate human rights responsibility. This will be discussed in Section 4.4.3.

limitation of working hours, and the right to rest and leisure (Kent, 1991, pp. 172-173). It should be noted at this point that civil/political rights and social/economic rights converge when they denote the right to strike and to freedom of association, which further comprise “a special category of industrial rights” (Kent, 1991, pp. 172-173, see also, Felice, 2010).

Although both categories of rights seem to be symbiotic here, in reality, a consensus is far from having been reached. There is a plethora of research arguing that it is imperative to consider the local context before concluding that the civil/political and social/economic shall be assigned the same weight everywhere in the world. This echoes the relativism of human rights (see Section 3.2.2.3.1), but it also relates more to the political sphere, a fact which is backed up by the prevailing claims. Some of the most typical claims include the Asian value debate (Davis, 1995b; Nathan, 1994; Svensson, 2002), and the concern over interference in internal affairs under the cover of upholding civil/political rights (Davis, 1995b; Foot, 2000; Goldsmith, 2000). China has openly expressed its concern about the sovereignty issue (Nathan, 1994, p. 628; Peerenboom, 2003, p. 41; 2005, p. 82; Sceats & Breslin, 2012; Svensson, 2002; Weatherley, 1999; Whelan et al., 2009), and more importantly, it relates to the contentious debate about the quasi-governmental status of business, regarding human rights issues in developing host countries (Brenkert, 2016; Ruggie, 2004; Wettstein, 2009).

The “third generation of human rights”: the right to development and self-determination

The gap between developed and developing countries’ perceptions of social/economic rights is further manifested in the debate on development as a human right. The “right to development” entered the human rights vocabulary in the 1970s (Uvin, 2004, 2007). Despite the long history of the concept of development, its meaning is still somehow elusive and the interpretations are diverse (Hamm, 2001, p. 1009; Rist, 2007). As it is not the intention of this study to offer an intellectual genealogy of development, this section focuses on the implication of the *beginning* of development in the human rights discourse, and thereafter on the Chinese position. Under the rubric of the right to development, the “third generation” houses a broad spectrum of human rights and is therefore hard to define. Uvin (2004, p. 14) reveals one profound shift in the human rights doctrine, brought about by the right to development, which is the notion of collectivism

embedded in it. Both the civil/political rights and social/economic rights revolve around the individual, whereas the right to development spells out the rights of a group of people. Hence Uvin (2004, p. 14, see also, Alston, 1982) also classifies it as “collective” or “solidarity” rights, which is arguably congruent with the *beginning* of collectivism in the traditional Chinese thinking of Confucius²¹. This has made it possible for the adoption and the improvement of the right to development discussion within the Chinese national discourse. Furthermore, the right to development also posits an account of self-determination which stems from the belief that it is not only that it matters that people should have rights, but what is more imperative is that people are capable of *realising* such rights (Uvin, 2004; Wettstein, 2009, p. 100). As a result, the right to development itself implies a right-based approach to human rights which is perceived to have strong political elements: the idea of empowerment and a focus on disadvantaged groups of people (Utting, 2005, p. 18; Wettstein, 2009, p. 100). That resonates with this research concerning vulnerable Chinese workers against powerful MNCs. Hence, it has the potential to advance the current BHR debate from its traditional focus on economic interests and CSR (Bijlmakers, 2018, p. 29). This approach has been firmly established at the international level through the annual *Human Development Report*, published by the United Nations Development Programme (UNDP) since 1990, which serves as the common platform for conceptualising and operationalising the right to development (Hamm, 2001, p. 1005; Wettstein, 2009, p. 101).

However, the consensus is yet to arrive in contemporary international society over understanding the development as the realisation of the entire spectrum of human rights on an incremental basis. Hamm (2001, p. 1006, see also, Donnelly, 1999; Kaufmann, 2004; Wettstein, 2009, pp. 101-102) argues that, while all human rights are understood as interdependent and interrelated, the traditional liberal approach to development highlights social/economic rights (especially economic growth) as the predominant concern. This is understandable, as whereas the issue of development falls into the study of economists and policy makers, more often than not the topic of human rights is dominated by philosophers and lawyers (UNDP, 2000). The emphasis on economic development represents the foundation of Asian values, as bluntly articulated by the Former Prime Minister of Singapore Lee Kuan Yew (Bell, 1996, p. 644), their firm advocate:

²¹ See Section 3.2.2.1 for the discussion of collectivism in Confucianism.

“As prime minister of Singapore, my first task was to lift my country out of the degradation that poverty, ignorance and disease had wrought. Since it was dire poverty that made for such a low priority given to human life, all other things became secondary...” (Lee, 1995).

Such a claim is largely shared by the Chinese government (Kent, 1991, p. 174; Svensson, 2000, p. 210). In fact, throughout the recent history of human rights in China, the right to development always acts as the main prerequisite for achieving the others. According to the speech by Chinese Delegation Head at the Vienna Meeting in 1993:

“For the vast number of developing countries, to respect and protect human rights is first and foremost to ensure the full realisation of the rights to subsistence and development...” (Angle, 2002, p. 242)

More recently, the stress on economic development as the core element of this right is evident in a series of *Human Rights White Papers* published by the Chinese government from 1991 (they will be further discussed in Section 6.4.2). For instance, the 1991, 1995, 1997 and 2000 white papers all reiterated the argument that the right to subsistence and (economic) development are paramount human rights, rising above the civil/political (Potter, 2007, pp. 710-711). Particularly in 2016, China’s State Council Information Office (CSCIO) issued a White Paper titled *The Right to Development: China’s Philosophy, Practice and Contribution*, which specifically positions development at the centre in recognition of its capacity for solving major problems, and maintains that it should take precedence over civil rights²².

The propensity to depict the right to development mainly in terms of economic development and the self-determination embedded within has received persistent opposition from the Western nations (Cmiel, 2004, p. 123). Wettstein (2009, pp. 101-102) points out the two “blatant” shortcomings in concentrating only on economic development. First, he argues that it is misleading to focus on economic benefits, as the ultimate subject of human development should be human beings. Second, he contends that economic growth and the boosting of GDP *per se* are not the panacea; quite the opposite, a society can be destabilised and living standards may worsen if the wealth generated is not distributed in a fair way. In his commentary on China’s achievement in alleviating extreme poverty, UN Special Rapporteur Professor Philip Alston also contends

²² This document will be further analysed in Section 6.4.2.

that the reconciliation of development with the translation into full respect for human rights needs to be further studied (Alston, 2016).

It is instructive to interpret the three generations of human rights from the negative/positive view as discussed in Section 3.2.1.3.2. Rosemont (2004, p. 59, see also, Peerenboom, 2005, p. 153) contends that the logical gap between the first generation and second and third generations of rights is distinct. That is, in most occasions the respect for civil/political rights can be fulfilled by simply refraining from doing certain things; meanwhile the realisation of social/economic rights and the right to development demands that the state actively engages in larger scale resource management and relocation, and establishes an effective judiciary, which can be costly (Alston & Quinn, 1987, p. 159; Donnelly, 1982b, p. 393). Similarly, Uvin (2004, p. 14) demonstrates the positive nature of second-generation rights, which is clearly applicable to the right to education, and an adequate standard of living and health. All call for the state to positively promote specific social outcomes. Remember here the argument of the proponents of the view that civil/political rights are the fundamental ones, since these stem from the autonomous nature of human beings, which is inherent in every individual, and does not depend on social, economic or cultural contexts.

3.2.2.4 The Chinese interpretation

The position of Chinese government on the three generations of human rights has been quite explicitly exhibited in various *texts* both within and outside the UN regime, and it can be argued that these *texts* represent *beginnings* with the *intention* to consistently rebut any doubts concerning, criticisms of, or assaults on its human rights record. The basic stance of Chinese government can be summarised as this: while China recognises the universality of human rights and acknowledges its obligations under the international human rights regime (Chen, 2009, p. 404; Foot, 2000, p. 211; Sceats & Breslin, 2012, p. 8; Weatherley, 1999, p. 116; Wen & Akina, 2012b, p. 10), it also aims to incorporate and legitimise the Chinese interpretation of human rights into the international human rights discourse. As we have been in the above discussions this is achieved by upholding the relativist stance, in order to give the local social, economical and political context a higher priority in the international norms and treaties, and at the same time to tackle the issue of economic development and the relevant social/economic rights (Gray & Gray, 2011). In

addition, the Chinese government holds that the full realisation of human rights can only be achieved through legislative and juridical channels, which have been formalised in the Chinese Constitution and various laws (e.g., China Labour Law; Davis, 1995b, p. 220; Kent, 1991, p. 176; Peerenboom, 2005, p. 79). This is interpreted as a top-down process (Alston, 2016; Weatherley, 1999).

There are indeed criticisms of this approach to human rights, and some of them have been mentioned above. Overall, this opposition depends on four arguments: (1) that human rights are basic rights which shall not be limited to those given by the state or those spelled out by law (Nathan, 1994); (2) it is not always justifiable to prioritise social/economic rights over civil/political rights (Angle, 2002; Kent, 1991; Svensson, 2002); (3) likewise, it is not always justifiable to depict human rights as collective rights whilst individual rights are relatively neglected (Svensson, 2002; Weatherley, 1999, p. 199; Wen & Akina, 2012); (4) the sovereignty argument should be scrutinised to avoid the violation of human rights under the shield of national sovereignty (Donnelly, 2007; Peerenboom, 2003, pp. 41-42; Wettstein, 2009).

However, it should be noted that the Chinese approach to the international human rights regime has also gained support from Western scholars. Peerenboom (1993; 2005) appeals for a commensurate focus on both the achievements and the problems in Chinese human rights discourse. He argues that there are merits in the approach of the Chinese government, of prioritising social/economic rights. Acknowledging the tremendous economic and social achievements China has attained without major disorder, he claims that it is inappropriate in this case for Western countries to privilege civil/political rights above others; given the level of development in China, it is justifiable for the Chinese government to limit civil/political rights to a certain extent, to ensure social/economic rights are fulfilled. Besides, this policy has been widely supported by the Chinese people and the majority of the poor citizens in developing countries. He further contends that the idea of the universality of human rights is merely rhetorical, and detached from the real needs of local people. This has been backed up by various scholars studying the interpretation of human rights by rapidly growing Asian countries. This is summarised by Bell (1996, p. 645), who contends that to curb certain rights in a particular context in order to achieve long-term development has received significant support from both the

Chinese government and its citizens, as well as in many Asian countries as manifested in the Asian value debate.

The preference for social/economic rights is transferrable to the business sector. The research of Whelan & Muthuri (2017, p. 741) on Chinese state-owned enterprises (SOEs) suggests that while Chinese SOEs are under international pressure to respect *all* human rights, such pressures are countered by an equally strong demand, which is to prioritise social/political rights, i.e., social and political rights. In a similar vein, Ruggie (2006) examined the human rights policy of 25 Chinese private companies and SOEs by comparing them to 300 companies globally. He concluded that the Chinese companies (both private and state-owned) more frequently exhibit support for social/economic rights and the right to development. While such studies may represent the situation in Chinese domestic companies, it however remains to be seen how MNCs operating in China perceive different categories of human rights, and balance them with one another. This research aims to fill this gap by looking into the implementation of MNCs' human rights policies in China.

3.2.3 Summary

Reflecting on the Western perspective on human rights, this section is particularly interested in those intercultural studies which underscore the nexus between Eastern (especially Chinese) and Western perceptions of human rights. In other words, the *beginnings* of human rights initiated in China and the West will be contemplated. They are characterised by their *intentions* to depart from the current status quo, as well as their connections with other *beginnings*. Our discussion is enlightened by the belief that as the *beginnings* of human rights are enshrined in different cultures and societies in the form of discursive *texts*, they are essentially historically and politically constructed (Benedek, De Feyter, & Marrella, 2007; Donnelly, 2011; Gallhofer et al., 2011; Peerenboom, 2003; Svensson, 2002). Indeed, it is rebuttable that the concept of human rights, if regarded as the basic rights held by all human beings, implies a sense of universality (Brenkert, 2016; Fasterling & Demuijnck, 2013; Wettstein, 2009). However, the contemporary world still sees the divide between the pronouncements on human rights uttered by *texts* disseminated by China, and those uttered by Western cultures (Angle, 2002; Krueger, 2008; Peerenboom, 2003). The influence of such a divide in the *texts* extends beyond the

scope of the state and is substantiated in the business sphere by materialising the discords and contestations around the *beginnings* of UNGPs and the *beginnings* thereafter (Gallhofer et al., 2015b; Mathews & Reynolds, 2001; Miller, 1998; Robson, 1991; Sinclair, 1995). Therefore it is necessary to set the backdrop of this research, based on the multi-actor perspective which emphasises their heterogeneous nature.

3.3 The *Beginning* of UDHR: the convergence of East and West

The 1948 UDHR represents a watershed for the *beginnings* on human rights. For the first time in human history, the discursive *texts* and the utterances on human rights converge at the international level of the UN, and its *beginning* is manifested in a robust representation in the *text* of the UDHR (Kent, 1991; Svensson, 2002). In particular, the *beginning* of Confucian thinking on human rights is either positively endorsed by the *text* of the UDHR or at least compatible with its provisions (Angle, 2002; Hoover, 2013; Kent, 1991; Svensson, 2002; Waltz, 2002). Therefore it is worth exploring how the *beginnings* of human rights in China (e.g., the emphasis on social/economic rights) is embedded in the UDHR, which sheds light on the adaptation of the UNGPs in China. Second, as the cornerstone of the international human rights principles, the UDHR sets the baseline for engaging with human rights issues for a wide range of actors, including businesses (Benedek et al., 2007; Gray & Gray, 2011). Thus it has far-reaching implications for the upcoming *beginnings* and *texts*, and acts as the blueprint for drafting these *texts*, including the UNGPs. An examination of the UDHR lays the foundation for the discussion of UNGPs in Section 4.4.

3.3.1 Background

As a collective response to the rampant spread of human rights abuses that preceded and accompanied the Second World War, the UDHR is the *beginning* of the modern human rights doctrine, uttered with the *intention* to achieve consensus among countries with distinctly different contexts (Cragg, 2000; Frankental, 2002; Seppala, 2009; Whelan et al., 2009). Despite the historical discords and contestations among different cultures on the

meaning of human rights, the notion of the universality of human rights is evident from the drafting process of the UDHR (Waltz, 2002; Whelan, Moon, & Orlitzky, 2009). The first UN Commission on Human Rights oversaw the entire drafting process, which benefited from the participation of representative states with diverse cultural backgrounds comprising Australia, Belgium, Byelorussia, Chile, China, Egypt, France, India, Iran, Lebanon, Panama, Philippines, Ukraine, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America, Uruguay and Yugoslavia (Whelan et al., 2009, p. 370). Moreover, throughout the process, various NGOs and states not represented on the Commission were also consulted (Benedek et al., 2007; Waltz, 2002). Hence the UDHR represents a common agreement on human rights protection between countries with different cultures and traditions.

The UDHR is comprised of 30 Articles, covering a comprehensive and reasonable list of human rights ranging from civil/political rights to social/economic rights, largely irrespective of the local culture (Donnelly, 2007). The underlying tone is set by the first three Articles (Gray & Gray, 2011):

Article 1: All 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.

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3: Everyone has the right to life, liberty and security of person (UN, 1948).

The above quotations unambiguously conceptualise the nature of human rights as inalienable, and inherent to all human beings regardless of social and cultural constructions (Donnelly, 1982b). This represents the official UN view. While it is undeniable that the issue of universalism/relativism of human rights still exists today and the UDHR still sets the tone for the notion of universality in the human rights doctrine (Donnelly, 2007).

3.3.2 *Beginning of the state-centric international human rights regime*

For a long time after the proclamation of the UDHR, the *beginning* of the state-centric international order, which depicts governments as the sole subjects of the UDHR, dominates the human rights question (Cragg, 2000). To a large extent this *beginning* has remained robust until today. Although it is commonly agreed that private actors (e.g., corporations) are increasingly enmeshed in the human rights debate, it is important to note that the current global order in terms of international human rights law and treaties is still state-centric in nature. Early demonstrations of this *beginning* can be found in Brierly's (1963) definition of international law as "the body of rules and principles of actions which are binding upon civilised States in their relations with one another". This definition implies that other actors are not directly obligated under international law, even if their activities clearly breach it. This is more pronounced in the human rights regime (Duruigbo, 2007, p. 226). Wettstein (2009, p. 156) which states that the human rights legislation is perhaps the best example of contemporary political realism, since it assigns the international human rights law exclusively to states, while other actors have at best secondary and indirect obligations. That is to say, non-state actors are only required to comply with the legal human rights duties stipulated in the national law. The state shall bear the responsibility if it fails to hold private actors or individuals accountable (Muchlinski, 2001, p. 32; Peerenboom, 2003, p. 18).

However, this well-established *beginning* is currently under profound reconfiguration, as these corporations are increasingly linked with human rights violations. People have started revisiting the opening *text* of the UDHR:

"Every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms..." (United Nations, 1948).

This argument is now evoked as the authoritative foundation for the application of the UDHR and other international instruments to corporations as "organ of society" (Henkin, 1999, p. 25; Muchlinski, 2001; Pegg, 2003; Sikka, 2011, p. 812). From the corporate perspective, MNCs have assimilated the UDHR into their CoC. This is perceived as a significant step, as it is in effect admitting corporate human rights responsibility under the international human rights laws, and thus is extending the boundaries of these laws

(Frankental, 2002, p. 131; Ratner, 2001, p. 466). That constitutes the background to this research and will be further discussed in Section 3.4.

3.3.3 The convergence of *beginnings* between East and West

Perhaps a good starting point to demonstrate the convergence of Western and Eastern *beginnings* on human rights is the coexistence of civil/political rights and social/economic rights in the UDHR. As it has been argued in Section 3.2.2.3.2, the first-generation, that of civil/political rights, are widely perceived by socialist and developing countries as the expressions of the Western ideology of individualism. For this reason, the *texts* of the UDHR embraced the full spectrum of human rights by including a set of new social/economic rights, showing no less attention to them than to civil/political rights (Angle, 2002, p. 241; Kent, 1991, p. 172; Svensson, 2002, p. 27). This tendency was inherited by the subsequent IBHR which converted the UDHR into legally binding initiatives²³ (Nathan, 1994, p. 623).

Another way of recognising the attempt to reconcile diverse cultures in the provisions of the UDHR is shown by the fact of its *multi-authorship*. According to Waltz (2002, pp. 441-442), people from different countries (including China) with separate cultural backgrounds all contributed to its drafting. (Svensson, 2002, p. 201). Waltz (2002, p. 442) further points out that extensive debates and discussions on its *texts* were conducted by the drafting committee, which consisted of eight states, including China. More specifically, the Chinese philosopher, and also Vice Chair of the Commission, Pengchun Chang, who stressed the importance to incorporate ethics and rights in the *text* of the UDHR more strongly than any other committee representative, has been acknowledged as the “towering intellect” of the committee (Gier, 2008; Hoover, 2013; Waltz, 2002, p. 443). Hence it is not surprising that there are scholars who argue that the UDHR is compatible with the traditional Chinese ideology of Confucianism (see, e.g., Angle, 2002). As a result, the UDHR can be regarded as an outcome of the conflicts and compromises of multifaceted and complex perceptions regarding human rights from diverse cultures, and thus is a truly universal project (Svensson, 2002, p. 201).

²³ The IBHR and China will be discussed in Section 3.3.4.

3.3.4 China and UN: From the IBHR perspective

The UDHR was never intended to be legally binding in the first place. Instead the legal duties regarding human rights were uttered and institutionalised in two subsequent treaties, the ICESCR and the ICCPR, which both entered into force in 1976. Together with the UDHR they are referred to as the IBHR. According to Campbell (2004), from the initiation of the IBHR, human rights are no longer merely the study subjects of moral campaigners and academics, they have acquired a tangible and palpable appearance, and are supported by most nations. Hence the *authority* of human rights has been established.

3.3.4.1 Defending its position: China's relativist stance towards the IBHR

As the title of this section suggests, China's posture within the UN human rights system is primarily watchful and defensive (Nathan, 1994, p. 622; Peerenboom, 2005, p. 73; Sceats & Breslin, 2012). Such a posture is intertwined with its emphasis on certain aspects of human rights (i.e., social/economic rights and the right to development), whilst retaining its interpretations on others (i.e., civil/political rights). Considering that China has fully embraced the other 21 covenants, this "selective adaptation paradigm" is perhaps most appropriately explained by a mixture of upholding the IBHR and the normative resistance to the local reception of international standards (Potter, 2007, p. 713). To be specific, in the case of the ICCPR, it is argued that complementarity issues must be resolved as a priority, in order to satisfy the local needs, which implies a hierarchy of human rights based on local realities (Potter, 2007, p. 714).

This tendency is of particular interest in this research because there is empirical evidence showing that the prioritisation of social/economic rights is transferrable to private business actors (see, e.g., Li & Belal, 2018; Ruggie, 2007c; Whelan & Muthuri, 2017). Therefore it is against this backdrop that the discourse on corporate human rights responsibility in China has been constructed, which arguably influences the interpretation of the UNGPs in the Chinese context.

3.4. Global governance, business and human rights

Although the history of business involvement in human rights infringements is as old as the corporation itself (Dowling, 2000; Stephens, 2002), it is only relatively recently, after the wave of globalisation, that we see a *beginning* of the rampant spread of unethical corporate operations all over the world (Bendell, 2000; Ruggie, 2008b, 2013b). Newspaper headlines, academic articles, regulatory documents and company reports have become increasingly attentive to corporate-related human rights scandals. In Said's terminology, it is in this way that the *beginnings* of BHR are captured in the discursive *texts* with different *intentions* for interpreting and influencing this trend in line with their interests and purposes.

While globalisation is a much discussed concept, and scholars have offered diverse perspectives on its consequences, this section focuses on a very specific research area with human rights at its centre. As this research sets out to explore the implementation of a particular *text*, that of the UNGPs, I intend to structure the discussion in alignment with the SRSG's examination of their social construction (Ruggie, 2017b). It takes as its initial background the tension between the economic actors (especially MNCs), on the one hand, who roam the globe pursuing profits, and the conventional state-centric governance mechanism within the international human rights regime on the other (Cragg, 2004). The interaction of different forces and their impacts on local human rights conditions has been most vividly demonstrated in the global supply chains of MNCs (Ruggie, 1998), leading to the retreat of the ability of states to regulate corporate activities, and the rise of governance gap. All these reflect the complex coordination between different actors in the field of BHR, projected in the polycentric governance. Hence a shifting discourse is taking place, which requires new paradigms in order to hold business actors accountable for their human rights impact. The intention is that these will lay the foundation for a discussion of the UNGPs in this research.

3.4.1 The rise of MNCs and human rights impacts

Although MNCs are not a new phenomenon, and their forerunners can be witnessed in the Middle Ages, MNCs that share the same characteristics with today's only occurred after 1970. Their prototypes were merely setting up local headquarters in other countries

to gain technological and managerial expertise (Wettstein, 2009). It was not until the later part of the twentieth century, especially after the 1960s, that the MNCs expended at an unprecedented rate, thanks to the advances in communication and transportation (Blitt, 2012; Brenkert, 2016). By the 1990s, MNCs had built bases in virtually all industrialised countries and taken the dominant position in marketing international goods and services (Vernon, 1992); and as Wettstein (2009, p. 167) argues, MNCs “have become more influential economically and politically.” Abdelal & Ruggie (2009, p. 154) depict MNCs as “the most visible institutional expression of globalisation.” This section, then, attempts to elucidate the increasing power of MNCs with the above comments in mind. Then the dominant debate around neoliberalism and embedded liberalism will be revisited which underpins the edifice of UNGPs.

3.4.1.1 MNCs as economic giants

Over the past two decades, neoliberal thinking has become inseparable from economic globalisation (Bartley, 2007). Advocated by the leading international force of the MNCs, neoliberal ideas stress the importance of free markets and corporate autonomy; meanwhile the states are obliged to boost the local economy through investment and deregulation, which is manifested and reinforced in countless national and international rules (Bartley, 2007; Sikka, 2011; Sorell, 2004; Wettstein, 2009). The surge of neoliberalism is intertwined with the expansionist nature of capitalism, which unremittingly craves higher economic surpluses on a global scale (Li & McKernan, 2016). It is against this background that MNCs gain tremendous economic power, which dwarfs that of many nations, by freeing themselves from national borders and the grip of governments.

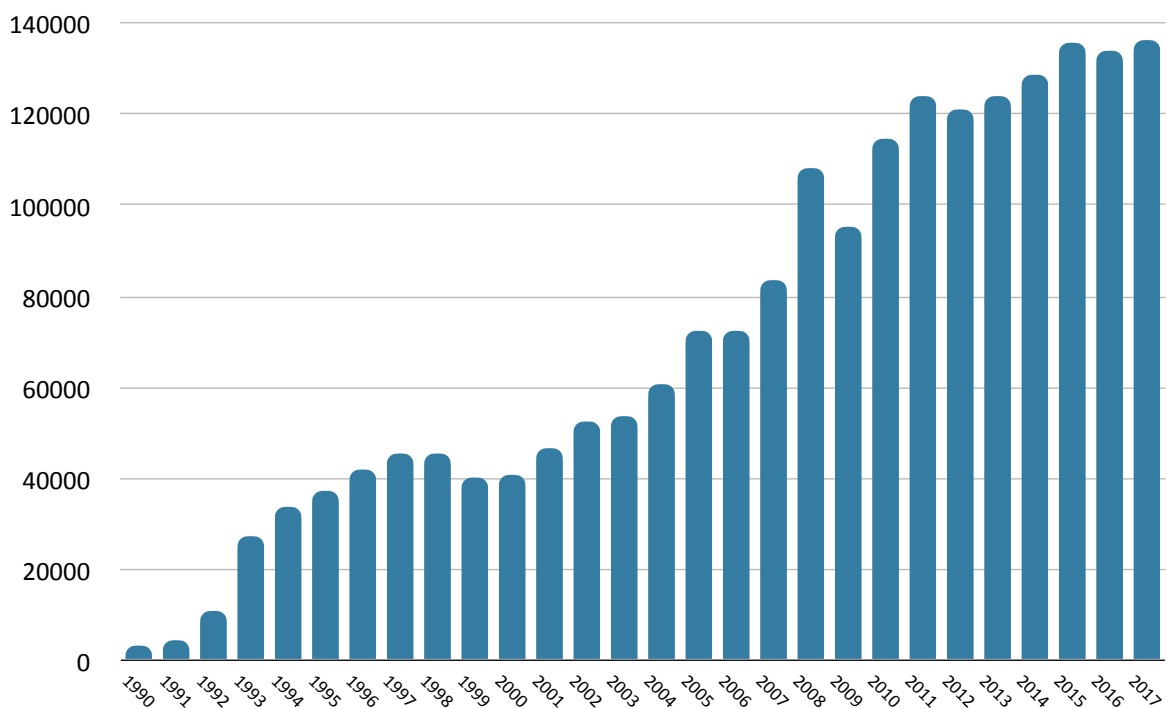
Perhaps nothing is more illustrative of the MNCs’ economic power than the statistics. According to Posner (2016, p. 708), if we list the world’s 100 biggest economic entities, half of them will be companies. As the most wealthy MNC in the world, the US technology giant Apple’s market value hit \$1 trillion in August, 2018 (Johnston, 2018). If Apple was a country, it would have been the 18th largest in 2018, in terms of GDP (Gross Domestic Product), rising above the Netherlands (International Monetary Fund, IMF, 2019). Moreover, according to Ruggie (2017b, p. 6) the MNCs have become the “major global

economic integrative force”, with 80% of global trade linked to their international production networks.

The significance of MNCs’ economic power goes beyond the enormous profits they have generated, and lies in their reconfiguration of the entire global production structure. Ever-increasing foreign direct investment (FDI) provides a good economic indicator of their international economic influence (Arnold, 2016, p. 266). In 2015, the annual global FDI reached its peak of \$1.92 trillion, among which nearly 38.7% flows into developing countries (UNCTAD, 2018). It is argued that MNCs have taken the dominant position over the nature of this trade (Sikka, 2011, p. 813). China, as one of the major destinations of FDI inflow (Sikka, 2011, p. 813) has increased its 1990 share of \$3847 million 39 times by the present day (see Figure 3.1, UNCTAD, 2018).

The reality is that governments, especially in developing countries, are competing for the FDI brought in by MNCs. This is because such investments add fuel to the engine which boosts the upgrade of the host country’s economic development. Giuliani & Macchi (2013, p. 480) argue that through FDI, host countries can benefit enormously from the employment opportunities and technology transfer provided by MNCs, which lead to an increase in the level of economic development. Jerbi (2009, p. 303) further states that

Figure 3.1 Increasing FDI inflows in China (1990-2017, USD Million)



Source: UNTAD, 2018

such a stance of attracting FDI has promoted the liberalisation of trade and investment policies, which in turn reinforces the economic power of MNCs.

However, on the other side of the coin, the capability MNCs have acquired to seek markets at the global scale has negative impacts on the local human rights conditions. Based on the report on the globalisation and human rights by the UN (2009), MNCs have power over states to ensure they receive the most advantageous benefits, which often lead to deregulation and less scrutiny of the working conditions and human (labour) rights (see also, Perulli, 2007). Sikka (2011, p. 814; see also, Frankental, 2011, p. 672; Lauwo & Otusanya, 2014; Moran, 2004) also points out that the governments in developing countries often yield to corporate demands either (or both) because of the need for the economy's stimulation by FDI, or their lack of power and the financial, legal and administrative resources to regulate the behaviour of MNCs. It is noteworthy that another indirect effect is also (perhaps more) significant in the context of this research, which is that of the partnerships of the MNCs and their subcontractors (i.e., supply chains) in developing countries. Wettstein (2009, p. 197) argues that such forms of employment are replacing direct investment in the MNCs' subsidiaries, and are exerting more tremendous influences on local human rights conditions²⁴. As the largest developing country in the world, China's economy and social development has benefited greatly from FDI (Lam, 2002; Ngai & Chan, 2012, pp. 384-385; Tan, 2009, p. 174; Tang & Li, 2009).

3.4.1.2 MNCs as quasi-state institutions and the shift in responsibility

The query into the MNCs as quasi-state institutions in this section generates from the simple premise suggested by Cragg (2012, p. 18): if it is claimed that MNCs have human rights responsibilities as states do²⁵, then the position of MNCs must in some way be analogous to the position of states. The truth of this premise has been widely supported by both scholars and practitioners alike. Perhaps a good starting point is the "neoliberal paradox" suggested by Wettstein (2009, p. 179). He states that while MNCs have gained the power to control the economic sphere, this will inevitably intertwine with the political domain of states. Hence, rather than give birth to an apolitical institution, the

²⁴ See Section 4.4.2 for further discussion.

²⁵ See the discussion on the state human rights responsibility in Section 3.3.2.

neoliberalism underpinning globalisation renders MNCs as quasi-governmental actors. More specifically, researchers argue that MNCs have taken on the role of governments by providing public goods like education and public health and social security (Matten & Crane, 2005; Mayer, 2009, p. 567; Sullivan, 2003, p. 308; Wood, 2012, p. 76). This is especially the case in the developing countries, where the governments are relatively weak. In an extreme case, Hertz (2002) points out that Shell generates 75% of the revenues of Nigerian government.

More comprehensively, the influence of MNCs as political actors has been conceptualised in the stream of “political corporate social responsibility” (PCSR) literature. In their seminal article on PCSR, Scherer & Palazzo (2007) observed the tension between the prominent role of private businesses on human rights and the need to justify and legitimise their actions as economic actors. Hence the political conception of corporate responsibility is devised to reflect the shift in power from states to corporations. In this scenario, the deliberative concept of CSR should be extended to accommodate the political role of MNCs (Buhmann, Jonsson, & Fisker, 2019; see also, Palazzo & Scherer, 2006). Furthermore, the power reconfiguration is demonstrated by both the provision of public goods as well as being a more positive and proactive step to fill the regulatory vacuum (Buhmann et al., 2019; Mayer, 2009, p. 567; Scherer & Palazzo, 2011)²⁶. The SRSG further states that whilst MNCs have moved into the domain of rule-making, this also provides an valuable opportunity to build a more inclusive institutional arena to regulate the MNCs’ global impacts on human rights that involves multi-stakeholders (Ruggie, 2004, p. 503). It is as part of this global agenda that UNGPs come to the fore.

It is commonly agreed now that as political actors, MNCs should carry human rights obligations which used to be solely applicable to states. However, diverse understandings arise on the nature and scope of corporate human rights responsibilities, in comparison with those of states (Brenkert, 2016, p. 293). Two approaches dominate the current discussion; the first favours the homogeneity of corporate and state obligations, which is embedded in the political nature of business, as has been demonstrated above. The other approach highlights the heterogeneity that is reflected in the PRR of UNGPs (Bader, 2008, p. 8; Ruggie, 2013a).

²⁶ This will be further discussed in next Section 3.4.3 as the “governance gap” devised by the SRSG.

3.4.2 *Beginning of global presence: the expanding supply chain*

The process of globalisation has been accompanied and intensified by the expansion of MNCs' global supply chains. While the MNCs entered the history at an earlier stage, their manufacturing structure was relatively constant before the 1970s. That is, before the 1970s the "multinational" nature of MNCs was merely the creation of their headquarters on a smaller scale in foreign countries (Wettstein, 2009, p. 11). However after the 1970s a fundamental re-model of the MNCs' production structure took place, as they began to relocate their manufacturing subsidiaries overseas, especially to many developing countries (Jerbi, 2009, p. 301). As trade liberalisation increased, this process was accentuated after 1980s by the deepening fragmentation of production in the form of geographically dispersed supply chains all over the world (Gereffi & Korzeniewicz, 1994). According to a report by the United Nations Industrial Development Organisation (UNIDO, 2009), the share of global manufacturing output by developing countries increased from 5% in 1950s to 23% in 2000.

Behind this trend is a mutually enabling relationship between MNCs and their host countries. That is, on the one hand MNCs are motivated to enhance their competitive advantage by splitting up and outsourcing their production to developing countries with lower costs, such as cheaper labour (Dicken, 2003; Wettstein, 2009, p. 11). On the other hand, as it has been indicated in the discussion on FDI, developing countries seeking investments to boost the local economy are all too susceptible to the exploitation of lax regulations on corporate activities and low labour costs (Gereffi, Humphrey, & Sturgeon, 2005; Lin, 2007, p. 329). Or even worse, some states have a tendency to utilise these as potential advantages to attract investments from MNCs (Chan, 2003; Muchlinski, 2004, p. 94). Combined with the MNCs' prioritisation of profit maximisation, the two forces lead to the degradation of labour conditions in many developing countries, which is captured by the term "race-to-the-bottom" (Chan, 2003; Cragg, 2000, p. 209; Harvey, 1999; Muchlinski, 2004, p. 94; Perulli, 2007, p. 101; Ratner, 2001, p. 463).

3.4.3 *Retreating states: the governance gap*

Against the backdrop of the dynamic power relations in the neoliberalism, states are widely observed to be unable or unwilling to fulfil their human rights obligations, which

creates permissive environments for corporate wrongdoings. This leads to the “retreat of the state” as coined by Strange (1996) and reiterated by Wettstein (2009, p. 178). As a result, a global regulatory vacuum has opened up between the eroding of state ability and the increasing impacts of economic actors on human rights (Cragg, 2000; 2012, p. 11). Ruggie (2008a) locates this in the crisis of the contemporary global governance system, and calls it the emergence of a “governance gap”:

“The root cause of the business and human rights predicament today lies in the governance gaps created by globalisation—between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge” (Ruggie, 2008a, p. 3).

The essence of the governance gap problem lies in the reach of law, both at the national and international level (Cragg, 2012, p. 11). As Ruggie (2008a) points out, the globalisation makes it possible for MNCs to operate in settings in which it is hard to hold them legally accountable. Hence, rather than the traditional state-centred international order to oversee the MNCs, the SRSR has coined the conception of “global public domain” as an “institutionalised arena of discourse, contestation, and action organised around the production of global public goods”—in which states, MNCs and CSOs (e.g., NGOs) influence each other (Ruggie, 2004, p. 519; 2008b, p. 24; 2017b, p. 13; Whelan et al., 2009, p. 373). It should be noted that this does not mean the state’s role should be neglected in the ongoing shift. Far from it—the PRR devised by the SRSR explicitly acknowledges the dominant position of states to hold MNCs accountable for their adverse human rights impacts. However, as Wettstein (2015, p. 164) points out, the emphasis on the governance gap does reflect the SRSR’s decisive move beyond the traditional view of the state’s exclusivity with regard to human rights issues.

Overall, the challenges brought about by the governance gap imply the tension between integrated economic forces and the fragmented structure of state-based authority (Abbott & Snidal, 2009; Ruggie, 2014, p. 10). As it has been repeatedly proved, states are incapable to do all the heavy lifting to address the corporate impacts on human rights. Thus other actors need to be involved to utilise their leverage (Ruggie, 2014, pp. 8-9). However, a “significant orchestration deficit” is preventing the current international

system from reaching a co-ordinated and legitimate scheme which takes clear account of the corporate human rights responsibility in response to the governance gap (Abbott & Snidal, 2009, p. 501; Ruggie, 2014, p. 10). The solution, as Ruggie (2008a) has demonstrated in the PRR and in the UNGPs, is to construct a framework that rests on “differentiated responsibilities”, especially between business and states with regard to human rights responsibilities (Arnold, 2016, p. 273; Wettstein, 2015, p. 167). It is argued that it was through the mechanism of polycentric governance that the UNGPs were constructed and received unanimous support in the UN, as the SRSR states: “The UNGPs do not merely advocate a theory of polycentric governance; in part, they were produced through such means” (Ruggie, 2014, p. 10). The business self-regulation represents another piece of the puzzle of polycentric governance.

3.4.4 Business self-regulation: is it the way out?

What are corporations themselves doing to cope with this situation? The CSR movement originating in the 1990s is probably the most obvious answer. As an umbrella concept covering numerous ideas and techniques (Valor, 2005, p. 193), it is the CoCs which are perceived in this research to be at the heart of the matter. MNCs have adopted this form of self-regulation for two reasons. Partly it is a benchmark against which to evaluate or advance human rights conditions in their enterprises (O’Rourke, 2003); and also to act as an alternative to international and national (legal) regulations, in order to fill the regulatory gap (Campbell, 2006, p. 257). The role of information and accountability is at the core of the mechanism, with the underlying assumption that the information collected by auditors will assist NGOs to pressure the MNCs to promote local human rights conditions, MNCs themselves also rely on the information to monitor, assess and improve the social performance of their suppliers (Kaptein, 2004, p. 27; Locke et al., 2007, p. 22). Therefore, the CoC has the potential to at least nominally make companies to knowledge their responsibility towards supply chains (Macdonald, 2007, p. 267).

3.4.4.1. Weakness of the CoCs in practice

While the terms “CSR” and “CoC” are prevalent in the business and government sphere, many scholars remain sceptical about the actual positive impact that the CSR initiatives

can have at a local level. Previous research has generally generated a dim view of the potential of CoC to challenge the extant labour relations and substantively improve the working conditions on the ground level (Barrientos & Smith, 2007; Gallhofer et al., 2011, p. 776; Islam, Deegan, & Gray, 2018, p. 202; Locke, Qin & Brause, 2007; Pegg, 2003, pp. 22-23, cf, Egels Zandén, 2014). Major obstacles have been indicated by studies targeting both developed and developing countries. The most common critique is that the CoC (CSR) is a “legitimacy tool”, for the purposes of public relations management. The in-depth empirical research conducted by Sum & Ngai (2005, p. 197) on the adaptation of CoC by Chinese suppliers reveals the paradoxes in “ethical production”. They elaborate that the CoC has largely degenerated, into merely serving the material and reputational benefits of MNCs, to the extent that it breeds a “market for ethics”. Focusing on Apple and its Chinese supplier Foxconn, Clarke & Boersma (2017, p. 127) state that Apple readily assures its legitimacy in the public eye, by relying on the flawed self-regulatory initiatives conducted by both Apple and Foxconn, while the short memory of the public, and sporadic actions taken by civil society all reinforce this situation. Such results are not only applicable to *outcome* standards (e.g., Occupational health and safety issues: OHS; working hours), but can also be noticed on *process* rights (e.g., freedom of association), as suggested by the study of Egels-Zandén & Merk (2014, p. 464). Apart from reasons of legitimation, the CoC also suffers from weak, displaced, or absent enforcement and monitoring mechanisms (Pegg, 2003, p. 24; Wawryk, 2003, p. 62). Moreover from the perspective of international regulation, Abdelal & Ruggie (2009, pp. 155-156) point out that the CoCs are often detached from the internationally recognised standards and hence lack clear and accurate explanations backed by authoritative norms, which dramatically limits its potential to regulate labour conditions.

3.4.4.2 CSR versus BHR

As the language of BHR has increasingly become the prevalent narrative employed by the victims of abuses and human rights advocates, especially in the age of globalisation, why is it different from the CSR practices that business has been engaging in for almost thirty years? This is one of central questions that has been puzzling Chinese business managers and is a barrier to the localisation of the UNGPs in China (China Responsible Business Forum, CRBF, 2015; Global Business Initiative, GBI, 2014, p. 17). Indeed, BHR and CSR are

“like two close cousins”, with an overlapping focus on the socially responsible activities of business (Ramasastry, 2015, p. 237). However, they have distinct identities based on different origins and different compliance mechanisms. Perhaps the more salient of these is their origins: CSR emerged from business scholarship while the BHR was developed by legal academics with a core of commonly agreed standards, as mechanisms for assessment and enforcement (in short, accountability), and for remedy (Posner, 2016, p. 708; Ramasastry, 2015; Ruggie, 2013a, p. xxvi). Hence it is argued that the terrain of CSR is being intruded upon by legal scholars from BHR, pressing for the codification and institutionalisation of “moral claims” as international standards (Santoro, 2015, pp. 157-158). Here comes the conflict: by its nature, BHR discharges accountability by imposing the “hard” legal obligations on companies, whereas CSR mainly involves “soft” corporate voluntarism and a sense of moral suasion in order to persuade companies to comply (Nolan, 2005, p. 448; Ramasastry, 2015; Ruggie, 2013a, p. xxvi). As Bader (2008, p. 7) bluntly describes it, “‘Human rights’ is associated with abuses, and ‘CSR’ is, well, whatever the user wants it to mean.” It implies that BHR concerns the negative duty of companies: “do no harm” as UNGPs stipulate; whereas CSR emphasises the positive and voluntary activities conducted by companies, which may not link with the human rights impacts. It should be noted here the notion of “accountability” acts as a critical factor in addressing the adverse human rights impacts on the victims by invoking the legal responsibility, the due diligence mechanism and the remedy which are essentially embedded in the UNGPs²⁷ (Bijlmakers, 2018).

Despite these differences between BHR and CSR, a linkage can be established between the two with which the obligatory nature of BHR can strengthen CSR (Osuji & Obibuaku, 2016). Meanwhile the flexibility of corporate CoC allows it to be adopted rather swiftly which includes both the “bottom line standards” and aspirational human rights targets without the arguments caused by the mandatory binding legal frameworks (Picciotto, 2003, p. 152). It is coherent to this line of reasoning that Jägers (2013, p. 296) contends that the operationalisation of the UNGPs largely relies on the voluntary corporate uptake. There are empirical evidences indicating that the UNGPs is being incorporated into the CSR frameworks. Buhmann (2016, p. 710; 2018, p. 41) points out that the (European Union) EU Communication on CSR has recognised the potential of UNGPs in informing

²⁷ We will further discuss the role of accountability in BHR in Section 4.3.

other CSR initiatives. Also the adoption of OECD Guidelines facilitate the assimilation of UNGPs in CSR frameworks in EU companies.

3.4.4.3 The role of MNCs in CSR in China

Even if the notion of CSR is not intrinsically a Western concept, as has been elaborated by Lin (2010), Lu (2009) and Xu & Yang (2010), it cannot be denied that the foreign MNCs act as strong drivers of CSR in China. The huge number of MNCs which have suppliers operating in China are not only striving to adapt their operational models within the Chinese market, but also need to engage in the challenges with respect to labour and environmental issues. CSR is devised as a vital tool for MNCs to cope with these challenges, which in turn strongly influences the development of CSR in China (Lin, 2007, p. 330; Lüthje et al., 2013, p. 199; Wang & Juslin, 2009, p. 439). According to Chan (2003, p. 11), under the pressure of international scrutiny, MNCs have nervously begun to request their suppliers to adopt and adhere to the CoC, which constitutes a major motivation for suppliers to do so. In his revisiting research in the Chinese Toy Suppliers for a MNC, Egels-Zandén (2014, p. 71) suggests that the even though the suppliers may initially respond with merely symbolic actions, the CoC can finally improve the labour rights given sufficient time. Furthermore, the CoC is also perceived as the mediator of the UNGPs in China. The case study of Alpha and its supplier Beta suggests that the *beginning* of UNGPs does not penetrate to the ground level directly, but through others means such as CoC and industrial standards. Therefore it provides rationale to examine the texts of corporation CoC in this study.

3.5. Conclusion

In this chapter the context of the multiple-actor arena surrounding human rights has been outlined, and the definition of human rights is constructed. Rather than providing an overarching concept, this chapter approaches human rights by considering four core elements whose *beginnings* contribute to much of the debate around BHR today. Their significance is also manifested in the different interpretations between China and the West, which in turn fosters the perennial problem of the contextualisation of international *beginnings* of human rights on the local level. Hence the four elements are approached

separately upon the introduction of the human rights *beginnings* initiated in China and Western countries respectively. It is argued that Said's *beginning* sheds light on the understanding of the historical review of human rights in China and the West, which requires the comprehension of the impacts of different ideologies (i.e., *beginnings* with different *intentions*) on the status quo. Also it is a handy concept to use to tease out the complex interplays among the various *beginnings* for human rights. From this perspective, the *beginnings* of human rights in both China and the West are examined in terms of natural rights, Marxist human rights in the West, and Confucian human rights and neoteric human rights in China. By looking at the discursive *texts* and pronouncements circulated by these *beginnings*, their *intentions* are fleshed out which converge with the *beginnings* at the UN level in the *texts* of the UDHR and the IBHR.

Viewed through the lens of Said's concepts of *beginning* and *intention*, the values, interpretations and practices of human rights materialised in *texts* are contextualised in various levels of analysis including the UN, state, business and the local context. Taking the relativist universalist approach to human rights, the chapter is built upon the presupposition that the *beginnings* of human rights are heterogeneous, with different *intentions* in China and Western culture respectively. This heterogeneity breeds a variety of *texts* which represent their own contexts, and the *beginnings* are captured during this process, in order to identify their departures as well as their interconnections with the extant knowledge (*text*) of human rights.

With the *beginnings* of state-centric human rights architecture explicated, the business dimension is brought in, also following the logic of Said. It is argued that Said's framework is particularly suitable for analysis of the polycentric structure which characterises current global governance. With the MNCs entering the international human rights regime as a main player, new *beginnings* are emerging, observing the profound power reconfigurations between the state and business. Meanwhile these *beginnings* also challenge the existing order of international human rights by *intentionally* carrying out human rights-related initiatives in a different and characteristic way, for example the concepts of CSR and the CoC. All these contribute to the *beginning* of the UNGPs, which absorbs the merits of the existing *beginnings* and whose own *beginning* is also inherited in the meantime, carried on and *molested* by other *beginnings* manifested in Chinese government documents and the *text* of CoCs.

Chapter 4

“Just business”: Accountability and human rights

4.1 Introduction

By reviewing the literature on accountability, more specifically on human rights accountability and the UNGPs, this chapter aims to depict the parameters of extant studies, and identify the gaps in the literature. The rationale for understanding the role of accountability in the UNGPs is provided by interpreting accountability as a form of human relatedness. It is argued that the moral dimension is embodied in accountability as the activity of giving an account, the realisation of which can only be achieved through interactions with others. The *text* of the UNGPs embraces this notion of accountability by evoking the moral obligations of companies to respect human rights, and further delimits the parameters of corporate responsibility. In order to examine how the accountability mechanism is articulated in the *text* of the UNGPs, as it is enacted and disseminated across the different levels of actors, Said's concepts of *authority* and *molestation* are employed to construct the discussion. Furthermore, the current status of the implementation of the UNGPs is examined, which paves the way for the document analysis in Chapter 6.

4.2 Accountability and human relatedness

4.2.1 Defining human relatedness

As a social creature, no human being can live without relation to others. Emmanuel Levinas, as the foremost philosopher of ethics and human relatedness whose work has significantly influenced the accounting intellectuals, will be reflected upon here. According

to Levinas (1989), the only way to understand ethics is through relational thinking, to situate it within the realm of relatedness (see also, Roberts, 2005, p. 266). He contends that we, as humans, are inherently accessible to relations in which there is the “gaze of the Other”—we continually present ourselves to exterior others who demand responses from us. Both action and omission are responses. In Levinas’ words, “It is an interpretive, phenomenological description of the rise and repetition of the face-to-face encounter, or the intersubjective relation at its precognitive core; viz., being called by another and responding to that other” (Bergo, 2007, webpage). From this perspective relatedness is ineluctably embedded in human nature in the form of responsibility (Letiche & Lightfoot, 2014, p. 114). Dillard (2013, p. 238) employs the term “solidarity” to describe human relatedness, which is the “ongoing, situated, purposeful interrelatedness of human agents as they act as members of social and natural systems”. That is, humans are driven by interests, and we influence others through our actions; meanwhile they are also receptive to the influence of others, and exist in relation to them also (Schweiker, 1993, p. 240). Hence it is argued that there are pre-given relations established between “I” and “others”, which feature the norms of good and evil (Schweiker, 1993, p. 241). Relatedness is manifested in love, empathy, justice and responsibility (Letiche & Lightfoot, 2014, p. 115; McKernan & MacLulich, 2004). Levinas (1989) argues that the very existence of humans entails an awareness of interaction and relatedness, and the quality of the address of others’ appeals is what Levinas defines as “responsibility”, that is, the response-ability, the ability to respond. Ethics, from this perspective, is essentially what we decide to do with the demands for responses from others: do we reply or look away (Letiche & Lightfoot, 2014, p. 115)?

What is underlying this argument is the distinction between the moral obligations to others and our self interests, and the imperative to prioritise the former (Shearer, 2002). The concept of human rights provides a good illustration of this point. As it has been reflected in Section 3.2.1.3.1, the merit of the human rights argument lies exactly in its moral weight as an overriding value which supersedes other demands.

As Letiche & Lightfoot (2014, p. 113) point out, Levinas’ notions of relatedness and the embedded responsibility are too abstract to be applied in professional contexts, considering that Levinas’ responsibility is ideal, unbounded and absolute, and that the real work relationship is always contextual, limited and partial. However, Levinas’ work

and similar ideas provide a useful angle for accounting scholars like John Roberts (2001, 2003, 2005, 2009), Schweiker (1993) and Shearer (2002) from which to construe the nature of accountability in the form of human relatedness. We now turn to that point.

4.2.2 An ethic of accountability

So far, the moral dimension of human rights has consistently underpinned the discussions throughout Chapter 3. In this section I attempt to introduce an ethic of accountability, which is arguably complementary to the human rights morality. Schweiker (1993) adopts the hermeneutic concept that the moral identity of companies is formed “in the act of ‘giving an account’” (Schweiker, 1993, p. 236). That is, he sees the practice of giving an account essentially as an activity which constructs the identity of the company corresponding to the demands and expectations of “others”, to which the corporation is accountable and “answerable” (Shearer, 2002, p. 543, see also, Arrington & Francis, 1993; Cooper & Owen, 2007; Joannides, 2012, p. 245; Sinclair, 1995, p. 221). Schweiker (1993, p. 237) further claims that “there is an analogous fiduciary and temporal structure entailed in giving an account of the identity of persons and that of corporations”. Hence, he concludes that “accounting is in the service of moral as well as economic reflection” (Schweiker, 1993, p. 232). Similarly, McKernan & MacLulich (2004, p. 341) contend that it is in this way that the activity of providing an account acquires a moral force through the narrative in general.

What is embedded in this argument is the notion of relatedness. According to Schweiker (1993), the giving of an account is in order to demonstrate the identity within the network of interdependence and relatedness with others, in which an entity (such as an organisation) has the power to influence others, and the account is evaluated against ethical norms and social expectations. This is achieved by the act of uttering or inscribing *texts* regarding the “intentions, actions, relations and outcomes to someone” (Schweiker, 1993, p. 234). In the words of Schweiker (1993, p. 235)

“[G]iving an account is one activity in which we come to be as selves and particular kinds of communities through forms of discourse that shape, guide and judge life regarding concern for the common good, human solidarity and basic respect.”

In this light, Roberts (1996, p. 40) situates accountability within the network full of “reciprocal dependence” between individuals and larger collectives, which he claims has both instrumental and moral dimensions. He contends that we are related with each other in a way in which the consequences to others of our activities (and *vice versa*) cannot be adequately reflected in strategic and calculable ways, but can only be realised by embracing the moral consequences of action and omission (see also, Mulgan, 2000, p. 557). Messner (2009, p. 920) further points out that the ethical dimension of accountability has the character of not focusing on the question of “what”, but on the problem of “how”. That is, the ethics of accountability extend beyond the types of demands, to the way in which these demands are formulated. I contend here that this is the perception which animates the human rights discussion, especially considering that one important contribution of the UNGPs is to provide a benchmark to assess the moral responsibility of companies with respect to human rights²⁸. The next section further explores the link between accountability and relatedness.

4.2.3 Accountability as human relatedness

Following the above discussion on the moral dimension of accountability, this section provides a definition of accountability as a feature of human relatedness. To begin with, as it has been reflected above, the basic nature of accountability can be understood as the giving and demanding of an account for one’s conduct (Adams, 2004, p. 732; Roberts & Scapens, 1985, p. 447). Then at the heart of this idea is that the activity of accounting situates us in a web of interactions with others through the process of giving (demanding) accounts (McKernan & MacLulich, 2004, p. 341; Roberts, 2001; Schweiker, 1993). A basic accountability relationship emerges from this, namely that is someone is held responsible for something by someone else (or themselves, Brown & Fraser, 2006, p. 104; Messner, 2009, p. 920). Roberts (2001, p. 1554) employs the term “the socialising process of accountability” to describe the status of freer flow of communication, and the greater opportunities to challenge and question, which become the source of a fuller personal recognition and identity. McKernan & MacLulich (2004, p. 347) take a step further, to emphasise the critical role of conversation for making accountability more dialogistic, and

²⁸ This will be further contemplated upon in Section 4.3.4.

to enhance the openness to others, which in turn contributes to the formation of the corporate identity (see also, Bebbington et al., 2007; Brown, 2009, Gallhofer et al., 2015).

As a consequence, accountability should be motivated by the responsibility to others, instead of to oneself (Messner, 2009, p. 921; Schweiker, 1993, p. 245). The prioritisation of others is not reflected in today's dominant economic theories, which reduce the moral obligations to others from oneself (Shearer, 2002, p. 558). Drawing on Levinas' discussion of self and other, Shearer (2002) condemns the accountability system today as one which has largely degenerated into justifying one's own actions, instead of prioritising the constitutive relation to others (see also, Schweiker, 1993, p. 245). Based on the conceptions of subjectivity and intersubjectivity, Shearer (2002, p. 544) is able to show that the accounts rendered by companies tend to reduce the "good of the moral community" to the "good of the individual economic entity", which negates the corporate obligation to the wider social and environmental concerns and interests. She proposes a shift from the subjectivity of interests of individual companies to the shared perceptions of moral responsibilities entailed by the intersubjective relationship. This argument is also embedded in the conclusions of Schweiker (1993, pp. 246, 249), stating that restricting the accountability to private interest is self-contradictory and deceptive, as the nature of giving an account is intersubjective, extending beyond oneself in order to be answerable to others in the complex social context.

This trend is revealed by the stream of critical accounting research emphasising the accounting problems which have emerged in the social-political, environmental and ethical dimensions, as represented by critical research in the SEA and CSR reporting disciplines (Messner, 2009, p. 921; Shearer, 2002, p. 568). The findings suggest that in practice companies may be motivated to construct their position in society and their relations with others solely in order to demonstrate corporate goodness, with the aim of enhancing their legitimacy and reputation, and in which the voices of "the Others" are largely muffled (Archel, Husillos, & Spence, 2011; Boiral, 2013; Chauvey, Giordano-Spring, Cho, & Patten, 2015; Cooper & Owen, 2007; Patten, Ren, & Zhao, 2015; see, also, Roberts, 2003, p. 257; Spence, 2009). McKernan & MacLulich (2004, p. 343-344) contend that such accounting will "capture only what they look for and, in general, what they can quantify." Furthermore, from a transparency angle, Roberts (2009) states that the blind pursuit of transparency will not necessarily lead to fairness and enhanced accountability, but often

acts as a distortion which reduces accountability merely to compliance with codes or reporting guidelines.

Discussions about the quality of human relatedness can be observed in various BHR debates. For instance, it may be alleged that across the many levels from the UN to local suppliers, a shift is taking place in context. It is acknowledged that there is a moral responsibility on businesses to uphold their human rights obligations by giving an account (“know and show” as is the term used in the UNGPs) of their actions (Bijlmakers, 2018; Gallhofer et al., 2011; McPhail & Adams, 2016; Ruggie, 2013a). Alongside this another trend flourishes, of a re-evaluation of the moral dimension in economic life, which too often values the purely economic as the norm, usually at the expense of human rights (Hazelton, 2013, p. 290; Scherer et al., 2006, pp. 509, 513; Schweiker, 1993, p. 238; Wettstein, 2009, p. 266). In the legal and political regimes, the established state-centric order governing human rights issues is also challenged, and a polycentric governance system is emerging, which is embedded in the UNGPs (Macdonald, 2007; Ruggie, 2013a; Wettstein, 2015, p. 164). As a result, business is increasingly subject to expectations to respond to its impacts on the human rights of a wider range of “others”, through the action of giving an account.

In this light, the provision of an account must take into consideration the fact that the requirements and demands of others vary in different contexts, and this cannot be allowed for by using universal accounting principles (Lehman, 1999; McKernan & MacLulich, 2004, p. 348; Roberts, 2003; Shearer, 2002). Therefore, it is vital to foster dialogic accounting and remove the barriers to direct and comprehensive engagement (Messner, 2009, p. 919).

4.2.4 Applying Said’s work in accountability

The *text* is at the core of the concept of accountability, which is compatible with the use of Said’s framework in this research. According to Schweiker (1993, p. 234), the giving of an account implies the “discursive act of saying or writing something about intentions, actions, relations and outcomes to someone”. Similarly, McKernan & MacLulich (2004, p. 344) argue that in order for companies to emerge as morally responsible agents, they must have the capacity to give a narrative of themselves in complex relations with others,

through “the socially situated interplay of language and action”. On the other hand, the social expectations for business embedded in different contexts are often communicated in the form of *texts*, both as inscribed *texts* such as regulatory documents and *texts* uttered by people (Arnold, 2016, p. 259; Buhmann, 2016, p. 703; Cooper & Ezzamel, 2013; McPhail & Adams, 2016, p. 651; Ruggie, 1982, p. 380; White, 1981, 2007).

The roles of *authority* and *molestation* are particularly significant in this process. Simply speaking, accountability as expressed in *text* entails and enacts the *authority*, meanwhile it is also *molested* in other *texts* by the readers (the *others*) which in term establishes their *authority* over the *text*. To begin with, the very basic notion of human rights as articulated in *texts* implies strong moral obligations which entail *authority*: “no one, anywhere, may be deprived of human rights without a grave affront to justice. There are certain actions that are never permissible, certain freedoms that should never be invaded...” (Campbell, 2006, pp. 11, 12; Cranston, 1983, p. 12, see also, Donnelly, 1982a, p. 305; Sen, 2004, p. 328). *Authority* sets the moral expectations which all “social organs” should uphold and respond to—in short, be accountable to (UN, 1948). In addition, the *authority* of human rights (accountability) is repeatedly reinforced through the *texts* disseminated by authoritative *authors*, such as the UNGPs by the UN (Cooper & Ezzamel, 2013; Jägers, 2011, p. 159; Ruggie, 2013a, pp. 76, 142; Said, 1975/1997).

Meanwhile, *texts* are also *molested* by their diverse readers, from the UN to the ground level. As Roberts (2003, p. 261) points out, from the business perspective, the interests of marginalised stakeholders (e.g., workers in their offshore supply chains) are located at the far end of the web of relatedness. Hence their interests are prefabricated, and accommodated to existing technologies available (McKernan & MacLulich, 2004, pp. 343-344; see also, Messner, 2009, pp. 922-923). The *molestation* arises through rendering the discursive voices of others into the sameness and standardised *texts*, which leads to the pitfall of creating “generalised others” (McKernan & MacLulich, 2004, pp. 343-344; Messner, 2009, p. 920; Roberts, 2003, p. 264). Thus these *authors* suggest that it is necessary to incorporate more discretion in the way business narrativises itself (Messner, 2009, p. 923), which echoes with how the *text* of the UNGPs constructs corporate human rights responsibility in a flexible manner (Bijlmakers, 2018, pp. 56, 120, 122; Haines et al., 2012, pp. 107-108; Ruggie, 2013a, p. 143; Wettstein, 2015, pp. 168-169). This is *molestation*, as well. The situation applies to the government and the workers too, who

are also in the position to interpret the *text* with regard to the “giving of account” in a certain context which features the local interactions between actors, and thus fosters *molestation* (Cooper & Ezzamel, 2013, p. 298; GBI, 2014, p. 51). Furthermore, it is argued that by *molesting* the *texts*, the readers imprint their own *authority* on them, which brings the *texts* closer to their own context.

4.3 Human rights accountability

4.3.1 Accountability and human rights — a historical review

The role of accountability remains fragile in the human rights discipline (Gray & Gray, 2011) and in particular, in labour rights (Deegan & Islam, 2014; Lauwo & Otusanya, 2014; McPhail & Adams, 2016; McPhail & McKernan, 2011; Momin, 2013; Sikka, 2011). Unlike accountability for environmental issues, which have clear benchmarks and thus can be easily quantified, the contested nature of human rights has contributed to the ambiguity of human rights violations, and makes the accountability process more difficult and elusive. Early pioneers in this field include the thinker Jeremy Bentham (1748-1832), whose *text* on accounting shed light on the emancipatory possibilities of accounting on human rights issues, with special focus on the disadvantaged English labourers of his own time (Gallhofer & Haslam, 2003). The 1970s witnessed the establishment of SEA as a robust discipline, with labour rights as its focal point (Mathews, 1997; Owen, 2008). Since then, the development of accounting for human rights has paralleled the history of social accounting, with employee accounting as the most typical example during the nineteenth century (Day & Woodward, 2004; Mathews, 1997, p. 484). Western Europe led the development of employee reporting from late 1970s (Gray, Adams, & Owen, 2014). The notion of the right to information was embedded in the approach of employee reporting, which aims to hold managers accountable for both internal and external stakeholders (Cooper et al., 2011; Johansen, 2008).

The issue of human rights accountability and MNCs entered the public sphere after the anti-sweatshop movement emerged in the 1990s (Yu, 2009). As we have seen in Section 3.4.3, the widening governance gap and the rise of MNCs led to the reconfirmation of power relations, rendering the governments in developing countries unable or unwilling to hold MNCs accountable. Combined with the vulnerable status of disempowered labour

in these countries (Barone, Ranamagar, & Solomon, 2013; Belal et al., 2015; Derry, 2012; Rubenstein, 2007; Unerman & Bennett, 2004), there is an urgent call for research on business human rights accountability and transparency in developing countries. The responsibility has most visibly been taken by the UN, by setting various international human rights standards and accountability initiatives (Bebbington & Unerman, 2018; Benedek et al., 2007; MacLeod, 2008; Meyer, 2003; Ratner, 2001), with the UNGPs being a milestone in BHR development (Li & McKernan, 2016; McPhail & Adams, 2016; Ramasastry, 2015; Rodriguez-Garavito, 2017a).

4.3.2 Elaborating the role of accountability vis-à-vis human rights

The potential of accountability, as demonstrated in the SEA, is that it has the ability to institutionalise the notion of answerability and responsiveness in order to facilitate the protection of human rights from the power of corporations (Chetty, 2011; Gallhofer et al., 2011; Lane, 2004; Macdonald, 2007). Especially, the emancipatory nature of SEA well serves the purpose of giving visibility to vulnerable and marginalised people affected by corporate activities (Belal, Cooper, & Khan, 2015; Sikka, 2011). Gallhofer et al. (2011) argues that through disseminating information regarding their human rights practices, MNCs may encourage managements to reflect on their operations and their impacts on human rights. For instance, reports can be generated on low wages, long working hours and other violations of human rights. Nowadays the importance of corporate human rights reporting is often located at the core of the human rights accountability realm, with various UN principles calling for business to evaluate and disseminate their human rights impacts. For instance, upholders of the UNGC are expected to communicate their progress regarding implementing the ten principles (Seppala, 2009). The Global Reporting Initiative (GRI) has been crafted to provide guidance for such reports. OECD Guidelines, on the other hand, also list the same clause on disclosing information on “material issues regarding workers and other stakeholders” (OECD, 2011, p. 27).

However, such clauses have been criticised for their vagueness and lack of implementation mechanisms (Simons, 2004). This has led to fewer than half of Fortune Global 500 companies being referred to third party initiatives such as the GRI, and two-thirds failed to include human rights criteria in their social impact assessments (Ruggie, 2007a). Also, the voluntary nature of human rights reporting has further hindered their

credibility. The common use of words such as “guidelines”, “recommended practices” and the circumvention of authoritative words like “enforcement” has diluted their potential power (Patten et al., 2015). All these have been attributed to the fact that companies are relatively free to choose what to publish, and they rarely disclose any information that might have negative impacts (Kent & Zunker, 2013; Sikka, 2011). Moreover, it is argued that accounting can be manipulated by management for self-serving purposes, and they resist change by disclosing only selective information on human rights, leading to biased or ambiguous language in reports (Cooper et al., 2011; Hazelton, 2013; Lauwo & Otusanya, 2014; Sikka, 2011; Spence, 2009). The terms “greenwash” (Brown & Fraser, 2006, p. 111; Gallhofer & Haslam, 2003, p. 126; Hazelton, 2013, p. 269; Laufer, 2003) and “bluewash” (Melish, 2017, pp. 82-83; Nolan, 2005, p. 446; Utting, 2005, p. 18) are used to describe the degeneration of the reporting practice. Not surprisingly, research has demonstrated that using companies themselves as the source of information on the social impacts within their supply chains is regarded as the least trustworthy method by stakeholders (Chilton & Sarfaty, 2017; Denedo et al., 2017; Zadek, 1998).

4.3.3 UNGPs and human rights accountability: current status

Despite the fact that PRR and the UNGPs have been on the agenda for international organisations, business and governments for more than eight years, it is only relatively recently that a concerted effort has been made to introduce them into the human rights accountability literature. Early brave attempts at airing this topic include the 2011 special issue of *Critical Perspectives on Accounting (CPA)*, which focuses mainly on the PRR framework. In this issue the differentiated yet complementary roles of state and business in protecting and respecting human rights have been introduced within the PRR (Frankental, 2011, p. 762; Gallhofer et al., 2011; Gray & Gray, 2011, p. 784). Due diligence is briefly discussed with respect to the foreign investment stabilisation clauses (Sikka, 2011, p. 824), the human rights assessment process (Frankental, 2011, p. 764) and in the Scottish context (Chetty, 2011). There is a call for a more active and robust presence of the UN on the BHR issue by promoting soft law initiatives (Gallhofer et al., 2011, p. 776; Sikka, 2011, p. 824), and note the potential of SEA to take us beyond the negative “do no harm”, and to make positive contributions to the human rights discourse (Chetty, 2011, p. 761),

or more broadly and fundamentally, to how humans account to and for each other (Gray & Gray, 2011, p. 788), especially to the marginalised stakeholders (Sikka, 2011, p. 825).

A more systematic integration of the UNGPs with human rights accountability is manifested in the 2016 special issue of *Accounting, Auditing & Accountability Journal* (AAAJ). Certain points in the 2011 CPA special issue are inherited and developed here, such as the potential of UNGPs to radically challenge the state-centred governance mechanism of human rights issues (McPhail & Ferguson, 2016, p. 531). Based upon these foundations, focal points emerge, such as the legal human rights responsibility of corporations (McPhail & Ferguson, 2016, p. 533), and the implications for reporting and assurance, especially in the implementation of the UN Guiding Principles Reporting Framework (McPhail & Adams, 2016; McPhail & Ferguson, 2016, pp. 528-529). Methven O'Brien & Dhanarajan (2016) provide a tentative assessment of the implementation of the UNGPs with respect to the four stages of due diligence (policy, assessment, integration and reporting) in government action, corporate behaviours and the activities of other social actors, especially regarding the corporate responsibility to respect human rights. Their findings indicate that the operationalisation of the UNGPs on the ground is slow and partial. More importantly, empirical evidence is beginning to accumulate, this enables the AAAJ issue to reflect the trends and challenges in operationalising the UNGPs (McPhail & Ferguson, 2016, p. 536). For instance, Sinkovics, Hoque & Sinkovics (2016) focus on the institutional changes after the Rana Plaza collapse in Bangladesh in 2013. They conclude that corporations tend to prioritise and operationalise measurable standards, instead of the local needs of the workers. Also focusing on the Rana Plaza disaster, and the strategy of denial adopted by corporations to evade accountability, Siddiqui & Uddin (2016) illustrate the reason why well-devised international instruments like the UNGPs are ineffective on the ground. Drawing on both PRR and the UNGPs, McPhail & Adams (2016) critically analyse the reports of thirty Fortune 500 corporations to examine the evolvment of "corporate respect for human rights" from the linguistic perspective. They assign high value to the structure of this relatively new discourse, as it demonstrates the "seismic" shifting order in the relationship between states, corporations and the society at large, and the role of accounting and accountability within it (McPhail & Ferguson, 2016, p. 530). Overall, while observing the positive impacts of the UNGPs and the centrality of accountability to many of these impacts, the studies point out that "accounting scholarship remains on the sidelines" (McPhail & Ferguson, 2016, p. 530). Especially, the

researchers are calling for further investigation into the operationalisation of the UNGPs within supply chains (Posner, 2016; Sinkovics et al., 2016), with labour rights at the centre of the topic (Posner, 2016; Siddiqui & Uddin, 2016). This research aims to contribute to the existing literature by looking into the contextualisation of the UNGPs in MNCs' supply chains in China. Particularly, it is argued that perceiving accountability as human relatedness has the potential to bring the focus back onto what matters most to the workers on the ground level.

4.3.4 Accountability as human relatedness in the UNGPs

In this section I attempt to connect two streams of the literature together, namely those on accountability as human relatedness, and on corporate human rights responsibility in the UNGPs. While the extant accountability literature tends to concentrate on the implications of the UNGPs on accountability mechanisms from the perspective of communication and reporting (see, e.g., McPhail & Adams, 2016), this section contends that the significance of the UNGPs extends beyond this point if we apply the notion of accountability as human relatedness to the framework of the UNGPs. It is argued that the notions of accountability ethics and relatedness are compatible with the *text* of the UNGPs, and by delimiting the parameters of corporate responsibility and clarifying the way it works, the UNGPs significantly contribute to the current human rights accountability research.

First of all, the moral dimension of human rights responsibility has been revived in the UNGPs, which is congruent with the underlying moral force of giving an account to the demands of others. As it will be reflected in Section 4.4.1, the merit of human rights as basic rights overriding all other interests is upheld in the UNGPs, which stimulates companies to respect human rights regardless of the local social, political and cultural conditions under which they operate. This argument is in accordance with the ethics of accountability, which extends beyond the economic considerations into a reconstruction of the moral identity of the company, within a network of mutual interdependence upon others, through the activity of giving an account (see Section 4.2.2). Therefore both approaches underscore the importance of morality, and revive the focus on the basic human demands, the common good and respect for others (Schweiker, 1993, p. 235).

Seen in that light, it is exactly this nature of accountability that inspires the logic of corporate human rights responsibility in the UNGPs.

Secondly, it is argued that the concept of human relatedness underlies the assessment of corporate human rights responsibility in the UNGPs, which is reflected in the SRSG's approach of locating the responsibility in business relationships. The attitude of the SRSG towards the concept of "sphere of influence" (SOI) demonstrates this point. The SOI is widely used in the CSR regime to define the scope of the corporations' responsibilities in the entities within business relationships (e.g., supply chain). The implicit assumption is that the responsibility of corporations, is based on their "influence" over other entities, which hinges on "proximity"²⁹ of operations and sometimes misunderstood as geographic distance (Frankental, 2002, p. 131; Macdonald, 2011, pp. 555-556; Wettstein, 2009, p. 311). The SRSG rejected this idea because it fails to capture the deeper layer of interconnectedness and relatedness between individuals in the globalised society, which is not based on geographic distance. Instead, responsibility is defined through an "impact-based" approach, with special focus on the extent of complicity and the ability for leverage (Principle 13 and Commentary of Principle 19 in the UNGPs, see also Backer, 2012, p. 134; Muchlinski, 2012, p. 162). All of these are materialised by a subtle evaluation of the business relationship, without compromising its practicability. Hence it is human relatedness which is at the heart of defining the scope of corporate responsibility.

Thirdly, while responding to the demands of others it is crucial not to render them into "sameness"—to avoid the concept of "generalised others"—and here dialogic accounting is proposed as a solution. This notion is also embedded in the UNGPs, emphasising the importance of stakeholder engagement and the need to prioritise human rights based on severity of the corporations' adverse impacts and local contexts, rather than taking a static position to assume that the "one solution for all" is realistic.

²⁹ It should be noted that in his report *Clarifying the Concepts of "Sphere of influence" and "Complicity"* (UN, 2008, p. 6), Ruggie extends the concept of proximity to include political, contractual, economic or geographic proximity. However "the precise meaning of proximity remains unclear".

4.4 UNGPs: the end of a *beginning*

Based on the previous overview of accountability and the UNGPs, this section goes further, to an examination of the key ideas of the UNGPs. It is not the intention here to provide an exhaustive list of all the principles in the UNGPs; instead only the most relevant ones to this research will be reflected upon. To better assist the discussion of accountability, this section is structured around the four basic elements of accountability, in the form of who should be held accountable, by whom, for what and how.

4.4.1 For what: between legal and moral obligations in the UNGPs

As the subject of this research is *text*, perhaps a good starting point is to look at the wording of the UNGPs. It is noticeable that the UNGPs employ two terms to describe the “differentiated but complementary” roles of states and business relating to human rights issues: states have the “duty” to protect human rights, whilst companies have the “responsibility” to respect them (Ruggie, 2008a, p. 4). According to Ruggie (2011, see also, 2013a), the state *duty* to protect is already embedded in the established treaties, and has a number of strong policy rationales behind it. The corporate *responsibility* to respect, on the other hand, is not enacted in the current international human rights law, rather it is constructed as a social expectation which is widely recognised in voluntary regulations and soft law instruments (López, 2013, p. 65). As the UNGPs state:

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights (Commentary of Principle 11).

Also, in the 2006 Interim Report submitted by the SRSG, he states that:

70) ...in doing so we should bear in mind that companies are constrained not only by legal standards but also by social norms and moral considerations—in the terminology of the BLIHR (Business Leaders Initiative on Human Rights) group, distinguishing what companies must do, what their internal and external stakeholders expect of them and what is desirable (UNCHR, 2006).

Yet this phrasing has been criticised by many scholars, claiming that it is “confusing” because CSR and BHR are placed within the same system, though inherently they are fundamentally different (McCorquodale, 2009, p. 393). Similarly Wettstein (2015, p. 167) also has concerns that “it is counterintuitive at best, and misleading at worst to limit the scope of duty to the legal, and that of responsibility to the non-legal realm at the outset.” However, this definition has also received considerable supports from business communities. Using the International Organisation of Employers (IOE) and International Chamber of Commerce (ICC) as example, they have expressed their satisfaction with the distinction between state duty and corporate responsibility, which refers to the exact reason they opposed the UN Norms: companies must not be assigned the responsibility of states (Whelan et al., 2009, p. 377). Following this line of reasoning, this research intends to adhere to the SRSG’s approach based on the following reasons.

First, it is not the case that the SRSG completely deviates from assigning legal duties to business. On the contrary, he explicitly underscores the idea that the baseline of corporate responsibility is law compliance. Principle 23 of the UNGPs states that:

23. In all contexts, business enterprises should:

- (a) Comply with all applicable laws and respect internationally recognised human rights, wherever they operate;
- (b) Seek ways to honour the principles of internationally recognised human rights when faced with conflicting requirements;
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

Apart from setting the tone, Principle 23 also touches on a crucial issue, which is the accountability of conflicting requirements imposed on business in different contexts. This is widely believed to be a complicated and difficult issue faced by many MNCs (Messner, 2009, p. 919; Ruggie, 2013a, p. 100), especially in developing countries like China (Ip, 2009a, p. 221). As a response, the UNGPs outline a hierarchy of legal obligations which the company should consider, and the steps it should follow to address the dilemma (Frankental, 2011, p. 763). Moreover, it is hoped that implementing global criteria above those of local states can acquire legal force and be institutionalised through contractual obligations, a step which has far-reaching implications for the labour conditions in MNCs’ supply chains (Ruggie & Sherman, 2015). Although there are researchers suggesting “a

more instrumental balancing” based on the principles already embedded in the UNGPs (see, e.g., Backer, 2012, p. 169), evidence shows that this commitment is beginning to take shape in countries like India, Pakistan and Russia (McPhail & Adams, 2016, pp. 661-662).

Second, setting the human rights obligations merely under the umbrella of legal duties is no longer competent today to address many corporate-related human rights issues. The impasse of UN Norms demonstrates that the state duties of human rights are not directly transferrable to business (Ratner, 2001, pp. 493-494; Whelan et al., 2009, p. 377). Also it is argued that MNCs are at better positions to expand both their economic and political powers and exploit such advantage to evade legal responsibilities (Charney, 1983; see also, Duruigbo, 2007, p. 252; Posner, 2016; Sikka, 2011). It is imperative to evoke the mindset of human rights morality to better discharge corporate accountability (Wettstein, 2015, p. 175). As it has been discussed in Section 3.2.1.3.1, the merit of human rights as embodying basic human dignity can be used as an overriding value, which is reflected in the UNGPs. Arnold (2016, p. 267) states that the human rights as considered in the UNGPs are compatible with moral rights, though they are not equal to morally-grounded human rights. Muchlinski (2012, pp. 156-157) argues that the morally motivated management system embedded in the UNGPs can generate stronger effects on corporate human rights policies than merely passively responding to external pressures (see also, Arnold, 2010, p. 389; Backer, 2012, pp. 127-128; Werhane, 2016, pp. 7, 20; Wettstein, 2015, p. 175).

4.4.2 Whom and for what: extending responsibility to suppliers

If the nature and scope of corporate responsibility towards human rights are already contentious topics, sophisticated global supply chains only render the situation more complex. In recent history companies have refused to be responsible for human rights violations among their offshore supply chains, as witnessed in the anti-sweatshop movement and the notorious case of Nike (Ramasastry, 2015, p. 242; Young, 2004, p. 367). Fortunately this argument has largely been discarded today, with the responsibility for supply chains becoming a common norm. However, this does not mean that an agreement has been reached between business, governments and various stakeholders. There are issues which remain to be clarified. The UNGPs bring us one step closer to the solution as will now be discussed.

4.4.2.1 Why should MNCs be responsible for their supply chains?

During the late 1990s, a number of clothing and footwear MNCs like Nike came under public scrutiny for the pervasive use of child labour and the deplorable sweatshop conditions in their supply chains in Southeast Asia (Greenhouse, 1997). While under attack by customers, NGOs and scholars, MNC executives at first took up a defensive stance by arguing that the suppliers were individual entities who were the sole bearers of responsibility (King & McDonnell, 2015). Also, supporters of the sweatshops claimed that by investing in the local supply chain, MNCs enabled developing countries to improve their economies and create more jobs, which would lead to an increase in wage levels (Maitland, 2004; Powell, 2006). On the other hand, scholars have vehemently criticised this by evoking the respect for the human dignity, and the compelling strategic reasons for MNCs to voluntarily improve these labour conditions (Arnold & Bowie, 2003; Arnold & Hartman, 2006).

While some of the arguments raised by both defenders and opponents are still valid today (e.g., the living wage debate, see Maitland, 2004), the increasingly sophisticated global supply chains and the shifting international BHR context, as discussed in Section 3.4, are inviting new challenges to the field.

4.4.3 For what: “do no harm” and positive duty

4.4.3.1 Respecting human rights: from negative to positive duty

Following the discussion of human rights as negative duty in Section 3.2.1.3.2, this section aims to locate that discussion in the business context. At the current stage a common agreement has been reached that companies bear negative duties not to infringe human rights, which has been phrased as “do no harm” in the UNGPs:

To respect rights essentially means not to infringe on the rights of others—put simply, to do no harm (Ruggie, 2008a, p. 9).

Business enterprises should respect human rights. 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 (Principle 11).

Although elements of positive action are embodied in the requirement to “address adverse human rights impacts” (we will further discuss this in Section 4.4.3.2), it is clear that the *text* of UNGPs stipulates corporate human rights responsibility as a negative duty, which sets the baseline (Ruggie, 2017b, p. 14; Whelan & Muthuri, 2017, p. 744; Wood, 2012, p. 65).

However, there are criticisms that the distinction between positive and negative duties is artificial and unrealistic (Macdonald, 2011, p. 551; Wood, 2012, p. 65). As Arnold (2009, p. 65) states, “It is not possible to protect a person from harm without taking proactive steps.” This point is further illustrated by Lane (2004, p. 150, see also, Bishop, 2012, pp. 131-132), claiming that respecting certain rights—for example, the right to subsistence or the right to education—requires companies to take actions to put pressure on states to make social provision, like building schools. Wettstein (2015, p. 170) argues that the construction of corporate human rights merely as negative duty is far from unique. On the contrary negative duty is agent-neutral in nature, which applies to any moral agent. Therefore the specialised role of business in society is not reflected in this contention. Based on the discussion of the tremendous power MNCs have gained during the process of globalisation, and their political influence as “quasi-states” (see Section 3.4.1.2), it is reasonable today that the company’s unique position confers upon it positive duties to contribute to the well-being of the entire society (Wettstein, 2015, pp. 170-171). Hence it is peculiar that the UNGPs refer to “do no harm” as the only corporate responsibility. Furthermore, some researchers also link the corporate entity as a moral agent with a positive duty. According to Wettstein (2009, p. 148), corporate moral responsibility derives from its failures to positively influence the state of affairs based on its abilities, which contributes to the moral blame-ability of remaining “silent” (Fasterling & Demuijnck, 2013, p. 804). In a similar vein, Kolstad (2009, p. 581) contends that there is a hierarchy of conditional duties to protect and promote human rights, which can be performed more effectively through subdivided moral agents. Whereas states as first level duty-bearers may default on their obligations, companies as successive duty-bearers should take up the task.

Finally, the simplistic dichotomy of “negative/positive” is questionable, and even misleading, in practice (Archard, 2004). There are “grey areas” between the two, which are open to broader interpretations.

To begin with, there are occasions when a company may not directly be involved in infringements of human rights, but is benefiting from the violations caused by other actors (e.g., governments) in the form of complicity (Clapham & Jerbi, 2000, p. 342; Fasterling & Demuijnck, 2013, pp. 804-805; Ramasastry, 2002, p. 95; Wettstein, 2010; 2012b, p. 40). In this situation, the fulfilment of negative duty (i.e., not to be complicit) causally requires companies to take positive actions to mitigate their impacts (Santoro, 2010; Wettstein, 2009; 2012a, p. 756). For instance, companies have proactive obligations to develop and enforce CoC, as well as establishing monitoring and grievance mechanisms (Nolan & Taylor, 2009, p. 443). In this regard the termination of contracts with suppliers using child labour is a good example. In certain cases involved child labour, the negative duty to abruptly terminate the contractual relationship with the supplier might cause even more severe impacts on human rights, as children might become homeless and the families are deprived from incomes (Tan, 2009, p. 185; Wettstein, 2009, pp. 292, 306; 2012a, p. 756).

Second, following the complicity argument, companies are expected to use their leverage to actively influence and improve human rights conditions, which is reflected in the Principle 13 and Commentary of Principle 19 of the UNGPs (Brenkert, 2016, p. 300; Wood, 2012, p. 64). The kernel of the leverage-based approach to the corporate responsibility is that even through company has no link to causal or other contribution to the human rights violations (in the term of the SRSG, no impacts), it is responsible to utilise its leverage over the actors to improve the state of affairs, which implies a sense of positive duty for corporations (Wood, 2012, pp. 63, 76). Some scholars even contend that companies should put pressure on governments over human rights protection (Campbell, 2006, p. 258; Kolstad, 2012, p. 280; Michaelson, 2010, p. 240; Orentlicher & Gelatt, 1993, p. 69; Santoro, 2010; Werhane, 2016, p. 18). It is true that such studies are attentive to the potential issue of considering human rights as internal affairs, which states might use to defy the company's intervention, and argue that such refusals are legitimate and valid. As we have seen in the Section 3.3.4.1, in practice companies are often facing strong resistance in this regard, and solid common ground is far from being reached between states, companies and other stakeholders.

4.4.3.2 Positive duty in the UNGPs

Whilst the UNGPs have been criticised for restricting corporate responsibility to negative duty, it is however inaccurate to conclude that positive duty is completely absent from the framework. In the 2008 report of the PRR Framework, Ruggie (2008a) contends that:

55...Finally, “doing no harm” is not merely a passive responsibility for firms, but may entail positive steps – for example, a workplace anti-discrimination policy might require the company to adopt specific recruitment and training programmes.

In his 2009 report, Ruggie (2009, p. 17, emphasis added) further notes that:

64. *More than respect* may be required when companies perform certain public functions. For example, the rights of prisoners do not diminish when prisons become privatised. Here, additional corporate responsibilities may arise as a result of the specific functions the company is performing. But it remains unclear what the full range of those responsibilities might be and how they relate to the State’s ongoing obligation to ensure that the rights in question are not diminished.

65. Beyond such situations, the picture becomes even murkier. A number of additional factors have been proposed for attributing greater responsibilities to companies. They include power, influence, capacity, and the notion that companies are “organs of society”. While such factors may impose certain moral obligations on any person or entity, including business, they are highly problematic bases for assigning responsibilities to companies beyond respecting all rights at all times, for reasons the Special Representative elaborated in previous reports.

Here the SRSR explicitly points out the situation in which companies are positively exercising governmental authority and acting as quasi-state organisations (McCorquodale & Simons, 2007; Nolan & Taylor, 2009, p. 444). Nevertheless he acknowledges the “murky” picture which might perplex them. In the final version of the UNGPs, the element of positive duty is also included, particularly in the requirement for due diligence. As Principle 17 of UNGPs states:

In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

As Nolan & Taylor (2009, p. 443; see also, Wood, 2012, p. 65) point out, due diligence represents an attempt to internalise the element of positive duties into corporate management, including devising measures to avoid adverse human rights impacts and increasing transparency to both internal and external stakeholders. In addition, Buhmann et al., (2019) state that stakeholder involvement and engagement builds a bridge between the negative duty of “do no harm” and the positive potential to proactively identify the potential harm before it happens. They further contend that risk-based due diligence provides a channel through which both scholars and practitioners can discharge the positive responsibilities based on the human rights assessments on the local context (Buhmann et al., 2019).

4.4.4 By whom and how: non-stated based remedy

If the second pillar of corporate responsibility emphasises “do no harm”, a principle concerning a negative duty, the third pillar, that of remedy, effectively assigns corporations an enabling role in realising human rights³⁰ (McPhail & Ferguson, 2016, p. 527). It is the most challenging of the UNGPs; as Backer (2012, p. 140) states, “The remedial obligations of states and corporations present the most potentially dynamic element of the UNGPs framework”. As the Principle 29 of the UNGPs states that:

“To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.”

The requirement of an operational-level grievance mechanism has significant implications for corporations operating in a context in which the state-based abilities to protect human rights are weak or absent (McPhail & Adams, 2016, p. 668; Ramasastry, 2015, p. 247). This is manifested in the SRSB’s concept of the “governance gap” (Seppala, 2009, p. 405). The *text* of the UNGPs envisages two functions for the remedies that are tied to the corporate responsibility to respect human rights: they are an indispensable part of the due diligence

³⁰ Ruggie (2013, p. 102) differentiates three categories of grievance mechanism: comprising judicial, state-based nonjudicial, and non-stated based (e.g., corporations). The state-based remedy mechanism consists of courts, National Human Rights Institutions and National Contact Points, etc (UN, 2011, p. 28). According to Backer (2012, p. 140) the states remain the primary force for addressing disputes, and corporations are a secondary one whose task is mainly mitigate grievances and problems before they escalate. However for the purpose of this research, only the corporate-based remedy mechanism will be reflected upon here.

which supports the identification of adverse human rights impacts; and perhaps more importantly, they highlight the importance of early remediation of grievances before they are escalated and compounded (Commentary of Principle 29). More specifically, the Commentary of Principle 29 explicitly points out the need to pre-emptively identify any potential impacts through grievance mechanisms:

“Such mechanisms need not require that a complaint or grievance amount to an alleged human rights abuse before it can be raised, but specifically aim to identify any legitimate concerns of those who may be adversely impacted. If those concerns are not identified and addressed, they may over time escalate into more major disputes and human rights abuses.”

As it will be demonstrated later in Section 7.3.2, this argument is particularly relevant to this research. That is, in practice workers are often asked to collect robust evidence before they file a grievance. Both the enabling and constraining functions of *molestation* are evident here. It is enabling because it opens the possibility that the grievance mechanism will be exploited by personal hatred which does not necessarily fall into the sphere of corporation control. However, it is also constraining as it provides causes for management either to neglect or refute the legitimate grievances of workers.

Finally, Principle 31 sets the effectiveness criteria for the non-judicial grievance mechanisms. These should be that it is (1) legitimate, (2) accessible, (3) predictable, (4) equitable, (5) transparent, (6) rights-compatible, (7) a source of continuous learning and (8) based on engagement and dialogue. In order to better locate them in the Chinese context, this section discusses the salient issues regarding these criteria from the perspective of Chinese local practice. It is not aiming for completeness, but only highlights the ones with most significant influence on this study.

The most fundamental criterion is legitimacy. As the Commentary on Principle 31 states, “Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it”. However, this is by no means an easy task, as one minor mistake can seriously discredit the entire grievance mechanism. Therefore as Zhang (2013, p. 34) describes, it is like “walking on ice”. He further contends that in the Chinese context the source of legitimacy can be either “rule of law” or “rule by man”, and workers tend to seek solutions through men, instead of through procedures or principles. However, this course only

renders the solution likely to be unreliable and unsustainable, which is easily to collapse in front of legitimacy.

Second, the grievance mechanism needs to be accessible, which should entail “being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access” (Principle 31). Particularly, the obstacles comprise “a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal” (Commentary of Principle 31). These are applicable in the context of most Chinese suppliers, where workers lack the resources and knowledge to access the grievance mechanism. Thus it is important to lower the barriers by communicating the relevant information in a way comprehensible to workers with different educational and cultural backgrounds (Zhang, 2013, p. 35).

Third, the process should be predictable and transparent, which requires the corporation to “provide a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and the means of monitoring implementation”. It should also “keep parties to a grievance informed about its progress” (Principle 31). In practice it is easy to design nicely structured work-flows, but it is difficult to adhere to them and keep the workers informed. Also, Zhang (2013, p. 38) comments that traditional thinking on the part of workers tends to downplay the procedural justice, and focus on the outcome only, which can be a source of *molestation* (see also, Xian, 2013, p. 43).

Fourth, aggrieved parties such as workers shall have “reasonable access to the sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms” (Principle 31). However the extant studies suggest that due to the power and information asymmetry between workers and management (Krueger, 2008, p. 119; Ye, 2013, p. 26), it is very difficult (if not impossible) for workers to access the relevant information and acquire the assistance they need.

Fifth, the grievance mechanism should be rights-compatible, which means that the “outcomes and remedies accord with internationally recognised human rights” (Principle 31). However, as Zhang (2013, p. 37) points out, the underlying predicament here is that the standards in Chinese national labour law are distinctly lower than international human rights standards. Considering there are only a small number of domestic corporations (especially small and medium-sized enterprises, SMEs) that can fully adhere to the

national law, it will be even more difficult for them to observe the international standards. Hence he concludes that to introduce these standards might be premature.

4.4.5 How: principled pragmatism

4.4.5.1 Principled pragmatism: the SRSG's approach

As it has been discussed in Section 3.4, polycentric governance is a dominant element in the contemporary international human rights regime, which reveals the complexity of the international order and the need to harmonise the heterogeneous global systems. The UNGPs are built upon the bedrock of the interplay of state legal systems, international organisations' governance mechanisms and the corporate internal regulation systems and social norms, as the SRSG describes:

70. ...In doing so we should bear in mind that companies are constrained not only by legal standards but also by social norms and moral considerations—in the terminology of the BLIHR group, distinguishing what companies must do, what their internal and external stakeholders expect of them and what is desirable. Each involves standards. But each has a very different basis in the fabric of society, exhibits distinct operating modes and is responsive to different incentive and disincentive mechanisms (UNCHR, 2006, p. 18).

The SRSG has taken a distinct and also controversial approach, which he labels “principled pragmatism” (Backer, 2012, p. 82; Ruggie, 2013a), which is

81. ...an unflinching commitment to the principle of strengthening the promotion and protection of human rights as it relates to business, coupled with a pragmatic attachment to what works best in creating change where it matters most—in the daily lives of people” (UNCHR, 2006, p. 20, see also, Ruggie, 2013a, p. xxiii).

Despite the fact that the final object is very simply stated, as to create change “in the daily lives of people”, the process of achieving this goal is by no means simple. The new regime of global plural (legal) governance requires creative ways to align the diverse interests held by different stakeholders, with the aim of solving the day-to-day operational human rights problems (Melish, 2017, p. 83; Wettstein, 2015, p. 163). Based on this observation, the SRSG approached the situation from a relatively neutral stance without tending to favour particular stakeholder groups. Notwithstanding his strong connections with the UN, he dismissed the suitability of the UN Norms as a feasible and fruitful instrument to

deliver positive influences on the current human rights regime (Jochnick, 2017, p. 130). Instead, as the SRSB states in the 2011 Report:

14. The Guiding Principles' normative contribution lies not in the creation of new international law obligations, but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved (UN, 2011, p. 5).

From this point of view the pragmatic approach well serves that purpose. Rodríguez-Garavito (2017b, p. 192) identifies a spectrum of principled and pragmatic considerations. At one end of the spectrum is principlism, which underlies an overriding normative goal with little attention to pragmatic matters; on the other end is pragmatism *tout court*, whose dominant concern is feasibility from the perspective of political opportunities for changing and improving the human rights situation by reducing power asymmetry. Most views are located somewhere between. He further points out the SRSB's approach leans to the pragmatic end in two ways: in terms of the *purpose*, the SRSB approach aims to produce change at the ground level, in terms of *means*, it intends to achieve effective progress by building consensus in the global governance system. This argument is largely congruent with the SRSB's reliance on the distinction between "the logic of consequences" and "the logic of appropriateness" (Ruggie, 2013a, p. 102).

4.4.5.2 The voluntary nature of UNGPs

One of the criticisms of UNGPs is the voluntary nature of the principles. Melish (2017, p. 83, see also, Haines et al., 2012, p. 126; Jochnick, 2017, p. 130; Wettstein, 2015, p. 164) perceives power asymmetry as the root cause of corporate human rights violations, which he argues that UNGPs fail to tackle, as they adhere to a "top-down" process, giving companies discretion to decide what is required in line with their self-interests. Blitt (2012, p. 45) further argues that the UNGPs downplay the global trend of putting private actors under more scrutiny, especially regarding potential legal liability (see also, Jägers, 2011, p. 160). Drawing from other empirical research, Vargas's (2017, p. 126) study shows that the treaties will have positive impacts when put into action by civil society. Cragg (2012, p. 28) has concerns that voluntary regulations such as corporate self-regulation codes do not have a very encouraging history. Rodríguez-Garavito (2017a, p. 33) proposes

three reasons to combine the voluntary and mandatory frameworks with respect to the UNGPs. First, a binding treaty has the ability to reinforce the compliance mechanism of the global public government regime, at the same time enhancing the remedy mechanisms for civil society by reference to the international human rights law. Second, adopting the treaty process will align the UNGPs with international norms, which delegitimises the companies' attempt to use the UNGPs a shield to conceal their evading of their legal obligations. Third, such a treaty will help to close the regulatory gap left by extraterritorial jurisdiction.

It is based on the SRSG's principled pragmatism that these issues can be addressed. Considering the failed attempt of the UN Norms to place corporate human rights obligations within the sphere of a legally binding treaty, the SRSG decided to avoid the time-consuming negotiation of a treaty and prioritised pragmatic methods to address the most pressing local challenges (Bijlmakers, 2018, p. 50; Rodriguez-Garavito, 2017a, p. 36; Wettstein, 2015, p. 175). He (Ruggie, 2017, p. 57) further contends that even if such a treaty is passed, the home states of the MNCs are highly unlikely to endorse it, which leads to another dead end (see also, Melish, 2017, p. 82).

I should add that this would not simply be an exercise in pure logic—which some of my friends in the academic world did not fully appreciate when noting my failure to provide a robust moral theory or a full scheme for the attribution of legal liability to underpin the Framework. The reason is straightforward: in order to maximise the prospect that states, businesses, and other relevant actors adopt and act on the GPs, I would have to go right back to the Human Rights Council for its up-or-down vote on whether to endorse them. Council members and others seeking to influence their decisions could be expected to adhere not only to "the logic of appropriateness" but also to apply "the logic of consequences" in judging my proposals—calculations of how it would affect them specifically (Ruggie, 2013a, p. 102).

Hence, for the SRSG neither a voluntary procedure nor a mandatory legal framework can solve the human rights conundrum by itself; instead he advocates a "smart mix" approach which is reflected in the due diligence (Buhmann, 2016, p. 707). As he states:

Achieving significant progress, I believed, would require moving beyond the mandatory-vs.-voluntary dichotomy to devise a smart mix of reinforcing policy measures that are capable over time of generating cumulative change and achieving large-scale success—including in the law (Ruggie, 2013a, p. xxiii).

4.5 Implementing UNGPs

4.5.1 Flexibility of UNGPs

Under the guidance of the pragmatic approach, an important feature of the UNGPs is the flexibility which is manifested by its open-ended language and a certain level of abstraction in defining the specific measures of corporate responsibilities and state duties, such as due diligence and the baseline of social expectations. They permit a certain level of discretion, and allow both companies and states to adopt a range of measures appropriate to their own circumstances (Bijlmakers, 2018, pp. 56, 120; Blitt, 2012, p. 43; Buhmann, 2012; Methven O'Brien & Dhanarajan, 2016, p. 545). From the legal perspective, Picciotto (2003, p. 144) values the potential of flexibility in practice in the form of self-regulation to raise the minimum standards set by states and international institutions, based on the circumstances and characteristics of the company itself³¹. Said's concept of *molestation* is useful here for interpreting this approach. Upon the foundation of principled pragmatism, the SRSG is facing three practical obstacles to the discharge of corporate human rights accountability: the complexity of local contexts and the role of companies within, the formidable task of reaching a consensus between business, state and civil society, and the imperative to address the human rights issues on the ground level. The UNGPs can be perceived as an attempt with an *intention* to overcome the three barriers, and pragmatism and flexibility are the key to doing so. In other words, the role of *molestation* is enhanced in the UNGPs, and audiences of the *text* are "encouraged" to incorporate their own interpretations based on their own operational contexts, which exercise their *authority* in *beginning* to talk about the human rights responsibility based on their specific character and context.

While acknowledging the merits of flexibility in the UNGPs, scholars also appeal to practitioners to pay close scrutiny in implementing the UNGPs. Setting out from this concern, Haines et al. (2012, p. 108) argue that as adverse corporate human rights impacts are the outcome of interactions with external stakeholders, the varying contextual factors leave significant room for discussion on the feasibility of corporate obligations. This is exactly the reason why concepts like SOI, "complicity" and "leverage"

³¹ As an important channel of adaptation, the codification of UNGPs into CoCs will be further discussed in Section 6.5.

have caused so much debate. Haines et al. (2012, p. 108) further points out that there is a risk that this flexibility might cause the UNGPs to be “watered down to the lowest denominator.” Mares (2018, pp. 7, 10) indicates that the non-binding nature of the UNGPs, which depend solely on their persuasive force, also contributes to their possible misinterpretation, especially of the concept of due diligence.

4.5.2 Implementing UNGPs: the UN interpretive documents

As the SRSG states: “It is impossible to distil six years of research, consultation and reflection into a document the length of the UNGPs” (OHCHR, 2012), the purpose of UNGPs as “principles” is not to provide a single template which covers every aspect of corporate human rights responsibility. Rather they are articulated at a certain level of abstraction, enabling business to embed the local reality and context into an implementation process based on sectors, issues and situations (Backer, 2012; Bijlmakers, 2018; Blitt, 2012; Buhmann, 2012). For this reason, twelve months after their first implementation, an interpretive document called *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (hereafter Interpretive Guide) was drafted by the UNWG to ground these pioneer efforts of contextualisation on the original *texts* and *intention* of the UNGPs (OHCHR, 2012). In addition, the Interpretive Guide brings together the SRSG’s work over the six years of his mandate, providing additional background in an attempt to facilitate the corporate understanding of their meaning and *intention* (OHCHR, 2012). The Interpretive Guide as a *text* therefore embodies the *beginning* of the UNGPs, providing at the same time a particular interpretation of them, which seeks to reflect on past experience. It aims by this to further operationalise the *texts* in a way which is consistent with that interpretation, as we will see in Chapter 6 (Backer, 2012; Brenkert, 2016; Fasterling, 2017). It is argued that the Interpretive Guide provides material to bridge the UNGPs’ *intention* with the implementation at ground level, through the analysis of which lies the foundation for further study of company policies and reports.

The document *Frequently Asked Questions About the Guiding Principles on Business and Human Rights* (hereafter FAQs) was published in 2014, three years after the UNGPs were issued. While the document’s primary aim is not to provide practical guidance for the UNGPs, it is addressed to a broad audience, including governments, companies, civil societies and of the public who are concerned with the topic of business-related human

rights. It attempts to categorise and answer the questions that have been put forward by stakeholders both before and after the UNGPs were published (OHCHR, 2014). By doing so, it provides background information on the UNGPs as a *beginning* and the interplays with other *beginnings* of BHR (e.g., the ones established UN human rights frameworks). In a word, the publication of the FAQs has the *intention* of complementing both the UNGPs and the Interpretive Guide which represents their official UN interpretation. Thus it is argued that a comparison between the *texts* of the FAQs and the UNGPs sheds light on the *molestation* of the UNGPs at the UN level. Therefore Section 6.3 sets out to explore this issue.

4.6 Conclusion

This chapter has set the scene of this research by reviewing three strands of literature: the literature on accountability as human relatedness, the more recent studies from the SEA discipline on the role of human rights accountability in the UNGPs, and specifically, the more comprehensive discussions on the UNGPs from the law literature, which overlaps with the SEA studies. By introducing the concept of accountability as human relatedness, the chapter attempts to provide a fresh angle from which to interpret the accountability mechanism underlying the UNGPs. It is argued that Said's emphasis on the *text* and the interplay between *authority* and *molestation* are both compatible with this approach to accountability. Upon contemplation of current studies on human rights accountability and the UNGPs, this research departs from the traditional focus on the corporate social disclosure practice by teasing out the complex interactions between *texts*, as viewed through Said's theoretical lens. It extends our knowledge regarding the varying contextualisation of the UNGPs among actors on many different levels, with respect to the role played by accountability. Finally, the discussion on the UNGPs' key aspects fleshes out the nature and scope of the accountability underlying this framework, which paves the way for the empirical chapters 6 and 7.

Chapter 5

Research methodology and method

5.1 Introduction

This chapter provides an overview of the methodology and research methods underpinning the research into the contextualisation of the UNGPs in China. The research design is in line with the SRSB's rejection of "one size for all" with respect to the BHR solutions, and the value of principled pragmatism. That is, the research methodology tends to see social phenomena as constructed through social interactions, which means it is context-sensitive and can be most appropriately understood by engaging with the local actors. Drawing on Said's theoretical framework, the data is collected in the form of *texts*, both inscribed and uttered by various actors, from the UN to the ground level. It is in the light of these two perspectives that the qualitative interpretive method has been selected, employing specifically the techniques of the semi-structured interview and participant observation.

5.2 Research methodology and method

5.2.1 Philosophical underpinnings: ontology and epistemology

As Burrell & Morgan (1979) state, all social science enquiries are grounded in a set of basic assumptions regarding ontology, epistemology and human nature. Generally speaking, ontology focuses on the problems of the nature of reality—"how things are" (Saunders, Lewis, & Thornhill, 2016, p. 127), and epistemology sets out to answer what is (should be) accepted knowledge and how this can be communicated to others—"how we know anything" (Bateson, 2000, pp. 313-314; Bryman, 2012, p. 27; Saunders et al., 2016, p. 127). Mason (2018, p. 7) suggests that researchers distinguish epistemological questions

from more straightforward questions on how to “generate” data, conscious that here epistemology is represented by the overarching theory and the guidelines for deciding how social phenomena can be assessed, validated and demonstrated.

To be more specific, one of the central points in ontology is the question of whether reality exists externally from social actors, as universal facts (objectivism), or is socially constructed from the perceptions and actions of these social actors (subjectivism, Saunders et al., 2016, p. 130, Bryman, 2012, p. 32). The extreme subjectivist approach is to view social reality as the product of the individual imagination, which leads to the position that knowledge is constituted by individual sense-making, and therefore mentally constructed (Morgan & Smircich, 1980, p. 493; Ryan, Scapens, & Theobald, 2002, p. 38; Sekaran & Bougie, 2013). A less extreme subjectivist approach can be seen in social constructionism, which contends that reality is (partially) created through interactions between social actors, who construct meanings shared between them through the medium of language and actions, which are confined to specific moments and contexts (Morgan & Smircich, 1980, p. 494; Saunders et al., 2016, p. 130). Researchers following the social constructionism principles will not, therefore, pursue “universal facts”; instead they tend to focus on the various opinions and narratives presented through social actions, which they believe shape multiple social realities (Ryan et al., 2002, p. 38; Saunders et al., 2016, p. 130).

These ontological assumptions have direct implications for the epistemology of the research, and the evaluation of research methodologies. As Bryman (2012, p. 27) points out, one of the core arguments in epistemology concentrates on whether human society can be studied in the same way as in the natural sciences (Bryman, 2012, p. 27). The positivist mainstream approach believes that only through the rigorous reasoning of natural science methods, can the world be studied and predicted (Bryman, 2012, p. 27). Hence the positivists are more likely to employ scientific methods, such as observation and experiment, to objectively acquire knowledge (Ryan et al., 2002, p. 39). On the other hand, interpretivism delves deeply into the understanding of social phenomena “through accessing the meaning that participants assign to them” (Orlikowski & Baroudi, 1991, p. 5). Thus their research is more likely to adopt hermeneutical methods, gaining knowledge by interpreting the subjective experiences that have emerged between social actors (Ryan et al., 2002, p. 40; Holstein Gubrium, cited by Silverman, 2014, pp. 24-25; Walsh, 2012, p.

Table 5.1 Six ontological assumptions and the corresponding epistemological stances

Objectivist approach	
↑	
Ontological assumptions	Epistemological stances
1. Reality as a concrete structure (naive realism, objectivism)	to construct a positivist science (positivism)
2. Reality as a concrete process (transcendental realism)	to study system, process, change
3. Reality as a contextual field of information (contextual relativism)	to map contexts
4. Reality as a symbolic discourse (transcendental idealism [Kant])	to understand patterns of symbolic discourse
5. Reality as a social construction (social constructionism [socially mediated idealism])	to understand how social reality is created, interpretivism
6. Reality as a projection of human imagination (idealism [Berkeley], constructionism, nominalism, subjectivism)	to obtain phenomenological insight, revelation
↓	
Subjectivist approach	

Source: Morgan & Smircich (1980, p. 492) and Ryan, Scapens, & Theobald (2002, p. 38), modified by the author based on Chua (1989, p. 603)

247). It is based on this line of reasoning that this research adheres to the interpretive angle for making sense of the contextualisation of UNGPs in China. Morgan & Smircich (1980, p. 492) provide a useful framework outlining six ontological assumptions and the corresponding epistemological stances along a spectrum (see Table 5.1).

5.2.2. Research methodology

Overall, the logic of the research methods in this study revolves around Said's theoretical framework, which examines textual information disseminated by actors on various levels. It is in line with the hermeneutical methods mentioned in the previous section, which also tend to focus on textual analysis. Therefore the research methods combine a number of techniques to extract and analyse *texts*: the document analysis of *texts* inscribed by the UN, the Chinese government and the companies in China are examined in Chapter 6; the

texts uttered by local actors, which were analysed through semi-structured interviews and participant observation, are presented in Chapter 7. Chapter 7 also includes written *texts* in the form of posters which were collected within the supplier factories. This section aims to justify the reasons for adopting these particular methods and show how they have been implemented in practice.

5.2.2.1 Qualitative research: definition and inspiration

As Denzin & Lincoln (2003, p. 1) state, qualitative research has a long and distinguished history in human disciplines. Its history is intertwined with that of quantitative methods, and to examine the distinctions between the two offers a way to explain and justify the adoption of qualitative research design in this study (Bryman, 2012). On the face of it, it seems the most obvious difference is that quantitative research employs “measurement” which qualitative research does not (Bryman, 2012; Creswell, 2013). However there are fundamental differences between their philosophical positions, which logically lead to different methodological choices for identifying, collecting, assessing and analysing data.

Qualitative research mainly sets out to answer *how* social actors interpret the world through a wide range of interconnected practices (Bryman, 2012, p. 33; Denzin & Lincoln, 2003, p. 13; Small, 2009, p. 28). In contrast to the experimental positivist scientists, who are looking for the immobile entity “truth”, transcending personal opinions and bias, qualitative researchers tend to see reality as constantly shifting and reconstructing itself, based on the individuals’ conceptions and creations, and believe that a true picture of reality can only be arrived at through its representations (Carey, 1989, p. 99; Flick, 2014, p. 231; Morgan & Smircich, 1980, p. 498; Munkvold & Bygstad, 2016). This gives qualitative researchers the advantage of immersion in idiographic and case-based situations or issues, which others have little or no knowledge of. Yet these have the capacity to generate rich information regarding the “how” question in that particular context (Denzin & Lincoln, 2003, p. 16; Munkvold & Bygstad, 2016; Parker, 2008, p. 911; Silverman, 2014, p. 18; Willmott, 2008, p. 923). Based on these arguments, Denzin & Lincoln (2011, p. 3) provide a useful definition of qualitative research:

Qualitative research is a situated activity that locates the observer in the world. Qualitative research consists of a set of interpretive, material practices that make the world visible. These practices transform the world. They turn the world into a series of

representations, including field notes, interviews, conversations, photographs, recordings, and memos to the self. At this level, qualitative research involves an interpretive, naturalistic approach to the world. This means that qualitative researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them.

The study of the contextualisation of UNGPs in China fits well into the discipline of qualitative research. As a start, although it is already eight years since Chinese government endorsed the UNGPs, to my best knowledge there are few academic studies on the implementation of UNGPs in the Chinese context (for one exception, see Whelan & Muthuri, 2017). I believe the present study is the first empirical research focusing on the UNGPs from the perspective of human rights accountability within an MNC's Chinese supply chain. Hence it is explorative in nature. As has been reflected above, the qualitative approach is the preferred strategy for explorative research, since it enables the researcher to explore previously unknown issues, and their possible influences on, and interrelations with social phenomena (Adams, Hoque, & McNicholas, 2006, p. 364; Munkvold & Bygstad, 2016). In accordance with that logic, the aim of this research is not to produce statistically generalisable knowledge and a fixed "truth" by investigating a large sample of participants, nor does it set out to test theory; instead it seeks to interpret a single specific social phenomenon (human rights accountability) by interacting with the participants, investigating their own interpretations, and becoming involved in the social setting. Last but not least, the research subject of human rights essentially echoes the notion of individual interpretations and the influence of local settings, which all presuppose the necessity to listen to, observe, and engage with individuals. This calls for a qualitative approach to research. In fact, considering that Chinese workers have been marginalised and their voices have been silenced, qualitative research has the value of listening to their multiple voices and engaging with them. It generates a more comprehensive and credible picture based on "mutual respect, granting of dignity, and deep appreciation of the human condition" (Lincoln, 1995, p. 284).

5.2.2.2 Making sense of human rights accounting and Said: Interpretivism

Arising from the above discussion on the categories of philosophical background, this study is interpretive in nature. It is based on the ontological assumptions of social

constructionism, which aims to understand social reality at the level of the subjective experience of everyday life (Burrell & Morgan, 1979, pp. 28-31; Moll, Major, & Hoque, 2006, p. 380; Munkvold & Bygstad, 2016). In contrast to the positivist research, which seeks to find universally applicable “laws” inherent in a generalised group of people through deterministic causal relationships, the interpretivist paradigm delves deeply into the ongoing process of human subjectivity and consciousness in specific contexts and moments (Burrell & Morgan, 1979, p. 28; Mason, 2018, p. 8; Saunders et al., 2016, p. 140). The interpretivist researchers’ understanding of a social phenomenon often cannot be generalised, but can shed light on other settings (Munkvold & Bygstad, 2016). Another way to demonstrate the features of interpretivist and positivist research lies in their contrasting orientations to answering “what” and “how” questions. Whereas the positivist study often seeks to answer “what is going on”, the interpretivist scholar focuses more on “how the social realities are produced, assembled and maintained...and how (the reality) is socially brought into being” (Holstein Gubrium, cited in Silverman, 2014, p. 25).

It is argued that the interpretivist paradigm is coherent with the logic of this research. From the theoretical perspective, the core subject of this study is the *text* disseminated by humans as a kind of social interaction. That is, these texts are uttered and inscribed by actors who have the *intention* to depart from the existing context and to enact their *authority* over the *text*. Said’s concept of *molestation* further demonstrates the subjectivity of the individuals by showing how they initiate their own *beginnings* based on their own contexts. Therefore the nature of social reality as understood in this study is not that it is a phenomenon that exists independently of people and the social context. On the contrary, it is produced and maintained and consistently reshaped through the interactions of individuals in exchanging *texts* (Cooper & Ezzamel, 2013; Lincoln, 1995, p. 280).

From the human rights perspective, as it is suggested in Section 3.2.2.3.1, not all countries conduct their human rights practice in the same way as the Western approach. The Asian value debate³² and the persistent claims of the Chinese government to the rights of development³³ all reveal the rather complex picture in which human rights are realised in varying ways. Hence, in order to explore human rights within the Chinese context, it is

³² See Section 3.2.2.3.2

³³ See also Section 3.2.2.3.2

crucial to uphold the interpretivist paradigm, and take local factors into consideration, and therefore to be attentive to the perceptions and ideas of the indigenous people.

From the accounting and accountability perspective, despite the fact that accounting used to be dominated by positivist assumptions of “normal science” free of value judgements, the social, historical and political dimensions of accounting are increasingly evoked in the literature (Chua, 1986; Mattessich, 1995, p. 260; Shapiro, 1998, p. 641). Chua (1986) has devised the concept of “interpretive accounting research”, which projects accounting as a social activity embedded within social interactions. More recently, the rapidly growing field of SEA frees accounting from the restrictions of “conventional accounting” by financial terms and economic entities, and mobilises the linkage between accounting and organisational and social contexts (Boyce, 2000; Brown, 2009; Gallhofer & Haslam, 2003; Gallhofer et al., 2015; Gray, 2000, p. 250; 2002, p. 692; McNicholas & Barrett, 2005). This trend is also manifested in the recently burgeoning literature on human rights accountability (Gallhofer et al., 2011; Macdonald, 2007; McPhail & Ferguson, 2016; McPhail & McKernan, 2011; Sikka, 2011). The present study is aligned with interpretivist thinking by evoking the role of accounting as facilitator of basic social interactions, in which the identities of the social actors are inter-subjectively displayed, and constructed over time (McPhail & Adams, 2016, p. 654; Messner, 2009; Roberts, 1996, 2001; Schweiker, 1993; Shearer, 2002).

5.2.2.3 Justifying the researcher’s role: relatedness and authoritarian voice

It seems there is a paradox here in this approach when Levinas’s idea of relatedness is involved. On the one hand Levinas emphasises the importance of relatedness, the responsibility and answerability on the face of Others, to accommodate the very specific needs of Others (Hand, 1989; Morgan, 2011). On the other hand, when interpreting others, especially people who usually live and work in an isolated context of supplier complexes, it is inevitable to involve the researcher’s authoritarian voice into the research. How to coordinate these two?

First and foremost, as the author of the thesis and as a Chinese national, I find it both inevitable and necessary to have the authoritarian voice in my thesis. During my past 26 years of living in China, I have acquired extensive and deep understanding of Chinese

culture, language, social manners and the overall social, political, and economic environments. Also, with family relatives used to be Beta employee and the extensive reading of information after the Beta suicides incident, I consider myself quite familiar with the local situation in Beta. All these enable me to engage with interviewees and the local context extremely well, and to better capture, interpret and communicate the relevant information to wider readers. Hence such authoritarian voice is benign in my research. Also, according to Said (1975/1997, see also, Cooper & Ezzamel, 2013), the authority means that authors have the power to initiate a beginning by authoring certain texts in a certain way based on his/her realities. The readers, on the other hand, will interpret and molest the texts according to their contexts. This is reflected in my research approach in which I adhere to my own voice based on my understandings and experiences in the local context.

Also from the perspective of Levinas's generalised others, the perceptions I generated from the document analysis, the participant observations and interviews reflect a certain angle of perspective. It is not from workers' or managers' perspective, but from my own perspective based on my own experiences. Therefore a balance needs to be achieved between the findings of generalised others and the authoritarian voice of the researcher which is based on his/her unique experience. The debate of the universalism/relativism of human rights throughout this research is a good example. Following the rationale of Levinas, I'm fully aware of the danger to impose the sameness of human rights to all Chinese workers, as I have repeatedly attempted to demonstrate in my thesis. However, as Gallhofer & Haslam (2019, p. 8) suggest, it is also important for the sensitivity to otherness not to collapse into excessive cultural relativism. Certain claims on human rights will always be universal.

5.2.2.4 Research method: a case study of Alpha's Chinese supplier Beta

5.2.2.4.1 Case study approach

Bearing in mind that this study aims to examine the *molestation* of the UNGPs in the Chinese context, the research can be seen as essentially about the process of the implementation of UNGPs within a particular context, from a particular angle of analysis. The focus is on the contemporary issue of the UNGPs, and the control over behavioural

Table 5.2 Relevant situations for different research methods

Method	(a) Form of research question	(b) Requires control over behavioural events?	(c) Focuses on contemporary events?
Experiment	How, why?	Yes	Yes
Survey	Who, what, where, how many, how much?	No	Yes
Archival analysis	Who, what, where, how many, how much?	No	Yes/No
History	How, why?	No	No
Case study	How, why?	No	Yes

Source: Yin (2018, p. 9)

events is not required, as the actors are studied within their natural social settings without (or in order to minimise) any influence from the researcher.

Most intuitively the term “case” is associated with a location (e.g., community, organisation, Bryman, 2012, p. 60). However sometimes the boundary of a case extends to the notion of “social setting” (Lee & Lings, 2008, p. 200), which involves the organisation; but the real-world context surrounding the organisation is also indispensable. Perhaps a more applicable definition of “case” in this research is that of the specific organisation within the social setting (Yin, 2018, p. 15). Within the discipline of accounting, the distinct features of the case study render it especially suited to explore and make sense of emerging practice and experiences, and how these experiences are constructed and interpreted among the individuals within the real-world setting (Adams et al., 2006, pp. 362-364; Berry & Otley, 2004, p. 239; Marginson, 2004, p. 326; Moll et al., 2006, p. 383). Yin (2018, p. 9) provides useful guidance for differentiating it from other research methods. Based on these judgements the case study is the most appropriate approach, as can be distilled from Table 5.2.

Next, the selection of Beta requires justification. It should be borne in mind that the most suitable case for study should display all the characteristics discussed above, and should

have the potential to yield meaningful empirical data with which the research questions can be addressed (Mason, 2018, p. 55; Scapens, 2004, pp. 261-262). .

In this study Beta is selected as a case study of human rights accountability and UNGPs in China. Indeed, Beta is perhaps the most eminent example of the dire working conditions in Chinese supply chains which have caused much controversy (see Section 5.2.2.4.2), and has been the case study for several works of research (see, e.g., Chan & Pun, 2010; Guo et al., 2012; Xu & Li, 2013). Nevertheless, there are more fundamental reasons to concentrate on Beta instead of other suppliers. First, as the largest supplier of electronic products in the world, employing millions of workers, Beta can be seen as representative of the Chinese supply chain as a whole. Thus it provides a typical setting in which all the human rights issues are potentially to be found. Second, as the global leader of the technology companies, Alpha claims to implement rigorous human rights CoC and standards in all its supply chains. Hence Beta, as Alpha's major supplier, is subject to the "highest standards of human rights principles" (Alpha, 2019b, p. 3). This constitutes the clear benchmark against which human rights conditions can be assessed. Third, the study of UNGPs requires a perceptible link between the subject companies and the UNGPs to be established, with the evidence of reference to the UNGPs made by these companies, both directly and indirectly through other standards and frameworks. Beta satisfies these criteria from two aspects: it is accountable in terms of the Alpha CoC (ACoC) which explicitly refers to UNGPs³⁴, and it follows its own CoC which observes the Responsible Business Alliance (RBA) codes and the UNGPs. It is argued that through these regulatory documents a link can be built between UNGPs and Beta. Last and perhaps most importantly, my interest in the working conditions in MNCs supply chains in China originated from concern over the Beta scandals, which motivated me to pursue this matter further and to start this research.

As Beta has over 30 manufacturing bases across mainland China (see the following section), it is neither feasible nor necessary investigate all of them. Considering the wide

³⁴ According to the 2019 Alpha Supplier Code of Conduct: "This Code draws from industry and internationally accepted principles such as the Responsible Business Alliance (RBA), Ethical Trading Initiative, International Labor Organisation's (ILO) International Labor Standards, **United Nations Guiding Principles on Business and Human Rights**, Social Accountability International, SA 8000, the ILO's Code of Practice in Safety and Health, National Fire Protection Association, Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, and OHSAS 18001" (Alpha, 2019, p. 6).

geographical distances and the different levels of economic development between northern and south provinces, this study aims to cover the major manufacturing bases in the Middle (Taiyuan, Zhengzhou), Capital area (Beijing, Tianjin), Yangtze River Delta (Kunshan) and Pearl River Delta (Shenzhen, headquarters of Beta in mainland China). While it is anticipated that various cultural and economic factors might have a potential influence on the perceptions of human rights conditions (working conditions) of local actors (e.g., the local wage level, see, e.g., Tsoi, 2010, Lüthje et al., 2013, p. 185), such influence will have had limited effects on the research result for three main reasons. First, as the research subjects are people, i.e., Beta workers and managers, it is hard to define a certain group with distinct features tied to the local context. In fact since many workers are migrants who tend to have a high rate of turnover, it means that the labour is extremely flexible and there is a consistent exchange of workers between different locations (Lüthje et al., 2013, p. 191; Pawlicki, 2016, p. 40). Hence this research intends to see the workers as a homogeneous group sharing the same identity. Second, the organisational structure of Beta is characterised by its centralised model of management, with unified systems in all the subsidiaries (Beta, 2017, 2018a). Thus it is assumed that its management principles regarding human rights will demonstrate a high level of similarity, which renders the geographical factor less important. Third, the aim of the research is to explore the interpretations of local actors regarding the implementation of UNGPs, and more broadly the human rights conditions in the industry; it does not intend to produce findings generalisable to the entire workforce or population, but to shed light on the current state of affairs. Therefore the choice of investigation sites does not aim for completeness. As a result, I intend to define the Beta example as an embedded single case study, drawn from data collected in six plants.

5.2.2.4.2 Introducing the case: Alpha, Beta and the global electronics industry

The electronics industry

It is common knowledge today that in the electronics industry the brand-name companies do not manufacture their products themselves. It is widely known that Alpha's productions include mobile phone, but we probably have never heard of the name of the company which actually manufactures these phones—and on most occasions, there is no need to know. This outsourcing of contract manufacturing in the electronics industry has

proved extremely successful for the past 35 years, and, in fact, it has dominated the reconfiguration of global production networks (Henderson, Dicken, Hess, Coe, & Yeung, 2002). From the mid-1990s, manufacturing has ceased to contribute to the competitive advantage of the high-tech companies, and is now considered as more like a burden to their profit-making. As a result, these companies were motivated to relentlessly search for low-cost countries and locations (Clarke & Boersma, 2017, p. 115; Pawlicki, 2016, pp. 22-23). After humble beginnings in 1980s, the electronics industry in Chinese Taiwan took off, with manufacturing giants such as Beta rapidly expanding their mass production into the mainland (Lüthje et al., 2013, pp. 106-107). Large manufacturers such as Beta enjoy a comprehensive capacity to vertically integrate almost all procedures and tasks from component processing to final assembly into the “one-stop shopping” solution for buyer companies like Alpha. Also, compared with smaller ones, large manufacturers are able to respond more quickly to short product cycles, as well as to more complex manufacturing techniques (Starosta, 2010, p. 546). For instance, they are experienced enough to adopt the Just-In-Time mechanism (JIT), which is valued by MNCs like Alpha. All this leads to strong relationships between buyer companies and their suppliers (Chan et al., 2015, pp. 78-79). The issue of JIT is significant here as it demonstrates the case of complicity and why MNCs are accountable for human rights violations in their supply chains. That is in order to reduce the risk and leave enough reaction time for themselves to understand their competitors and the market demands, companies work toward JIT technique deliberately place the order to suppliers at the last minute (Jiang, 2009, p. 79). This is even more salient in the situation of extremely short and disruptive product cycles with highly fluctuating expected sales volumes which are very difficult to predict (e.g., the electronic industry, van Liemt, 2016, p. 47). Too often the result is that the global forces firmly control the local practice, namely, the immediate demand of buyer companies which leaves little time for suppliers to react, and the downward pressure of minimise costs. The consequence is workers are required to do the excessive overtime to meet the deadline (Barrientos & Smith, 2007, pp. 724-725).

Alpha and Beta

Alpha is one of the richest companies in the world. Alpha started to outsource most of the manufacturing process to offshore contract suppliers at a very early age. As the former

Present of Alpha Computers states in 1982: “Our business was designing, educating and marketing. I thought that Alpha should do the least amount of work that it could and...let the subcontractors have the problems” (Moritz, 1984, pp. 200-201). This statement still applies today. After the explosion of the demands of Alpha’s mobile phone, this manufacturing model has been significantly upgraded and intensified, and has become largely dominated by Alpha (Lüthje et al., 2013). It was against this background that the relationship between Alpha and Beta was formulated and strengthened.

The rapid rise of Beta as the world’s largest Electronics Manufacturing Services (EMS) company can be attributed to the huge amount of cheap labour in mainland China. This, and its highly integrated manufacturing style (Andrijasevic, Drahokoupil, & Sacchetto, 2016, p. 10; Pawlicki, 2016, p. 23; Xu & Li, 2013, p. 375), together have allowed it to conquer the EMS market by its unbeatable low prices, and to attract large orders from Alpha (Chan, 2013b, p. 84; Lüthje et al., 2013, p. 42; Müller, 2016, p. 156; van Liemt, 2016, p. 49). According to the data from the latest 2018 Beta Social and Environmental Responsibility Report, the headcount of Beta employees in mainland China is 863,000, spread over the 30 manufacturing bases across the country (Beta, 2018a, p. 11), with a peak number of 1.6 million, exceeding all other EMS manufacturers in the market (Clarke & Boersma, 2017, p. 119).

It has been argued that Beta’s stellar rise also benefited from the favourable policies of local Chinese governments eager to attract investment to boost the local economy, sometimes to the extent of assisting Beta to recruit workers (Ngai & Chan, 2012, pp. 384-386). The resulting alliance makes it likely to hamper the government’s power to regulate Beta’s labour practices (Ngai & Chan, 2012, p. 386; Pun et al., 2016, p. 171).

Perhaps an even more remarkable side of the picture is the peculiar relationship between Alpha and Beta. Pivotal to Alpha’s success in generating tremendous profits are its effective management, and especially its tight control over its suppliers, especially Beta (Chan et al., 2013, p. 104; Gambino, 2016, p. 225). The linkage between Alpha and Beta is different from those in industries in which the coordination is dominated by dynamic market relations which make it difficult for buyer-companies to control their suppliers at arm’s length. For instance, in the coffee industry the buyer-companies like Starbucks usually do not purchase coffee beans directly from the farmers, but from market exchanges, which severely constrains its ability to influence the production process, as

well as the working conditions in its suppliers' businesses (Fitter & Kaplinsky, 2001; Macdonald, 2011, p. 554). However, the case of Alpha and Beta is completely different. Unlike the coffee industry, where the buyer companies purchase from thousands of suppliers, items manufactured by Beta alone make up a significant proportion of Alpha products. Also, as distinct from the coffee industry where an intermediary system exists, Alpha is known to have created a closed ecosystem in which it directly controls its suppliers, from design to manufacture to assembly (Clarke & Boersma, 2017, p. 117). As top executives of Alpha highly value the flexibility of suppliers who can quickly respond to consumer demands, it widely imposes the JIT mechanism, which is only possible under conditions of strong linkage with between the two (Chan et al., 2015, p. 79; Froud et al., 2014, p. 52; Ngai et al., 2014, p. 216). In addition, Harris (2014a, p. 9) points out that large MNCs like Alpha usually employ highly professional auditors and consultants to examine candidate suppliers, and their reports are thoroughly based on the size of the labour force available, quality of product, and social/environmental aspects. Hence Alpha has full knowledge of their suppliers' internal situations, especially major suppliers like Beta. Considering the strong linkage between Alpha and Beta and the purchasing strategies Alpha pursues, such as JIT, the social implications of complicity are clearly spelled out in this situation.

The working conditions in Beta

Despite all these procedures, unfortunately it seems that labour tensions in the manufacturers' businesses often take second place to their economic performance in the stock markets, with the suppliers and MNCs largely impervious to media releases on human rights abuses at the ground level (Harris, 2014b, p. 9). The turning point happened in 2010 when there was a rash of suicides by Beta workers, with 18 attempted suicides and 14 deaths (Chan, 2013, p. 85). This tragedy exposed the abusive working conditions, and put Beta as well as Alpha under the public scrutiny both of the international media (Barboza, 2010; Duhigg & Barboza, 2012), and of scholars (Chan, 2013b; Chan & Pun, 2010; Lüthje et al., 2013, p. 198; Ngai & Chan, 2012, p. 384; Xu & Li, 2013, p. 371), local government (Hu, 2010) and NGOs (Students and Scholars Against Corporate Misbehavior (SACOM), 2010).

Scholars played an active role in investigating the root causes of the suicides at Beta. Leading scholars have conducted field investigations inside a number of Beta bases. Their findings concentrate on the extremely insufficient wages, just slightly above the local minimum level (Chan & Selden, 2014, p. 605; Müller, 2016, p. 166; Ngai & Chan, 2012, p. 399; Ngai et al., 2014, p. 217), which lead to widespread excessive overtime (Chan et al., 2015, p. 89; Lucas et al., 2013, p. 97; Ngai & Chan, 2012, p. 399; Ngai et al., 2014, pp. 217-218; Pun et al., 2016, p. 170). Apart from these outcome-based findings, they also provide valuable first-hand information on process-based issues such as the harsh military-like, punishment-oriented management style, which draws on a hierarchical relationship system, and fosters an atmosphere of obedience (Chan, 2013b, pp. 88-90; Chan & Pun, 2010, p. 17; Chan & Selden, 2014, p. 604; Lucas et al., 2013, pp. 98- 99; Ngai & Chan, 2012, p. 397; Pun et al., 2016, pp. 172-173; Xu & Li, 2013, p. 375), and the nature of the tedious and repetitive work (Lucas, Kang, & Li, 2013, p. 98; Ngai & Chan, 2012, pp. 400-401). As important as these works are, none of them capture one important development within the international human rights regime—the UNGPs. Rather, they tend to take the traditional approach, which falls into the discipline of labour relations and CSR studies. This research takes a step further by introducing the UNGPs into the field, which has the potential to bridge the gap between the study of local BHR, and the UN regime itself.

5.3. Data collection and analysis

5.3.1 Justifying the approach: reflections on Levinas

Before moving into the detailed discussions of the data collection and analysis techniques, this section sheds light on the logic of adopting a combination of both document analysis and interviews. The question raises in the seemingly tension between these two approaches in the discourse of Levinas. That is, as the Levinas's ethics evolves around the face-to-face encounter with others (which is realised through interviews), the use of document analysis as the circumventing of the faces effectively minimised the inclusion of Levinas. However, as I attempt to demonstrate below, the document analysis and interview do reconcile in the light of Levinas.

First, it is true that the ethics of Levinas emerges from the face to face encounter with others (Critchley & Bernasconi, 2002; Letiche & Lightfoot, 2014; Levinas, 1987; Morgan, 2011; Roberts, 2005), which leads to the individualising accountability as discussed by Roberts (2001) in Section 4.2. This approach is clearly reflected in Section 7.3 of interview analysis. The logic is that as I'm examining the contextualisation of a human rights framework in the local Chinese factory, it is crucial to engage face-to-face with workers and managers, to understand their own perceptions and feelings, upon which the sense of self and others is evolved and the responsibility is established according to Levinas (Hand, 1989; Morgan, 2011).

However, it is not possible and always beneficial to engage face-to-face with all research subjects. The responsibilities cannot be built upon the encounter with millions of Chinese workers, with all of them having their different demands. Also, there are benefits to keep the researchees at distance by looking at the documents. The most obvious advantage is the save of time. Also, considering the sensitive nature of human rights issues in China, document analysis opens up a safe space in which such issues can be questioned and examined. During this process the notion of "generalised others" by Levinas comes into play. According to Levinas, what we tend to do in daily life to address the demands of Other is to assume that the Other is like ourselves and by doing so we reduce Other to our own preconceptions and presuppositions (Letiche & Lightfoot, 2014, p. 114). It should be noted that the "Other" with the capital O implies the acknowledgement that others are not merely reflections of the self, but with their own demands upon us, and an Other as an infinite other (Thomas, 2004, p. 106). When you try to accommodate another, try to understand he/she to the fullest, then he/she transfer from the lower-case "other" to the capitalised "Other". When applying this to corporate day-to-day activities, people will stick to assumptions, best-practices, protocols and rules (Letiche & Lightfoot, 2014, p. 114). McKernan & MacLulich (2004, pp. 343-344) argue that in nature we are imposing the sameness on the other, and such accounting mechanisms will usually capture only what we are looking for (see also, Joannides, 2012; Messner, 2009; Shearer, 2002, p. 559). Many accounting scholars have already demonstrated this in their study on corporate social and environmental reporting practice, suggesting that there is a tendency that accountability mechanisms are privileging new practices using formal, rule-based and procedural methods, which does not result in greater levels of accountability (Brown & Fraser, 2006; Shenkin & Coulson, 2007). Instead it fosters a "more distanced forms of

accountability” in which the information produced is a partial and twisted reflection (Roberts & Scapens, 1985, p. 451, see also, Messner, 2009). This argument is demonstrated in the texts authored by the Chinese government, Alpha and Beta, which effectively reduce the face of individual workers into a series of protocols and rules (e.g., onsite posters), and justify their responsibilities have been fulfilled by upholding the rules.

In summary, both notions of Levinas’s ethics as face-to-face encounter with Others and generalised others are adopted in my research. I observe the advantage of document analysis, which allows me to collect and analyse organised information that covers huge group of research subjects within a short period of time. Also I was able to place myself within a safe space considering the sensitive nature of human rights issues in China. However, the danger of doing so is also recognised which is the inevitable tendency to twist and ignore the individual demands on the ground level, and renders others as sameness. Therefore I also conducted interviews with workers and managers face-to-face to make sense of their own interests, ideas and demands, to try my best to accommodate Others, hence uphold Levinas’s ethics in the face-to-face encounters with Others. Nevertheless, it should be noted that this is a very difficult approach. As many scholars have pointed out, that Levinas’s ethics is highly idealistic and utterly impossible to achieve in practice (Morgan, 2011; Nootboom, 2012). In the context of this research, this is because in the face-to-face encounter with Others, there is still “me” in the dialogue. The information collected during interviews is still filtered and interpreted through me, so there is still a bit of generalised others (with the lower-case “o”). But as it has been discussed, it is inevitable and sometimes beneficial to have the authoritarian voice in the research. Hence my approach can be summarised as the mixed attempt to adopt Levinas’s responsibility towards Others, the inevitable generalised others, and my authoritarian voice.

5.3.2 Document analysis

Document analysis can be simply defined as “a systematic procedure for reviewing or evaluating documents, both printed and electronic material” (Bowen, 2009, p. 27). As Walsh (2012, p. 255) suggests, that since we are living in a “literate society”, almost all aspects of everyday life are organised around the dissemination and interpretation of documents (*texts*). This approach is embraced by the SEA researchers (see, e.g., Adams,

2004; Archel et al., 2011; Denedo et al., 2017; Laine & Vinnari, 2017), and has proved to be useful in investigating the CSR and human rights issues in China (Chan, 1998; Gao, 2009; Xu & Li, 2013; Yu, 2008), especially in the case of supply chains (Lucas et al., 2013; Xu, 2013).

It is relevant here that the value of *text* is observed in Said's theoretical framework, which explains the way *texts* are *authored* and *molested*, and how they interact with the local context. It is exactly because of Said's focus on *texts* that his thought is used as a theoretical framework in this research. The logic behind the adoption of document analysis in this research is straightforward: the implementation of UNGPs is best (and sometimes can only be) observed and studied by analysing the documents *authored* by different levels of actors, from the UN to the Chinese government, from a MNC and to its suppliers. As we are at an early stage of the UNGPs' application, the official documents (mostly regulatory in nature) act as pioneering examples for contextualising and implementing UNGPs, and this is especially the case in China where few empirical studies have been conducted on them. Therefore the entire thesis is constructed around the examination of a stream of documents relating to the UNGPs (see Table 5.3). This section discusses the process of selecting and analysing these documents.

5.3.2.1 Selecting the documents

As an authoritative UN document whose drafting process has benefited from the inputs of numerous actors from the state, business and civil society spheres who are concerned with the universal issue of human rights, applicability of the UNGPs spans many different sections and contexts. Such applicability is manifested in a wide range of *texts* related to the UNGPs disseminated by various bodies, including UN entities, Chinese governmental departments and companies and their contract suppliers. In the light of Said's work, each of these *texts* represents a *beginning* for reconstructing the *beginning* of the UNGPs regarding their corporate human rights responsibility, in a way which reflects their contexts and local realities, based on which *authority* can be built. It is through this process that the *beginning* of corporate duty to respect human rights is transmitted and made practical to varying actors (especially to the local actors), during which the role of *molestation* is invoked. As a result, all of these *texts* contribute to the study of the contextualisation of UNGPs. However, as it is not feasible to conduct an analysis of all the

massive amount of data here, it is necessary to identify the key documents at the outset. In this chapter there are three main sources of empirical data: from the UN level, the Chinese national level and the Business (both Alpha and supplier) level.

Table 5.3 List of documents analysed

Level of analysis	Year	Title	Web link
UN	2011	UN Guiding principles on business and human rights	https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf
	2012	The corporate responsibility to respect human rights: an interpretive guide	https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf
	2014	Frequently asked questions about the Guiding Principles on Business and Human Rights	https://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf
	2003	First Periodic Report by China: Initial report submitted by States parties under articles 16 and 17 of the ICESCR Covenant	https://undocs.org/E/1990/5/Add.59
	2012	Second Periodic Report by China: Second report submitted by States parties under articles 16 and 17 of the ICESCR Covenant	https://undocs.org/E/C.12/CHN/2
	2008	National report submitted in accordance with paragraph 15(A) of the annex to Human Rights Council Resolution 5/1	https://undocs.org/A/HRC/WG.6/4/CHN/1
	2014	Committee on Economic, Social and Cultural Rights Fifty-second session: Summary record of the 18th meeting : Held at the Palais Wilson, Geneva, on Thursday, 8 May 2014, at 3 p.m.	https://undocs.org/E/C.12/2014/SR.18
	2012	National Human Rights Action Plan of China (2012-2015)	http://www.china-un.ch/eng/rqrd/jblc/t953936.htm

Continued

Table 5.3 List of documents analysed

Level of analysis	Year	Title	Web link
Chinese government	2016	National Human Rights Action Plan of China (2016-2020)	http://english.www.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm
	1991	White Paper: Human rights in China	http://www.china.org.cn/e-white/7/index.htm
	1995	White Paper: The progress of human rights in China	http://www.china.org.cn/e-white/phumanrights19/index.htm
	2000	White Paper: Progress in China's Human Rights Cause in 2000	http://english1.english.gov.cn/official/2005-07/27/content_17546.htm
	2016	White Paper: The right to development: China's philosophy, practice and contribution	http://english.gov.cn/archive/white_paper/2016/12/01/content_281475505407672.htm
	2018	White Paper: Progress in human rights over the 40 years of reform and opening up in China	http://english.www.gov.cn/archive/white_paper/2018/12/13/content_281476431737638.htm
	2010	(International standard) ISO 26000: Guidance on social responsibility	https://www.iso.org/standard/42546.html
	2015	GB/T 36000: Guidance on social responsibility	-
Company	2019 (Latest version)	Alpha supplier codes of conduct	Link removed for anonymity purpose

Continued

Table 5.3 List of documents analysed

Level of analysis	Year	Title	Web link
Company	2018	Beta global code of conduct policy: social and environmental responsibility (Chinese)	Link removed for anonymity purpose
Ground level	-	Beta employee handbook (Chinese, 10th version)	Link removed for anonymity purpose
		Onsite poster on human rights policy	Collected onsite
		Onsite poster on grievance mechanism	Collected onsite

5.3.2.1.1 UN documents

At the UN level the human rights doctrine operates on a well-established structure formulated by the main actors, including the Office of the UN High Commissioner for Human Rights (OHCHR), who is often in collaboration with the UNWG, a subsidiary of the UN Human Rights Council (UNHRC). Apart from endorsing the PPR and the UNGPs in 2011, the UNHRC also works closely with the OHCHR to develop guidance and training on the implementation of the UNGPs at various levels (UNHRC, 2012). After examining an exhaustive list of publications of OHCHR (UNHRC, 2019), two official guidance documents on interpreting and integrating the UNGPs into business management are identified for analysis, namely the 2012 Interpretive Guide (HR/PUB/12/02) and the 2014 FAQs (HR/PUB/14/3, see Section 4.5.2). Both the Interpretive Guide and the FAQs are companions of the UNGPs, and they are the only two official explanatory UN documents of these principles. Although there are other official reports and communications on the UNGPs, they are not deemed to be authoritative documents representing the official position of UN on their implementation. Therefore they will contribute to this thesis as literature, rather than as document data for analysis.

5.3.2.1.2 Chinese national documents

Although the Chinese government endorsed the UNGPs in 2011, the evidence of direct adoption at the Chinese national level is still absent. However it is argued that the analysis of the government documents should not be excluded from analysis for two main reasons. First, the state duty to protect human rights from the adverse impact by business marks the foundation of the UNGPs. Also, as has been illustrated by previous studies, the Chinese government largely dominates the discourse on CSR in China (Li & Belal, 2018; Svensson, 2002; Whelan & Muthuri, 2017) and has the *authority* to interpret and implement the UN human rights regulations (e.g. UDHR and IBHR), based on which the UNGPs are formulated (Chen, 2009; Potter, 2007; Sceats & Breslin, 2012). In these circumstances, it can be expected that the national and business *texts* on human rights will exhibit a certain level of convergence.

After a period of isolation from the international human rights regime, China slowly intensified its participation in both the normative and institutional dimensions of international human rights after 1971 (Nathan, 1994, Potter, 2007). Since then it has been engaging with the UN human rights system by ratifying numerous treaties and standards covering them—from economic, social and cultural rights (ICESCR) to women’s rights (The Convention on the Elimination of all Forms of Discrimination Against Women, CEDAW), children’s rights (The Convention on the Rights of the Child, CRC) and prisoners’ rights (The Convention against Torture, CAT), as well as other discursive topics relating to human rights in specific contexts (e.g. human rights in conflict areas). In addition, China has also actively participated in the UN human rights regime in other ways, including engaging in multilateral and bilateral dialogues and submitting periodic reports to the UNHRC (Peerenboom, 2005). Using Said’s theory, it is argued that textual information in these documents provides valuable material to analyse the link between *text* and reality in which are embedded the *beginning* and *authority* of each entity, and the corresponding *molestations*.

The focus on the topic of business-related human rights in this study helps to narrow down the number of target documents. Due to the lack of authoritative standards in accordance with the UNGPs at the national level, this study refers to the national Guidance on Social Responsibility GB/T 36000 (2015) as the only official document indirectly refers to the UNGPs through the intermediate document of ISO 26000 (2010).

More specifically, the human rights section in the ISO 26000 is aligned with the UNGPs, and ISO 26000 enjoys widespread uptake in Asian countries, including China³⁵. The GB/T 36000 represents the official attempt of the Chinese government to localise ISO 26000, which, therefore, logically links GB/T 36000 to the UNGPs.

5.3.2.1.3 Business documents

It has never been the *intention* of the UNGPs to put a full stop to the BHR discussion. On the contrary, the SRSG states that the “[The endorsement of the UNGPs] marks the end of the beginning” (Ruggie, 2013a, p. xxii). The UNGPs aim to promote a new regulatory dynamic through both hard law and soft law mechanisms simultaneously (Bijlmakers, 2018). At the business level, the implementation of UNGPs should result in the convergence of the international and business human rights discourses in more granular works. This enables the UNGPs to act as a global common platform, from which their meanings can be further translated into specific industry sectors and local contexts (Mares, 2018; Ruggie, 2013b). Typically, this is manifested in the form of private regulation CoC (Faracik, 2017; Haines et al., 2012; Ruggie, 2013a). Such documents involved in this study include both Alpha and supplier CoCs, which are available online. This chapter focuses only on the latest versions of the CoCs: Alpha updated their Version 4.5 on January 1, 2019, and Beta updated their BCoC in 2018 (only the Chinese version is available). It should be noticed that Alpha has published two regulatory documents, namely the Alpha Supplier Code of Conduct (6 pages) and Alpha Supplier Responsibility Standards (95 pages). The latter serves as additional documentation which provides clarity regarding Alpha’s requirements and governs the ACoC. Therefore, this section mainly focuses its analysis on the Standards rather than the ACoC.

5.3.2.2 Analysing the documents

This section fleshes out the particular analytical technique adopted to examine the translation and contextualisation process flowing from *texts* of UN level to the Chinese national level and the lower business/supplier level. It undertakes thematic analysis, a technique which is widely employed both in accounting and in political studies on the BHR

³⁵ See Section 6.4.3 for more detailed discussion.

issues (Bebbington & Unerman, 2018; Burchell & Cook, 2013; Denedo et al., 2017; Tsoi, 2010). This approach benefits from the structure of the documents which frame the principles and topics with relatively independent meanings, thus providing the “skeleton” of comparable themes. Specifically, each document was carefully reviewed several times to identify the emerging themes, especially those related to the accountability relationships (who, what, by whom, how). The software NVivo 11 was used to facilitate the coding process. As that does not support Chinese, MAXQDA 2018 was also utilised to code Chinese documents (e.g., Chinese supplier codes). Initially general themes were identified which are relatively abstract (e.g., the corporate human rights responsibility), then the first and second tier codes were generated which are more detailed. Hence the links between the documents can be established through comparing the codes, based on which the evidence of *molestation* in the implementation of UNGPs can be collected and analysed (see the Appendix 2).

In addition to categorising the themes in accordance with the principles, the existing literature of human rights accountability is also scrutinised to identify the gaps in the literature which have been reflected or addressed in the UNGPs and other documents. For instance, the themes generated from the literature include the need to study human rights in accordance with specific local contexts (Angle, 2002; Haines et al., 2012; Whelan & Muthuri, 2017) and especially the contextualisation of UNGPs (McPhail & Adams, 2016; McPhail & McKernan, 2011) in the Chinese local reality (Wright, 2015); and the role of accounting in discharging corporate human rights accountability (Bijlmakers, 2018; Gray & Gray, 2011; Islam & McPhail, 2011; McPhail & Ferguson, 2016; McPhail & McKernan, 2011; Parker, 2011; Sikka, 2011).

5.3.3 Semi-structured interview

5.3.3.1 Justifying the interview method

The ontological position of this research suggests that social reality rests upon people’s knowledge, interpretations and narratives, and is in nature situational and contextual. The epistemological stance highlights the need to understand reality by listening, observing and interacting with the actors, in order to analyse their use of language and their way of perceiving the world. Said’s theoretical framework reinforces the need to analyse the

“texts”, which are disseminated by individuals, capturing their view of the local context. These preconceptions causally lead to the selection of interview as the main research method. As Mason (2018, p. 116) points out, researchers can benefit from interviews by fully engaging with people, giving them the maximum freedom to construct their contextual knowledge, teasing out specific issues and exploring their perspectives in depth. Also, the researcher has the advantage of flexibly adapting himself to the interviewees’ responses as the interview is proceeding, which makes it particularly helpful for understanding a relatively new topic or research area, or for exploring voices and experiences which have been marginalised, ignored or misinterpreted (Byrne, 2012, pp. 209-212).

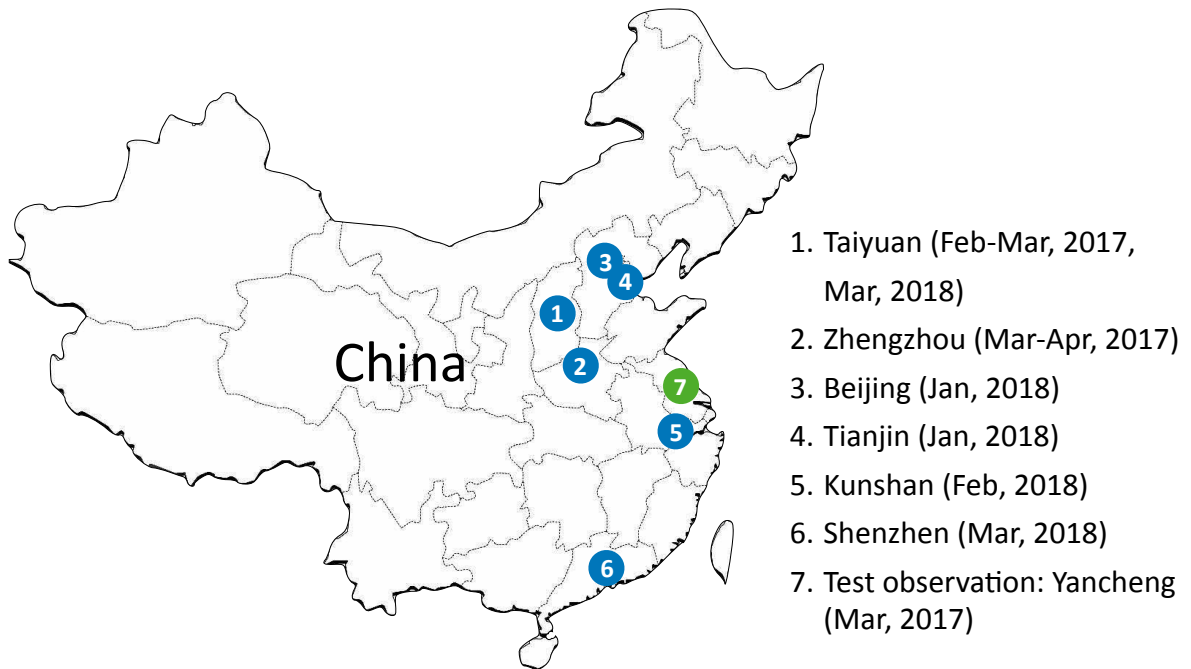
The interview method has been widely employed in both SEA and CSR research with respect to labour conditions (Archel et al., 2011; Denedo et al., 2017; Islam et al., 2018; Jamali & Karam, 2018; Laine & Vinnari, 2017; Li & Belal, 2018; Owen, 2008, p. 247). Specifically in the discipline of human rights accountability, it has enabled researchers to look into labour practices in depth, both in the overall Chinese context (Tsoi, 2010; Yin & Zhang, 2012) and in the situation in Chinese supply chains (Egels-Zandén, 2007, 2014; Wang, 2005; Yu, 2008), especially Beta (Chan, 2013; Lucas et al., 2013; Ngai et al., 2014). Acknowledging the benefits of the interview, the research draws on this technique to explore the understandings of the local actors regarding human rights-related issues. By closely interacting with workers and managers, listening to their voices and further probing both the root causes and the perceptions behind these voices, the study generates rich insights into human rights accountability practice on the ground level, and the current status of the implementation of UNGPs in China.

5.3.3.2 The interview process

5.3.3.2.1 Sampling

As qualitative research does not aim to arrive at conclusions with wide applicability, the sampling method is not statistically based on the individuals, but focuses instead on the specific social processes, actions or phenomena, with linkage to the particular theory used in the research (Munkvold & Bygstad, 2016; Scapens, 2004, pp. 261-262; Silverman, 2014, p. 73; Yin, 2018, p. 15). As Lee & Lings (2008, p. 212) claim, qualitative research is not

Figure 5.1 Beta plants investigated



“collecting” data, but rather “generating” data in conjunction with the interviewees. Following this logic, purposive sampling is employed, with theoretical sampling as the starting point of the strategy (Lee & Lings, 2008, p. 212; Seale, 2012, p. 144). According to Glaser & Strauss (2017, p. 62), “Theoretical sampling is done in order to discover categories and their properties, and to suggest the interrelationships into a theory.” Said’s theoretical framework suggests that the adaptation and dissemination of the *text* (in the case of this research, the UNGPs) happens between various actors, each of whom has the ability to interpret, and more importantly, *molest* the *text* based on his/her context, which renders the *text* more practical. Therefore the actors are assigned equal weighting in the data-collection process.

However, in practice there are certain obstacles to reaching the target participants and generating a good response rate. Based on previous empirical investigations, human rights conditions remain a sensitive topic, to some extent, in the Chinese local context, and both workers and managers are reluctant to directly discuss “human rights” issues with a stranger (Lee, 2007; Peerenboom, 2005). This is especially the case after the Beta scandals. Taking that into consideration, the researcher decided to use snowball sampling as an entry point. Snowball sampling is also known as network sampling, and as the name suggests, it recruits participants through the personal connections between the

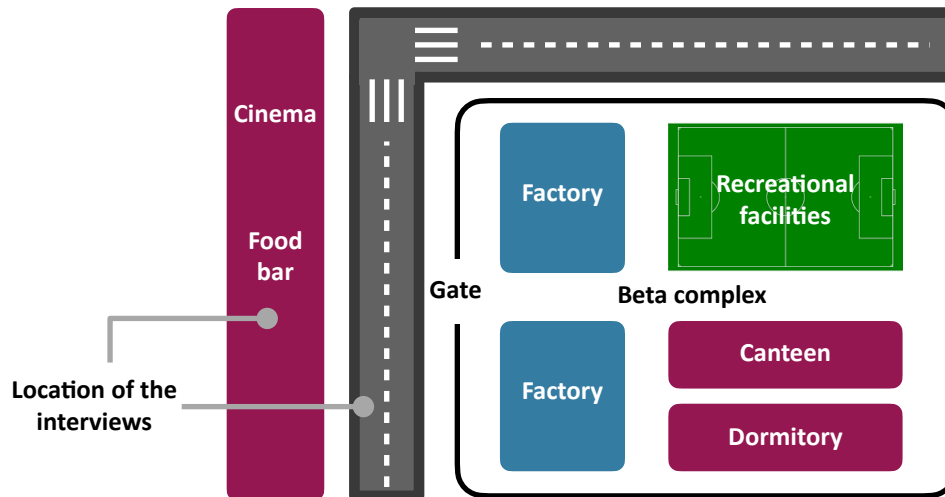
researcher and the participants themselves (Bryman, 2012, p. 415; Byrne, 2012, p. 218). Apart from its advantage of reaching out to people and revealing their views on sensitive issues, it is particularly appropriate in Chinese society which values *guanxi* (personal and interpersonal connections) as a way to secure favours and get behind closed doors (Chan, Ip & Lam, 2009, p. 3; Shafer et al., 2007, p. 267; Shin et al., 2007, pp. 166-167). This is arguably linked to Confucian values (Ip, 2009b, p. 469; Koehn, 2001, p. 421).

Under the guidance of this sampling strategy, during the first stage I contacted three workers and two managers (one senior manager) from Beta through my relatives. The interviews were conducted informally, some way from Beta communities, in places like restaurants or the interviewee's home. This created a relaxed environment in which interviewees were more likely to share their personal feelings and interpretations without concern. Following the first stage I was introduced to three more workers and one manager in Taiyuan Beta, and one senior manager in Zhengzhou Beta. After reflection upon the data collection, I entered stage three, in which I interviewed both workers and managers outside of Beta in six cities. The Beta employees can be easily identified by their uniform and ID card. The interviews took place during the dinner time, or after the shifts when workers poured out of the factories. I intentionally balanced the gender and age of the interviewees, however it was not possible for me to predetermine their job title before the interview. As anticipated, the response rate was low (around 30%). A total number of eighteen workers and six managers were interviewed at this stage.

5.3.3.2.2 Preparing and conducting interviews

Once the interview research method has been defined, the drafting of interview protocol is commenced. The interviews are semi-structured; in these the researcher enters the field with an interview guide comprising the specific topics for covering the essential aspects to address in order to answer the research questions (Bryman, 2012, p. 468). This is based on two observations. First, although the human rights conditions in MNCs' Chinese supply chains largely remain behind closed doors, this is not a blank area. Several researchers and media coverage have shed light on the various issues (see, e.g., Chan, Ngai, & Chan, 2010; Chan, 2013; Chan et al., 2016). So the researcher is not entering the field blindfold, but attempts to contribute to the extant literature by observing the phenomena from a certain perspective. Second, the investigation benefits from the

Figure 5.2 Locations of interviews outside Beta



flexibility of the semi-structured interview technique. In fact, the value of flexibility is coherently embodied throughout the chapters, approached from different angles using certain terms: the *molestation* from Said's work in Chapter 2, the relativism of human rights in Section 3.2.2.3.1, the principled pragmatism of UNGPs in Section 4.4.5, and the interpretivist methodology in this chapter. All these point to the need to mobilise flexibility to encourage the participants to share their own values and understandings, which all contextualise the research questions at the local level.

Adhering to the notion of flexibility, the interview protocol is drafted. It draws on the findings of previous studies, but also contains elements linked with onsite *texts* such as the corporate CoC. It is based on the belief that the research topic of UNGPs will not be communicated directly to the employees (especially workers), so they are not expected to have any knowledge whatsoever of the UNGPs. Instead the *text* of the UNGPs is received, reinterpreted and *molested* by the buyer MNC (ACoC), and the supplier itself (BCoC). The onsite *text* for the workers' eyes will be very distant from the original *text* of the UNGPs, and the extent of *molestation* registered is very high. Therefore the protocol is constructed based on a document analysis of the *texts* at ground level, including the Alpha and Beta CoCs. In line with this logic, the interview protocol intentionally avoids technical terms such as "due diligence", "leverage" and "grievance mechanism", etc. In addition, the frequency of the term "human rights" used in interviews is reduced to the minimum and is replaced by "labour rights", as discussing the human rights will cause unnecessary reluctance and misinterpretations on the part of the respondents. Two broad topics are covered: questions about general working conditions (i.e., working hours,

wages, working environments, freedom of association, pressure, grievance mechanism), and the perceptions of the issues related to management practices (e.g., management style, Alpha's role in human rights protection, the interpretation of onsite *texts*, auditing). However, in practice, the boundary between the two topics is not fixed, and workers are encouraged to further express their own feelings, concerns and understandings regarding topics they are interested in.

The first stage interviews were conducted smoothly, as the interviewees were introduced by friends and families. They were highly informal, taking place in restaurants and in interviewees' homes, which fostered a more relaxed atmosphere, and where interviewees tended to talk for a longer time (most interviews lasted for more than two hours) and in a more detailed manner. This provided the opportunity to fully interact with the interviewees, and to comprehend the local factors and contexts. The second- and third-stage interviews proved to be more challenging, as the identity of the researcher became stranger to the interviewees and the environment was against long and more detailed conversations. To be specific, as the researcher did not have access into the supplier complex, all interviews were conducted outside the site before or after shifts (Figure 5.2). Although there were thousands of workers, they tended to only have limited time for the interview (ranging from ten to twenty minutes). In order to cope with the constrained timescale, the questions were conveyed in a more direct manner, and if the researcher sensed that workers were particularly interested in a certain topic (based on their tone, length of talking, level of detail provided), the interviewee was asked to give more information. This was also balanced with the salience of the topic according to its relatedness with the UNGPs. The majority of the interviewees agreed to be recorded upon the promise of anonymity and confidentiality. For those who refused, notes were taken and the researcher would repeat the contents of the interview in his own words into the recorder immediately after the interview.

5.3.3.3 Analysing the interview data

Generally there were two kinds of data: interview recordings and fieldnotes. The recordings were transcribed by the researcher himself, and double checked by listening through the recordings twice. Due to the amount of data generated, it is deemed to be too time consuming to translate it into English in its entirety. Also it is believed that

analysing the data in its original language helps to capture its real meaning. Hence only the quotations displayed in preliminary reports (for my supervisors) and in this thesis were translated into English. Computer-assisted qualitative data analysis software (CAQDAS) was used to code and analyse the data (Specially, MAXQDA 2018). There is a debate over the usefulness of CAQDAS (Bryman, 2012, p. 602; Yin, 2018, p. 166), but considering the large amount of data in this research, it significantly assisted the coding and categorising process, which is now reflected.

To begin with, the role of the researcher in the data analysis is active and reflexive, rather than as an outsider passively processing the information (Mason, 2018, pp. 114-115). That is, while reading the transcripts the researcher looks for the meaning beyond the literal dialogue, to the implications outside the interview interactions which are embodied in the context (Mason, 2018, p. 134). Based on this interpretive stance the transcripts were reviewed generally with consideration both to the research questions and the questions in the interview protocol. This was undertaken to provide an overall picture of the data and provide rough guidance for the following coding. Based on this general feeling, I started to code the initial themes, which broadly fell into two categories: the discussion of working conditions, and the perceptions of the issues related to management practices. The process began with the first-stage interviews, as they reveal more detailed information and tend to be more coherent with the interview protocol. The recurring themes and the themes directly related to human rights issues and the elements of UNGPs were highlighted as primary codes, and the more detailed information was labelled with secondary codes. For instance, under the code of “Excessive Overtime” there are sub-codes which include the frequency of overtime, positive/negative attitudes toward overtime, etc³⁶.

During this process negative instances or contradictory cases are particularly highlighted. The phrase “negative instances” indicates situations (themes) which tend in different or even opposite directions from the presupposed interpretations prior to the interviews (Mason, 2018, p. 212). The underpinning argument is the “generalised others” discussed in Section 4.2.4, which reminds us of the danger of ignoring the marginalised voice of the workers’ voices by misinterpreting their demands. It is also a sensitive and useful way to

³⁶ See the Appendix 2 for the coding list.

ensure that the researcher is not imposing his own interpretations inappropriately (Mason, 2018, p. 133).

5.3.4 Participant observation

5.3.4.1 Justifying the participant observation method

As useful as an interview is, it suffers from two shortcomings in this research. First, workers might be unable or unwilling to provide honest and reliable feedback due to the local factors (e.g., sensitive topic, the unfavourable environment for interviews), and this might build barriers to initiating and maintaining a meaningful dialogue with them, and could lead to inadequate data. Even if these obstacles are eliminated, not all knowledge can be articulated and expressed in language, as Mason (2018, pp. 141-142) points out; hence for the interpretivist it is vital to become immersed in the local context, to observe and participate in 'natural' and 'ongoing' settings. This is particularly relevant when facing the diversity of perceptions on human rights issues, a situation in which all the presupposed propositions grounded in Western culture must be carefully examined based on the local context (Walsh, 2012, p. 246). Then the research can benefit from participant observation to draw insights and knowledge from the everyday life of Beta workers, to connect with their ideas, understandings (in the form of spoken *texts*), and with the specific local context which is normally unreachable to "outsiders" (Kousis & Gooch, 2001, p. 83). This approach has been proved useful in previous studies on accounting research (see an overview by Scapens, 2004, p. 264), on the Chinese supply chain (Xu, 2013; Yu, 2008) and on the case of Beta (Ngai & Chan, 2012; Ngai et al., 2014).

5.3.4.2 The participant observation process

As it was the researcher's first experience of closely observing the real life of workers inside the factories, it was a new setting, with numerous new ingredients of the manufacturing process that were strange to the researcher. To conduct successful participant observation requires the researcher to have the skill to accurately capture and document the observations (Moll et al., 2006, p. 390). In order to develop this skill and become familiar with the electronics industry at the ground level, the researcher decided

to conduct a test observation in Yancheng (see Figure 5.1) for two weeks. Through personal connections he acted as an observer in a local company making electronic products for both domestic and international customers, which shares similar processes with Beta. The researcher had full access to the entire factory, where he had the opportunity to observe, interact with and document the elements related to the research question. The researcher also interviewed the Chief Executive Officer (CEO) and several line-managers to familiarise with the local situation.

Upon reflection on the test observation, the researcher negotiated the access to Beta in Taiyuan through personal connections. After the research purpose and the guarantee of anonymity and confidentiality were communicated to the person involved, the researcher was allowed to enrol as a new employee in the department manufacturing smart phones. In addition, the fact that Beta was under a severe labour shortage after the Chinese New Year contributed to the relatively smooth negotiation over access. Even so, it was simply not possible to circulate the message with respect to the research to the entire population in the workshop. Also, previous studies have suggested that the validity and reliability of the data collected through official, announced interviews is problematic in the Chinese context (Egels-Zandén, 2007, p. 56; Frenkel, 2001, p. 537). Therefore for most of the time the researcher acted as a worker, to participate in the manufacturing process. The only exception was the onsite interviews after the shift, away from the monitoring of the manager, in which the researcher asked the workers (his working colleagues) questions regarding human rights issues. In this situation the identity of the researcher was disclosed to the interviewees and the research purpose was introduced. The interviewees were given the chance to decide whether to participate or not. Full anonymity and confidentiality were promised.

The participant observation lasted seven days. The researcher devoted himself to actively interact with the local actors, participate in the operations, observe the working conditions and document the findings. The experience gained from the test observation proved to be useful for understanding the process, and to cope with the challenges the researcher encountered, both in the production tasks and the way to interact with workers. Even though the researcher was able to fully engage with the working environment in Beta, it was not possible for him to get access to the company internal human rights documents, such as the detailed cases in the grievance mechanism, the

internal communications on the human rights policies and regulations, the management documents for each workshop, etc. In this case another data source proved to be extremely important, which was the onsite posters on the human rights policies and the grievance mechanism procedure. This is important because it represents the version of the human rights *texts authorised* officially for the workers' eyes, which is normally concealed from outsiders.

5.3.4.3 Analysing the observation data

There were certain obstacles to recording the data during the participant observation. The most significant one was that no personal electronic devices (in fact, no metal objects) are allowed in the workshop. Walk-through metal detectors are used to make sure of this. Hence it was impossible to record the conversations. Also, the nature of the work is highly intensive, so it was not feasible to keep a written record during the observation. The solution was that after each day's shift the observations, interpretations and conversations were repeated by the researcher into the recorder, which finally contributed to the research diary formulated during the fieldwork. The researcher was able to take pictures of the onsite posters, as they are located outside the workshops.

The analysis of the observation data mirrored the interview data, in which the *texts* were coded in line with the research questions. Comparisons were made between the two sets of data to fill the gaps in the interviews and substantiate the existing arguments. Additionally, the negative/contradictory instances were highlighted to avoid the pitfall of "generalised others".

5.4 Concluding comments

This chapter bridges the literature on human rights accountability as embedded in the UNGPs, the enquiry into the Chinese context and the following empirical Chapters 6 and 7. The study is highly context-sensitive in nature, and the researcher has set out to explore the contextualisation of UNGPs in a specific Chinese context. The aim is not to provide generalisable knowledge, but to understand the current status of a relatively new social phenomenon by immersing in a particular case study of Beta. Seen through the

theoretical lens of Said's work, *text* remains at the heart of data collection in the form of both written (documents) and spoken language (semi-structured interviews, participant observation). Following this line of reasoning, Chapter 6 commences the document analysis (written *text*) and Chapter 7 focuses on the interview and observation data (largely spoken *texts*).

Chapter 6

Reconstructing the meaning: Contextualising the UNGPs at different level *texts*

6.1 Introduction

This chapter examines how the international human rights context articulated in the UNGPs is consumed, reinterpreted and re-shaped at the international, national and business levels. The aim is to address the research question:

“How and to what extent is the meaning of the UNGPs’ *text*, as it cascades down, interpreted, contextualised and *molested* in the form of formal written *texts*, from the UN level through the national, Alpha, and to the ground level of Beta?”

By utilising a multilayer analysis, this chapter focuses on the human rights accountability inscribed in written *texts* produced in a variety of contexts, including the UN level and others. Using Said’s work as the theoretical lens, the *texts* of the UNGPs are constructed as a “family of ideas” and meanings, around which different the branches of interpretation are stretched out in the form of UN and company documents (Said, 1975/1997, pp. 206-207). By adapting Said’s notions of *authority* and *molestation*, the *texts* relating to the human rights from three levels of actors are collected and analysed: UN level, Chinese government level and business level.

First, in Section 6.3 the *texts* of the UNGPs are analysed and compared with other official UN operational guidances for the UNGPs, namely Interpretive Guide, and the FAQs. The aim is to study how the *text* of corporate human rights responsibility in the UNGPs is engaged with, re-produced, or *molested* in the official interpretation of the UNGPs. Second, at the government level, Section 6.4 focuses on two clusters of documents: the Chinese government official communication with the UN human rights regime, in the form of periodical reviews, NHRAP and White Papers. Another source of documents is the

official guideline on social responsibility (GB/T 36000) published by the authorised Chinese agencies, which can be linked to the UNGPs through ISO 26000. It is argued that the stance of Chinese government towards the UN human rights discourse is reflected in the *texts* of these documents. This sheds further light on the translation of the UNGPs in the Chinese context. Third, Section 6.5 examines the *texts* at the business level. It is argued that there are two parallel processes of translation or contextualisation taking place: the translation from the UN to business, and from Alpha to Beta. While the link between the UN and business (especially at supplier level) needs to be strengthened, at the present stage the Alpha/Beta translation is of primary concern. As a result, the evidence of *molestation* is approached from both enabling and constraining potentials to see whether or not the meaning of the UNGPs is rendered more practical in the contexts of lower level actors.

6.2 Data analysis method

This section partially reiterates Chapter 5 (Methodology and method Chapter), meanwhile fleshing out the particular analytical technique adopted to examine the translation and contextualisation process flowing from *texts* of UN level both to the Chinese national level, and the lower business/supplier level. In order to analyse the written *texts* disseminated from various actors located in different contexts, this research undertakes a thematic analysis, a technique which is widely employed in accounting and political studies on BHR issues and has proved to be helpful for coping with a large quantity of data (Bebbington & Unerman, 2018; Burchell & Cook, 2013; Denedo et al., 2017). The following section reflects on the logic of thematic analysis in this research, with special attention to the coding process.

6.2.1 Thematic analysis and the coding process

This study sets out to explore the reinterpretation of the *texts* from a target document (UNGPs) by examining a stream of *texts* authored by various actors. It is argued that the method of thematic analysis is particularly suitable in this research. This approach benefits from the structure of the documents, which frame the principles and topics with relatively independent meanings, thus providing the “skeleton” of comparable themes.

For instance, the UNGPs consist of 31 principles which are interrelated yet exhibit different meanings, and each principle is regarded as a theme. The other two interpretive documents (Interpretive Guide and FAQs) adhere to a similar structure, which includes interpretation of each principle in the UNGPs (Interpretive Guide) and the possible questions relating to fundamental principles in the UNGPs (FAQs). All these conveniently provide comparable themes for examining the transfer of meaning from the UNGPs to the interpretive documents.

With regard to the corporation documents, a slightly different approach is adopted. The technique of documentary analysis can be said to have been widely employed in SEA, not only because the CSR reports constitute the subjects of many studies (see, e.g., Adams, 2004; Denedo et al., 2017; Thomson et al., 2015), but also because they represent the accessible official information regarding the company's social and environmental practice (Cruz, Scapens, & Major, 2011, p. 416; Vinnari & Laine, 2017). While the importance of CSR reports is acknowledged in this research, in the present chapter the focus will be solely on the regulatory documents, i.e., the corporate CoCs. We consider these documents to provide evidence on the ways the organisation conducts itself (and therefore makes itself accountable), and we pay particular attention to the tone and substance of interpretations and other *molestations* made in respect to human rights. As the official corporate policy documents on human rights responsibilities, the CoCs are mainly constitute a categorisation of human rights, followed by expectations and guidance on the issue of implementation. This structure is different from the UNGPs and interpretive documents, which are constructed around both the fundamental and pragmatic issues on corporate human rights responsibility. Therefore the analysis of the CoCs will adopt the open coding technique to stay close to the data (McKague, Zietsma, & Oliver, 2015).

Specifically, each document was carefully reviewed several times to identify the salient themes, especially those related to the themes identified in the UNGPs and interpretive documents. In addition, accountability relationships (who, what, by whom, how) also provide the logic forming the themes. The software NVivo 11 was used to facilitate the coding process. MAXQDA 2018 was also utilised to code Chinese documents (e.g., Chinese supplier codes). Initially general themes were identified which were relatively abstract (e.g., the corporate human rights responsibility), then the first and second tier codes were

generated which are more detailed. Hence the links between the documents can be established through comparing the codes, based on which the evidence of *molestation* in the implementation of UNGPs can be collected and analysed (see Table 6.1 and 6.3 for the list of themes and the *texts* excerpted from the original documents).

In addition to categorising the themes in accordance with the UN General Principles, the existing literature of human rights accountability is also scrutinised to identify the gaps in the literature which have been reflected or addressed in the UNGPs and other documents. For instance, the themes generated from the literature include the need to study human rights in accordance with specific local contexts (Angle, 2002; Haines et al., 2012; Whelan & Muthuri, 2017), and especially the contextualisation of UNGPs (McPhail & Adams, 2016; McPhail & McKernan, 2011; Preuss & Brown, 2012) in the Chinese local reality (Whelan & Muthuri, 2017; Wright, 2015); and the role of accounting in discharging corporate human rights accountability (Bijlmakers, 2018; Gray & Gray, 2011; Islam & McPhail, 2011; Li & McKernan, 2016; McPhail & Ferguson, 2016; McPhail & McKernan, 2011; Parker, 2011).

Table 6.1 Representative data (From UNGPs to Interpretive Guide and FAQs)

Theme	First order code	Representative data
The notion of “severity”	<p>UNGPs:</p> <p>“Severity” serves as one benchmark for business to prioritise the adverse human rights impacts.</p>	<ul style="list-style-type: none"> • 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 (A14). • Where it is necessary to prioritise actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable (A26).

Continued

Table 6.1 Representative data (From UNGPs to Interpretive Guide and FAQs)

Theme	First order code	Representative data
	<p>Interpretive Guide:</p> <p>Further emphasises the severity as the single most important factor;</p> <p>Introduces the concept of “probability”</p>	<ul style="list-style-type: none"> • The single most important factor, however, in determining the processes needed will be the severity of its human rights impact (Q28). • In traditional risk assessment, risk factors in both the consequences of an event (its severity) and its probability. In the context of human rights risk, severity is the predominant factor. Probability may be relevant in helping prioritise the order in which potential impacts are addressed in some circumstances (p. 7).
	<p>UNGPs:</p> <p>Seek ways to honour the international principles to the great extent, and back this up with demonstration</p>	<ul style="list-style-type: none"> • Where the domestic context renders it impossible to meet this responsibility fully, business enterprises are expected to respect the principles of internationally recognised human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard (A23).
<p>Dealing with conflicting requirements</p>	<p>Interpretive Guide:</p> <p>Utilise due diligence process, enhance the link with stakeholders</p>	<ul style="list-style-type: none"> • An enterprise’s human rights due diligence process should reveal where it may be faced with this kind of dilemma and what measures could prevent or mitigate the risk. • Understanding the exact nature, scope and implications of the conflicting requirements is an important first step in identifying ways of addressing the dilemma. • If an enterprise cannot find immediate or obvious solutions, it will be well advised to engage with relevant expert stakeholders (Q83).

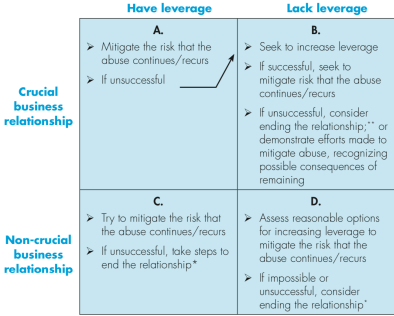
Continued

Table 6.1 Representative data (From UNGPs to Interpretive Guide and FAQs)

Theme	First order code	Representative data
	<p>FAQs:</p> <p>Further provide pragmatic guidance</p>	<ul style="list-style-type: none"> • This could mean, for example, protesting against government demands, seeking to enter into a dialogue with the government on human rights issues, or seeking exemptions from legal provisions that could result in adverse human rights impact. But if over time the national context makes it impossible to prevent or mitigate adverse human rights impact, the company may need to consider ending its operations there, taking into account credible assessments about the human rights impact of doing so (Q31).
<p>The notion of “leverage”</p>	<p>UNGPs:</p> <p>The general statement of the two cases of leverage;</p> <p>The open texture of requirements.</p>	<ul style="list-style-type: none"> • Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm. • Two cases: (1) Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible; (2) Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. • Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise’s leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences (A19).

Continued

Table 6.1 Representative data (From UNGPs to Interpretive Guide and FAQs)

Theme	First order code	Representative data
	<p>Interpretive Guide:</p> <p>The leverage is based on the operational reality and the company's ability to influence.</p>	
	<p>FAQs:</p> <p>Further prioritise the operational reality in defining the leverage</p>	<ul style="list-style-type: none"> • If a company has not caused the impact itself, the leverage it has over the perpetrator will shape its range of options to prevent or mitigate the impact, but it does not affect the scope of the responsibility itself (Q30).
	<p>UNGPs:</p> <p>Indirect reference to CSR;</p> <p>The corporate human rights responsibility as negative duty</p>	<ul style="list-style-type: none"> • Business companies may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations (A11).
<p>UNGPs and CSR</p>	<p>FAQs:</p> <p>Explicitly distinguish corporate human rights responsibility from CSR</p>	<ul style="list-style-type: none"> • While such efforts may be relevant to, align with or support the implementation of the UNGPs, the fundamental difference between this traditional understanding of CSR and the UNGPs is that implementation of the latter is a global expectation of all companies rather than a voluntary effort a company may decide to engage in subject to its other objectives and priorities and/or as part of its social or legal licence to operate in particular situations. • The UNGPs explicitly recognise that companies may undertake commitments or activities to support and promote human rights, which may contribute to the enjoyment of these rights. But doing so does not offset a failure to respect human rights through their operations (Q9).

6.3 UNGPs, the Interpretive Guide and the FAQs

6.3.1 Setting the scene: the Interpretive Guide and FAQs

This section carries forward the discussion on two interpretive documents *authored* by the UN as introduced in Section 4.5.2. The aim is to examine how the *text* of the UNGPs is reconstructed, reinterpreted and in short, *molested* at the UN level. It can be expected that the *molestation* registered here will to a small extent comparable with other levels, considering the interpreters or audiences of the *texts* share the same institutional environment with the *authors* of UNGPs. Nevertheless it is argued the interpretive documents are not immune from *molestations*, as the *authoring* of a *text* is inevitably accompanied by these (Cooper & Ezzamel, 2013, p. 291; Said, 1975/1997, p. 84).

6.3.2 From UNGPs to Interpretive Guide and FAQs: evidence of *molestation*

This section attempts to examine the translation (i.e., the contextualisation) of the meaning from the UNGPs to the Interpretive Guide, based on the analysis of their *texts*. Using Said's writings, the *texts* of the two documents in relation to the corporate responsibility to respect human rights will be compared, and the differences will be interpreted from the angle of *molestation*. Based on the result, two significant pieces of evidence of *molestation* are generated out of the 16 principles in both the UNGPs and the Interpretive Guide.

6.3.2.1 The notion of "severity"

The UNGPs recognise that it is not always possible for companies to address all their adverse human rights impacts simultaneously, especially for small and medium-sized companies. Therefore "severity" serves as one benchmark with which the company can begin to prioritise the adverse human rights impacts based on their scale, scope and remediable character (UNHRC, 2011). While in line with the UNGPs, the *texts* of Interpretive Guide take this argument further, to define severity as the *single* most important factor in assessing the human rights impact and determining the process of due diligence. In order to clarify this, the Interpretive Guide introduces the parallel concept of

“probability” in the standard risk assessment approach, which is in line with the arguments of scholars including Aven & Renn (2009), Mahmoudi et al. (2013) and Esteves et al. (2017). The Interpretive Guide argues that although “probability” is helpful in the traditional approach for prioritising the order according to which the potential impacts are addressed, the human rights risk in the UNGPs is separate from this business-centred cost-benefit analysis, but focuses on the risks that are imposed on human rights by business operations. As a result, companies should adapt the notion of severity as the paramount factor, which overrides all others such as probability. In a word, “If a potential human rights impact has low probability but high severity, the former does not offset the latter” (OHCHR, 2012, p. 40).

While the core ideas of the UNGPs already challenge the traditional view of human rights risk as a “secondary risk” for business, which means solely that the violation of human rights will have a business repercussion (Brenkert, 2016; Power, 2004; Sikka, 2011), the Interpretive Guide further enforces the dominant position of the rights-oriented approach by referring to the vital concept of severity (Fasterling & Demuijnck, 2013). According to both the UNGPs and the Interpretive Guide, the two approaches may converge, but when the conflict arises, the Interpretive Guide prioritises the severity of adverse human rights impacts above all other factors. Informed by Said’s theory, the Interpretive Guide *molests* the texts of UNGPs by *intentionally* underscoring the dominant role of severity in guiding the corporate response to adverse human rights impacts, and sets clear expectations for corporate activities. This *molestation* has the potential to enable or restrain the translation or contextualisation process of the UNGPs, on both company level and local supplier level in China; these processes are uttered in the form of *texts* and speeches. To be specific, the company (Alpha) produces *texts* (i.e., CoC and Standards) based on their interpretations of the severity in certain contexts (e.g., Chinese context), which may either confirm or resist the meaning of severity in the UNGPs and Interpretive Guide. Moreover, the Interpretive Guide is in line with the UNGPs in stating that severity is not an absolute concept, but relates to other human rights impacts identified by the business (UNHRC, 2011; OHCHR, 2012). This could open up room for further *molestations*.

6.3.2.2 Dealing with conflicting requirements

Both the UNGPs and the Interpretive Guide acknowledge the juxtaposition of requirements for companies to comply with both national laws and the corporate responsibilities to respect human rights, which may pose serious dilemmas for corporations (especially MNCs) if there are conflicting requirements between the two (UNHRC, 2011; OHCHR, 2012; Ruggie, 2013a). In this case the UNGPs ambiguously suggest business:

“...to respect the principles of internationally recognised human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard” (UNHRC, 2011, p. 25).

While the meaning of expressions such as “to the greatest extent possible” here remains ill-defined, the Interpretive Guide provides additional explanations in this regard. It *intentionally* refers to the due diligence required to facilitate the understanding, contextualising and addressing of the dilemma. As it is required by the due diligence, the company must judge the dilemma’s exact nature, scope and implications. During this process there might be opportunities to mitigate the conflict. For instance, official clarification from government or local authorities may prove to be helpful to detect any overstatements of the dilemma, and companies are even encouraged to challenge the official discourse if possible. Also, even if companies cannot find obvious solutions, they are encouraged to draw on external expertise to establish complementary mechanisms to fill the gap between national and international human rights practices. The Interpretive Guide explicitly discusses the example of freedom of association, in which it encourages the company to establish parallel processes (e.g., an employee caring centre or similar mechanism, hotlines to deal with complaints and feedbacks) to engage with workers (OHCHR, 2012, p. 78).

The *text* of FAQs carries the similar meaning:

“Typically, some of the most challenging situations for companies arise when national law directly conflicts with international human rights standards or does not fully comply with them...If the national legislative environment makes it impossible for a company to fully meet its responsibility to respect human rights, the company is expected to seek ways to honour the principles of internationally recognised human rights and to continually demonstrate its efforts to do so. This could mean, for example, protesting against

government demands, seeking to enter into a dialogue with the government on human rights issues, or seeking exemptions from legal provisions that could result in adverse human rights impact. But if over time the national context makes it impossible to prevent or mitigate adverse human rights impact, the company may need to consider ending its operations there, taking into account credible assessments about the human rights impact of doing so.” (OHCHR, 2014, p. 30)

The issue of conflicting requirements has been a long-standing problem hampering the efforts to hold businesses accountable for their local human rights impacts (EU, 1950; Ruggie, 2013a). The UNGPs articulate the expectation that companies will maximise their efforts to uphold the principles of internationally recognised human rights, without providing too much detail and leaving room for *molestation*. The Interpretive Guide and FAQs fill the void to some extent by stipulating the procedures the companies should follow. In a word, the companies cannot take the actual and potential adverse human rights impacts lightly, just because they presume the social or political system does not provide favourable conditions for their implementation. Rather they should devote extra efforts to clarify the situation (through due diligence), and ensure that the appropriate parallel or complementary mechanisms are in place, by consulting with external expertise if necessary. In the light of Said’s theory, it is argued that the *texts* of the Interpretive Guide and FAQs convert the meaning of the UNGPs into something more practical and actionable, by integrating them with the company’s local reality, and clarifying the subjects in the accountability relationships in practice.

6.3.2.3 The notion of “leverage”

According to the *text* of the UNGPs, leverage is a vital factor in determining the appropriate actions to address human rights impacts. The core idea of leverage is congruent with the documents analysed, whose definition is: “Leverage is considered to exist where the company has the ability to effect change in the wrongful practices of an entity that causes or contributes to a harm” (UNHRC, 2011). This is applicable in two cases: in the first, the company contributes or may contribute to the adverse human rights impacts; in the second, the company doesn’t contribute but nevertheless the impact is directly linked to its operations, products or services by its business relationship with another entity, which according to the UNGPs is *more complex* (UNHRC, 2011, p. 21,

Figure 6.1: Decision matrix of corporate human rights responsibility

	Have leverage	Lack leverage
Crucial business relationship	A. <ul style="list-style-type: none"> ➤ Mitigate the risk that the abuse continues/recurs ➤ If unsuccessful 	B. <ul style="list-style-type: none"> ➤ Seek to increase leverage ➤ If successful, seek to mitigate risk that the abuse continues/recurs ➤ If unsuccessful, consider ending the relationship;** or demonstrate efforts made to mitigate abuse, recognizing possible consequences of remaining
Non-crucial business relationship	C. <ul style="list-style-type: none"> ➤ Try to mitigate the risk that the abuse continues/recurs ➤ If unsuccessful, take steps to end the relationship* 	D. <ul style="list-style-type: none"> ➤ Assess reasonable options for increasing leverage to mitigate the risk that the abuse continues/recurs ➤ If impossible or unsuccessful, consider ending the relationship*

* Decisions on ending the relationship should take into account credible assessments of any potential adverse human rights impact of doing so.

** If the relationship is deemed crucial, the severity of the impact should also be considered when assessing the appropriate course of action.

Source: Interpretive Guide, p. 50

emphasis added). This is in line with Principle 13 which extends the corporate human rights responsibility from impact-based responsibility to leverage-based responsibility. That is, even when a company does not causally contribute to the negative impacts, it has the responsibility to use leverage to mitigate the impacts within the business relationships to the greatest extent possible (Wood, 2012).

Nevertheless, as the baseline to define corporate responsibility is that of avoiding infringing on human rights, the UNGPs only embrace a moderate version of leverage-based responsibility (Wood, 2012). This is reflected in the discussion of situations where the company is “directly linked” with the human rights impacts while it is not contributing to them. The UNGPs give a more general introduction to the factors which should guide the appropriate operations, including the “company’s leverage over the entity concerned, how crucial the relationship is to the company, the severity of the abuse, and whether

terminating the relationship with the entity itself would have adverse human rights consequences” (UNHRC, 2011, p. 22). The open texture of the requirements here could lead to a relaxed standard of corporate responsibility, and open the door for *molestation*. In the *texts* of the Interpretive Guide and the FAQs, leverage-based responsibility is contextualised and operationalised; however it is arguably more relaxed.

While adhering to the basic line of reasoning in the UNGPs, the Interpretive Guide provides a matrix for operationalising the exercise of leverage when the company is not contributing to, but directly linked with the human rights impacts (see Figure 6.1). The model is based on two dimensions: whether the company possesses or lacks the leverage, and whether the business relationship is crucial to the company, and other factors are complementary in nature (OHCHR, 2012, p. 50). This gives the impression of prioritising the operational reality and the company’s ability for influence, and the nature of corporate responsibility is left out of the picture. This is further stressed in the FAQs as “If a company has not caused the impact itself, the leverage it has over the perpetrator will shape its range of options to prevent or mitigate the impact, but it does not affect the scope of the responsibility itself” (OHCHR, 2014, p. 30). Hence there is the possibility that the emphasis on the operational reality will divert attention from the fundamental nature of human rights responsibility.

6.3.2.4 UNGPs and CSR

Many companies today tend to confuse human rights responsibility with CSR, and therefore routinely justify their practice of respecting human rights through fragmented CSR initiatives (Posner, 2016; Ramasastry, 2015). Contemplation on the overlapping boundaries between CSR and human rights responsibility is reflected in the drafting process of the UNGPs, but surprisingly has not found its way into their *texts* (Ramasastry, 2015; Ruggie, 2013a). The UNGPs only refer to the notion of CSR indirectly, as follows:

“Business companies may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations.

Business companies should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes" (UNHRC, 2011, p. 13).

Here the UNGPs have the *intention* to distinguish the human rights-based approach from the CSR path based on two dimensions. First, by depicting corporate human rights responsibility as negative duty, the UNGPs rebut the argument that corporate responsibility can be fulfilled through positive means for supporting and promoting human rights such as philanthropic endeavours, as Chinese managers tend to believe (Tang & Li, 2009; Lin, 2010; Yin & Zhang, 2012). This is in line with the definition of impact-based responsibility, as we have discussed in the preceding section. Second, the UNGPs underscore the regulatory function of the state for reinforcing corporate responsibility, rather than merely relying on the corporate self-motivations to uphold human rights through voluntary initiatives and practices.

Following the indirect reference to CSR in the UNGPs, the FAQs explicitly state the distinctions between the two:

"While such efforts may be relevant to, align with or support the implementation of the Guiding Principles, the fundamental difference between this traditional understanding of CSR and the Guiding Principles is that implementation of the latter is a global expectation of all companies rather than a voluntary effort a company may decide to engage in subject to its other objectives and priorities and/or as part of its social or legal licence to operate in particular situations.

The Guiding Principles explicitly recognise that companies may undertake commitments or activities to support and promote human rights, which may contribute to the enjoyment of these rights. But doing so does not offset a failure to respect human rights through their operations" (OHCHR, 2014, p. 10).

By categorising the UNGPs as a global expectation for all businesses, the FAQs here insert the social norm dimension between the legal and moral norm dimensions of corporate human rights responsibility (Ruggie, 2017b). Hence the requirements for companies arise above their legal duties; but meanwhile, the complex debates around the moral duties can be avoided, which entail a pragmatic approach for operationalising human rights responsibility at the business level. That is, in order to demonstrate both to itself and to the external stakeholders that the responsibility has been fulfilled, the company needs to

“know and show” through internal systems, including due diligence (Ruggie, 2017b). Following this line of reasoning, the enabling role of FAQs’ *molestation* helps to contextualise the *texts* within the Chinese local reality, where boundaries of the CSR and corporate human rights responsibility are often obscure (GBI, 2014). The common practices of using CSR as “greenwash” or “bluewash” immediately lose their legitimacy in China. The *texts* of FAQs further shed light on the resolution of this obscurity, which consists of uncovering the corporate activities which are in nature of CSR practice (e.g., philanthropy activities which are not relevant to the company’s human rights impacts as discussed above) and integrating the UNGPs into the daily operations.

6.3.3 The *molestation* of the accountability relationship

Following the analysis of the evidence of *molestation* of the UNGPs, this section specifically demonstrates the interpretation of the accountability relationships in the Interpretive Guide and FAQs. For the purpose of discussion, the accountability relationship will be approached from four aspects: who should be held accountable? By whom? For what? And how should this be done exactly? Said’s theory on both the enabling and constraining perspectives of *molestation* will guide the analysis, helping us to see both to what extent has the accountability relationship been re-shaped in the two documents, and also the implications for implementation. It is argued that the overarching structure of accountability remains the same in both documents. The companies (as well as the entities within the business relationships) are firmly put at the centre, in being required to “know and show” they respect all the internationally recognised human rights above the national legal requirements, and to demonstrate their efforts to both the state and the entire society. However, in facilitating the understanding of the UNGPs, Interpretive Guide and FAQs provide complementary additional detail, in which evidence of *molesting* the accountability relationships can be found.

6.3.3.1 Who should be held responsible?

The obligation to uphold human rights used to be perceived exclusively as a state duty before the existence of the UNGPs. The UNGPs challenge this perception by clarifying and categorising the human rights responsibilities in the context of both state and business, in

which the state has the legal duty to protect human rights against abuses by third parties, including business, through legislative means, and foster business respect for these rights by taking positive actions, while companies have the responsibility to mitigate both actually and potentially adverse human rights impacts. Regarding the state duty to protect human rights, the two complementary documents do not offer too many new insights. The Interpretive Guide mainly concentrates on the second pillar of “Corporate responsibility to respect”, while the FAQs largely substantiate the mentions of the state in the UNGPs with examples. As a result it can be argued that the *molestation* regarding the state’s duty to protect human rights is relatively low in the *texts* of the two documents. The reason for this might be that this has been already affirmed in internationally recognised standards and regulations, and thus is less controversial than corporate human rights responsibility.

That being so, it is perhaps more worthwhile to look at the shifting order of meaning of human rights responsibility, from state to business. First and foremost, this is reflected in the discussion of the nature of human rights responsibility in the UNGPs, where it is defined as a “global standard of expected conduct for all business enterprises...It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations...And it exists over and above compliance with national laws and regulations protecting human rights” (UNHRC, 2011, p. 13). This statement sets the tone for the human rights responsibility to be considered as a social norm, rather than just a legal requirement. As a result of this move beyond the legal sphere, business now bears an independent responsibility. Second, the above quotation implies acknowledgement of the problematic situation in which some states are unable or unwilling to protect human rights from corporate abuses through legislative means. In that case, business should bear independent responsibility regardless of whether the state is fulfilling the duty or not.

Interestingly, when explicating the mechanism of corporate human rights responsibility, both the Interpretive Guide and the FAQs *intentionally* highlight the negative consequences to the company’s own interests if it fails to respect human rights:

“There can be legal, financial and reputational consequences if enterprises fail to meet the responsibility to respect. Such failure may also hamper an enterprise’s ability to recruit and retain staff, to gain permits, investment, new project opportunities or similar benefits essential to a successful, sustainable business. As a result, where business poses

a risk to human rights, it increasingly also poses a risk to its own long-term interests” (OHCHR, 2012, p. 14).

“Failure to do so can subject companies to the “court of public opinion”—comprising employees, communities, consumers, civil society, as well as investors. So there can be legal, financial and reputational consequences if companies fail to respect human rights as set out in the Guiding Principles” (OHCHR, 2014, p. 9).

Considering the facts of corporate reality and the shareholder-orientated management style, the *texts* of the two complementary documents here demonstrate both a repetition of the authoritative *texts* of the UNGPs and *molestations* of their contents. First, by adhering to the UNGPs’ definition of the corporate human rights responsibility as a universal social norm, both documents enshrine this idea by underlining the independent, human rights-oriented nature of corporate responsibility. Second, the two documents develop the UNGPs’ argument by bringing the *texts* closer to the reality of business operations. More than solely referring to the overarching structure of social norms, these interpretive documents demonstrate and reinforce the links between the abstract statements in the UNGPs and company performance. Hence, through their *molestation* by the Interpretive Guide and FAQs, the *texts* of UNGPs are rendered more practical in the business contexts.

6.3.3.2 By whom?

The field of international human rights involves multiple actors: the state, the company, any entity within the business relationship (e.g., supplier), both internal and external stakeholders, and ultimately, the entire society. There are dynamic interplays of power in the form of accountability relationships between these actors, which in turn influence their human rights practices. The *texts* of the UNGPs sketch three of these as follows: first, the company (including entity in the business relationship) is accountable to the state, both internal and external stakeholders and the entire society; second, the state is accountable to the stakeholders and the entire society, and third, the entity in the business relationship is accountable to all other actors. Rather than put the same weight on all of these actors, the *texts* of the UNGPs reflect a specific rationale for evaluating the agents to whom the responsibility is owed, following which the Interpretive Guide and FAQs further interpret this rationale, arguably with *molestations*.

As constitutional human rights responsibility is deeply rooted in the regime of international and domestic laws, the state is placed at the centre to hold business accountable. However, as it has been demonstrated above, it is not the *intention* of UNGPs to reinforce the state-centred discourse, which suffers some serious flaws. Rather, the UNGPs focus on the role of business in this field, especially the more practical issues which involve the dynamic accountability relations between the company and the entity in the business relationships, as well as [its relations] with both internal and external stakeholders. First, the *texts* of UNGPs construct the accountability mechanism around the company itself, for instance:

“The responsibility to respect human rights requires that business enterprises 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” (UNHRC, 2011, p. 14).

While on the surface the *texts* suggest the company is responsible for the human rights impacts within the business relationships (e.g., with suppliers, which will be discussed in more detail in the following section), it also implies a mutual accountability, in which the suppliers are also accountable to the company. This is a significant point within the articulation of this study, since it focuses on a variety of objects across various levels, including the suppliers. The UNGPs do not intend to apply differing structures of human rights responsibility to companies and their suppliers, as “The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure” (UNHRC, 2011, p. 15).

6.3.3.3 For what?

The answer to this question, as provided by the UNGPs, seems to be straightforward: the responsibility is for every kind of internationally recognised human rights (UNHRC, 2011). However, it is argued that the UNGPs have the *intention* of framing the language in a way which avoids the long-standing legal debate about whether business should be regulated by international human rights law (Ruggie, 2017b). Apart from this, more finely grained analysis is needed to enhance the applicability of this rather abstract concept, both in the business context and within local conditions. The discussions of the scope and nature of human rights generate rich insights connecting human rights as an international concept

with their specific meaning within local contexts. Also, the open-ended language which is formulated to serve the pragmatic purpose of inducing change at the ground level creates space for propounding the potential of *molestation* to operationalise the UNGPs. This section attempts to examine the extent to which the notion of human rights, in terms of their scope and nature (legal, social or moral), is transmitted or re-shaped from the *texts* of UNGPs to its expression in the Interpretive Guide and the FAQs. The discussion draws upon three issues: the human rights impacts in business relationships, the issue of collective duty, and the dilemma of conflicting requirements. As some of them have been touched upon in preceding sections, only the key argument relevant to the accountability relationships will be discussed.

6.3.3.3.1 Business relationship

Section 4.4.2 introduces an important contribution of the UNGPs, which is their addressing of the issue of corporate responsibility in business relationships. The UNGPs contend that corporate responsibility falls into three categories: for impacts that the company causes (or may cause), contributes (or may contribute), which are directly linked to the misconduct of another entity in the business relationship (UNHRC, 2011, p. 21). The main message is consistent in the *texts* of UNGPs and the two interpretive documents: the company is responsible for the impacts in the business relationships to the extent that it has leverage for potential influence. This does not require the company to provide remedy, which is the obligation of the entity itself. Apart from this, the Interpretive Guide extends the discussion to include the factor of size:

“A large enterprise will have more employees, typically undertake more activities and be engaged in more relationships than a small one...They are more likely than small enterprises to have operations, value chain relationships, clients or customers that span multiple countries, making the implementation and monitoring of standards more challenging...They may have longer and more complex value chains with multiple forms of relationships, some of them entailing more human rights risks than others” (OHCHR, 2012, pp. 19-20).

This is also reflected in the FAQs:

“Larger companies will likely be engaged in a wider range of activities, and have more business relationships and longer and more complex supply chains than small companies” (OHCHR, 2012, p. 32).

The development of the *texts* in the two documents alerts the large company to the higher possibility of involvement in the human rights impacts stemming from the business relationship. By being associated with more complex supply chains, the company in turn bears more responsibility to mitigate the impacts. Hence, justifying the failure to respect human rights by reason of the large quantity of suppliers would not count as a sufficient reason in the context of Interpretive Guide and FAQs. As this is not quite explicitly stated in the UNGPs, it could be argued that the interpretive documents contextualise the “for what” issue by underlining the factor of size.

On the other hand, although the interpretive documents require large companies to scrutinise the human rights conditions in suppliers, both the UNGPs and the interpretive documents agree that it is not realistic to oversee all human rights in all suppliers, therefore companies should prioritise the human rights risks. This has been discussed in Section 4.2.1, and also belongs to the “for what” question. The following section revisits this issue from the perspective of accountability.

Furthermore, the Interpretive Guide takes an extra step, that of considering the receiving and understanding of international norms at the local supplier level in a list of questions for the company to ask the suppliers:

“Is it clear to all personnel and to those with whom we have business relationships in those contexts that we work to the standard of respect for all internationally recognised human rights? Do they understand what that entails?” (OHCHR, 2012, p. 81)

While the issue of context is also mentioned in the UNGPs, the Interpretive Guide highlights a very practical matter from the perspective of the company. It specifically points to the possibility that local suppliers tend to have varying understandings of internationally recognised human rights, so the company should have procedures in place to cope with this situation. This entails the constraining function of *molestation* in which the suppliers have the *intention* of projecting their local realities into the translation of the UNGPs. By doing so, the meaning of human rights at the international level might be distorted or misunderstood by the local suppliers. This will be elaborated in Section 7.

6.3.3.3.2 Collective duty

There is another practical issue which has not been adequately addressed in the UNGPs: many suppliers (especially large ones) are involved in multiple business relationships with companies (MNCs). This is a matter of individual accounts of responsibility, whose inadequacy has been noted by both academics and practitioners (Ruggie, 2007b; Wettstein, 2010b). The Interpretive Guide explicitly provides guidance on this issue:

“When looking at business relationships, the focus is not on the risks the related party poses to human rights *in general*, but on the risks that it may harm human rights *in connection with the enterprise’s own operations, products or services*” (OHCHR, 2012, p. 32, emphasis added).

The *texts* here exclude the reasoning of collective duty, and take the approach the corporate responsibility to the impacts linked to the company’s own operations, products or services. For business, it is a practical approach for them to avoid interference with, or from, other companies. In this sense the Interpretive Guide contextualises the practical issue by *molesting* the *texts* of UNGPs, and arguably this increases the applicability of the UNGPs at the ground level. However, it also should be noticed that many fundamental human rights violations are caused or contributed to by the collective actions of many companies within or even outside one industry. Therefore, individual companies cannot and should not tackle them alone. In this case it is possible that by focusing on the responsibility of individual companies, a missed opportunity has occurred to make changes through collective work between companies. The constraining function of *molestation* plays an important role here.

6.3.3.3.3 Conflicting requirement

As it is been explicated in Section 4.2.2, this section mainly teases out the way through which the *texts* on corresponding human rights is reshaped in the interpretive documents, with regard to the situation of conflicting requirements. All three documents are consistent in setting the international recognised human rights as the benchmark against which business shall be accountable. The FAQs substantiate the discussion by clarifying the relationship between national laws and international regulations:

“Where national law is enacted and enforced in such a way that it requires companies to respect all internationally recognised human rights, respecting human rights will be a legal duty. But the corporate responsibility to respect human rights exists above and beyond the need to comply with national laws and regulations protecting human rights. It applies equally where relevant domestic law is weak, absent or not enforced. Typically, some of the most challenging situations for companies arise when national law directly conflicts with international human rights standards or does not fully comply with them” (OHCHR, 2014, p. 30).

The statement above reveals the superior status of international human rights regulations over national ones facing conflicting requirements, a point which is omitted in the UNGPs. This contributes to the justification that merely following national laws does not suffice to fulfil the corporate human rights responsibility. It points out that sometimes companies even need to weight the international laws against national ones in order to discharge their accountability. In this context, it is no longer legitimate for companies to violate or dismiss international human rights regulations under the cover of national laws. This is a crucial *molestation* of the UNGPs which provides authoritative principles to hold companies accountable in this complex situation. However, as the Interpretive Guide admits, “(For business) There is no blueprint for how to respond (in the situation of conflicting requirements)” (OHCHR, 2012, p. 78). There is still a void in the *texts*, and thus *molestation* can be expected during practice.

6.3.3.4 How should this be done?

Upon providing an overview of the actors in the accountability relationship and *of the molestation* from the *texts* of UNGPs to the *texts* of the Interpretive Guide and FAQs, this section concentrates on the question of “how”. According to Ruggie (2017b), the underlying logic is straightforward: in order to demonstrate to both insiders and outsiders that it is respecting human rights, the company must have a system in place to “know and show” the practice. This system is in nature an accountability mechanism embedded in the process of due diligence and remedy (Gallhofer et al., 2011; Li & McKernan, 2016; Ruggie, 2017b). The primary concern of this section is to explore how the accountability mechanism sketched in the UNGPs is being interpreted and made practical (or not) in the

texts of the two interpretive documents. Said's notion of *molestation* will be employed to interpret the differences between the *texts*.

6.3.3.4.1 Corporate human rights responsibility as negative duty

In advocating that companies have responsibility to respect human rights, all three documents set the baseline as “do no harm” (OHCHR, 2011; 2012, 2014). In other words, the corporate responsibility is in nature a negative duty which does not require business to “protect” and “remedy” ALL human rights. Instead, these duties fall on the shoulders of states (Macdonald, 2011; Whelan & Muthuri, 2017; Wood, 2012). The logic behind this is not adequately addressed by the *texts* of the UNGPs. The two interpretive documents provide exact information:

“This means that enterprises can go about their activities, within the law, so long as they do not cause harm to individuals’ human rights in the process.

Debate continues over whether there may be a *responsibility* for some enterprises in some situations to go beyond respect for human rights and also to seek to promote them. This falls beyond the scope of the Guiding Principles, which constitute a global standard of responsibility for *all* businesses in *all* situations and therefore focus on the responsibility to respect human rights” (OHCHR, 2012, pp. 13-14).

“The corporate responsibility to respect human rights requires companies not to infringe on human rights, but does not require them to go beyond that to promote and fulfil human rights. This is not to discourage companies from also promoting and helping to fulfil human rights, where they can and choose to do so. Such activities may be voluntary commitments or required of them by contract in some circumstances. But such additional activities are not part of the universal baseline responsibility that all companies have to respect human rights, and they cannot be used to offset or compensate for a failure to meet this responsibility.

Nevertheless, many companies choose to support human rights. Signatories to the Global Compact commit to “support and respect” human rights, as stated in the first of the ten Global Compact principles. For examples on how business can support human rights, see the United Nations Global Compact’s website” (OHCHR, 2014, p. 29).

The discussions above reflect the pragmatic approach taken by the SRSB, which is not substantiated in the *texts* of UNGPs. That is, he is not looking at specific cases in which

individual companies are required to make extra efforts to promote human rights. As it is illustrated by the *texts* of two documents, the SRSB prudently constructs the requirements for business in a middle way between coercive legal duty and pure voluntarism. The documents explicitly draw the line between respecting human rights as the universal baseline for all companies, and as voluntary commitments by several companies. In this way, the *texts* provide a description of responsibility which is relatively non-demanding, and companies are allowed not to bear the responsibility to promote human rights within this “non-infringing” circle. Thus the interpretive documents further develop the meaning of “do no harm” by clarifying the boundaries, through which the original *texts* of UNGPs are *molested* and made more practical in the business context.

Meanwhile, it should be noticed that the FAQs do not intend to exclude the positive role of business from the picture. By building connections with other *beginnings* of corporate human rights responsibility (in this case, the UNGC), the FAQs underpin their requirements for business to promote human rights. This opens room for future developments and *molestations*.

6.3.3.4.2 Due diligence

At the heart of the UNGPs is the materialisation of the respect for human rights through the due diligence process (Li & McKernan, 2016). The five main steps contained in due diligence (assessing, consulting, integrating, tracking and communicating) represent a progressive integration of corporate responsibility into executive actions and the institutionalisation of human rights accountability (McPhail & Adams, 2016). As the basic five-step structure is similar in both the UNGPs and the interpretive documents, it is not the *intention* of this section to compare the process of due diligence between the documents. Rather, this section examines the *molestation* of due diligence in the *texts* of the Interpretive Guide and the FAQs by looking at two vital factors determining the effectiveness of due diligence: the role of stakeholder engagement, and context-related issues. It should be pointed out that some of the other factors related to due diligence have already been introduced in previous sections, which will not be repeated here.

6.3.3.4.3 The role of stakeholder engagement

According to the UNGPs, stakeholder engagement plays a key role in the process of due diligence. For instance, when assessing the impacts (Principle 18) and communicating the results (Principle 21), the UNGPs require the company to conduct meaningful consultations with stakeholders, with special attention to the potential obstacles to such as language. Also, in case it is not possible or feasible to conduct engagement, the UNGPs make the practical requirement for a company to utilise alternative methods, such as involving credible, independent third parties (UNHRC, 2011, p. 20). However, the *text* of UNGPs does not articulate the nature of the stakeholder engagement and to what extent companies should resort to this method rather than conduct the investigation on their own.

The Interpretive Guide sheds light on the nature of stakeholder engagement by stating that:

“Human rights due diligence is about people. It reflects the entitlement of every human being to be treated with dignity. It therefore involves relationships—between an enterprise and those on whom it may have an impact.

Hence, the key to human rights due diligence is the need to understand the perspective of potentially affected individuals and groups. Where possible and appropriate to the enterprise’s size or human rights risk profile, this should involve direct consultation with those who may be affected or their legitimate representatives, as discussed further under Guiding Principle 18” (OHCHR, 2012, p. 33).

“Engagement with stakeholders plays a number of roles. It enables an enterprise to identify whether stakeholders have the same or different perspectives (than the enterprise and than each other) on what constitutes an impact on their human rights and on how significant an impact may be...Changes to factory shift hours that seem to make sense to the management of an enterprise may have a particular impact on women with childcare responsibilities or individuals with whose religious practices the new hours would interfere. It is often only through talking to those who may be affected that these issues come to light and can be addressed” (OHCHR, 2012, p. 44).

Compared with the UNGPs, the Interpretive Guide provides a clearer meaning of stakeholder engagement by clarifying the rationale of it. This quotation unequivocally points out that simple humanity is at the centre of due diligence, thus it is crucial to

understand people's needs and concerns. Furthermore, the Interpretive Guide illustrates the argument by providing the example of changing factory shift hours. Based on the interviews with Beta workers, this is a legitimate concern which is often neglected from the business side. Hence the quote above enhances the credibility of the arguments from those in the UNGPs by fleshing out some highly realistic issues on the ground level. This is *molestation* which rescues the *texts* of UNGPs from being seen as fuzzy and impractical. At the same time, referring back to the document of the UNGPs itself, the implementation of the UNGPs can benefit from direct dialogue with affected people, which has the potential to diminish the containing *molestation*.

Moreover, the Interpretive Guide highlights some very practical issues:

“Consultation with potentially affected stakeholders can require particular sensitivity. It necessitates attention to any obstacles to—linguistic, cultural, gender or other—that stakeholders may face in speaking openly to the enterprise's representatives. It requires sensitivity to cultural differences and perceived power imbalances, where these exist.

Some individuals or groups may be at risk of exclusion from the consultation process unless targeted efforts are made to reach out to them. There may be competing views among and within stakeholder groups about the relative significance of certain impacts. Where there is a legacy of distrust between the enterprise and stakeholders, there may be a need for a neutral, trusted individual to facilitate the engagement process” (OHCHR, 2012, p. 44).

Although the UNGPs have alerted companies about the potential obstacles to engagement, the Interpretive Guide sketches a comprehensive picture by bringing in the dimensions of culture and power, as well as the situation of exclusion. Again, these issues are highly relevant when companies are dealing with human rights issues in the Chinese context, where the cultural differences and the dynamic power relations at the ground level will undermine the effectiveness of stakeholder engagement, in which case the mechanism in the MNCs is not compatible with the local reality (Franceschini, Siu, & Chan, 2016; Lin, 2007). Here the enabling function of *molestation* is involved, which flags up the weakness of the *texts* of UNGPs and enables the companies to pay extra attention to these matters in practice. The Interpretive Guide renders the meaning of the UNGPs more practical and believable.

However, the constraining function of *molestation* is also reflected here in the Interpretive Guide:

“This Guiding Principle also recognises that, for many small and medium-sized enterprises, consultations with directly affected stakeholders may not be feasible, owing to legitimate financial, geographical or other constraints. The Guiding Principles point to other ways of maximising the information the company can obtain about its human rights impact and how it is perceived, including through sources of external expertise, as discussed under question 41” (OHCHR, 2012, p. 44).

“For a small enterprise with limited impact, a simple means for people to give feedback may be sufficient, such as a known and accessible e-mail address or phone number. For enterprises with more significant human rights risks, a more proactive approach to solicit feedback will likely be appropriate” (OHCHR, 2012, p. 55).

Here the *texts* of the Interpretive Guide display a certain level of flexibility in defining the scope to which companies should resort to external resources rather than internalise the stakeholder engagement. Rather than depicting it as a “must-do” task for companies, the quote shows an intention to afford companies wide discretion in determining the method and scope of stakeholder engagement based on their own characteristics such as capability, size and geographical factors. It is true that such open-ended language can foster the acceptability and applicability of stakeholder engagement. However, there is the possibility that companies will deviate from, or even dismiss the meaning and importance of stakeholder engagement and “hide behind” the UNGPs under the cover of incapability and local contexts. While both the UNGPs and the interpretive documents provide additional information to help business and stakeholders to foresee this possibility, there is evidence (both academic and empirical) showing companies abusing the looseness of the language on stakeholder engagement (Bijlmakers, 2018; Blitt, 2012; Faracik, 2017; Haines et al., 2012). In this sense it can be argued that the *molestation* by the Interpretive Guide restricts the ability of the UNGPs to achieve effective stakeholder engagement.

6.3.4 Discussion

It is argued that while the Interpretive Guide keeps the basic accountability framework in the UNGPs, it provides more space for companies to manoeuvre within the framework.

The *intention* of the Interpretive Guide to introduce more flexibility into the *authority* of the UNGPs to in the interests of practicality is materialised by *molesting* the *texts* of UNGPs in relation to the discursive regional operational contexts. To be specific, within the framework of the UNGPs, the Interpretive Guide offers the company a certain level of discretion in defining the four accountability elements, based on various factors such as the nature of the business relationship, the local legal requirements, the severity of the adverse human rights impacts, the size and capacity of the company and the role of external stakeholders. While some of these *molestations* contribute to the localisation of the UNGPs by bringing the global articulation closer to the local reality, others appear to have the potential to constrain the *authority* of UNGPs at the ground level. For instance, the factors of size and capacity in determining the scope of accountability may be exploited by local companies to escape responsibility. Therefore in this study it remains to be explored whether or how the meaning of UNGPs gets translated, interpreted, in short *molested*, at both the company (Alpha) level and the local supplier (Beta) level. This is the aim of the next section, which focuses on the *molestation* in the company codes of conduct.

In order to facilitate the process of adaptation and remove potential constraints generated from the local operational context, the *texts* of the UNGPs are *intentionally* formed with a certain level of flexibility, to allow companies to exercise their human rights responsibility through appropriate measures proportionate to their circumstances (Bijlmakers, 2018; Buhmann, 2012; Merry, 2006; Methven O'Brien & Dhanarajan, 2016; Salcito, Wielga, & Singer, 2015). The examination of this approach can benefit from Said's line of reasoning, construing it as an open invitation for the enabling function of *molestation* to bring the meaning of *texts* closer to the recipient's reality (Cooper & Ezzamel, 2013; Said, 1975/1997; Sceats & Breslin, 2012). The analysis of the Interpretive Guide's *molestation* supports this argument to an extent. For instance, the commentary on due diligence is considerate to the capacity of small and medium-sized companies with regard to operationalising the assessment of adverse human rights impacts, and hence poses a relatively loose requirement. It can be imagined this will facilitate their integration of the UNGPs.

However, the enabling function of *molestation* is often conflated with its constraining potential. The *intention* to avert criticism by pointing to the flexible language in the

UNGPs is also where the doubts and debates are generated (Bijlmakers, 2018; Blitt, 2012; Mares, 2018; Wood, 2012). It is argued that the looseness in language is likely to invite superficial adaptation and the “business-as-usual” approach (Bijlmakers, 2018). The reinterpretation in the Interpretive Guide confirms this, and the constraining role of *molestation* is evident in the *texts* (Cooper & Ezzamel, 2013; Said, 1975/1997). In the same example, the accountability mechanism has degenerated in the Interpretive Guide, which lowers the bar against which the company decides the extent to which to distribute their resources on addressing human rights impacts. Therefore the constraining function of *molestation* can dilute the effectiveness of accountability in the business context.

6.4 China and the UN human rights regime

6.4.1 Setting the scene: the Chinese government

At both the international and national levels, the state is still at the centre of human rights protection, based on which the human rights treaties and the UNGPs have developed and converged. Nevertheless companies (especially MNCs) in China are often facing different, and sometimes even conflicting human rights discourses, between the Chinese government and the international regime, which is reflected in the governmental documents. Rather than swinging between the two, MNCs intend to *molest* certain areas of human rights, both domestically and internationally, in order to acquire legitimacy, or “social contract” as has been the expression used in the UNGPs (Brenkert, 2016; Li & McKernan, 2016; Ruggie, 2013b). Such *molestation* is often conducted by confusing the legal and moral responsibilities—which again involves the governmental documents. Therefore in order to study corporate *molestation*, it is essential to bring the Chinese government’s voice into this research.

6.4.2 The official communications between China and the UN

6.4.2.1 The fundamental principle: emphasising the local reality of human rights

The discussion here carries forward the literature on the Chinese government’s stance on the human rights issues as discussed in Section 3.3.4. The *texts* of official Chinese human rights discourse seem to generate a normative position prioritising the local reality over

the universality of human rights in the context of the UN. In the *text* of the UNGPs, the SRS *intentionally* builds the duty of states and corporations to protect and respect human rights upon the foundation of universal social norms which exist independently of both state and business ability to fulfil the human rights function (Ruggie, 2013a). The key meaning of the ICESCR converges with the UNGPs in the latest (2011) version, framing the state duty to ensure corporate compliance within national law and societal norms through regulatory measures (CESCR, 2011, E/C.12/2011/1).

With their submission to ICESCR, the Chinese government illustrates its interpretation of the dilemma between universality and relativism in human rights by the following statement in the second National Report to the CESCR:

“China respects the principle of the universality of human rights and considers that all countries have an obligation to adopt measures continuously to promote and protect human rights in accordance with the purposes and principles of the Charter of the United Nations and the relevant provisions of international human rights instruments, and in the light of their national realities. The international community should respect the principle of the indivisibility of human rights and attach equal importance to civil and political rights and economic, social and cultural rights as well as the right to development” (2008, A/HRC/WG.6/4/CHN/1).

China reiterated this policy in the 2016 NHRAP and the 2018 White Paper:

“China, with a population of over 1.3 billion, is the largest developing country in the world. Development is the top priority of the Communist Party of China (CPC) in governance and national revitalisation, and the key to resolving all other problems. Based on its prevailing conditions, China adheres to the Chinese socialist path and to the philosophy that development is of paramount importance. China integrates the principle of universal application of human rights with the country’s reality” (CSCIO, 2016).

“Integration of the principle of universality of human rights with China’s national conditions. The universality of human rights is grounded in human dignity and value, and based on common interests and basic moral norms shared by all. There is no universally applicable model for fulfilling human rights, and human rights can only advance in the context of national conditions and people’s needs” (CSCIO, 2018).

It is interesting to see the change of attitude towards the universality of human rights, considering China took a fairly strong position against it in the 1990s (Angle, 2002;

Svensson, 2002). Considering this, it is not surprising that there are criticisms of the self-contradictory nature of the official *texts* (Whelan & Muthuri, 2017). While such an argument appears well-grounded, Said's theory provides a fresh perspective to look at the *texts* from the angle of *beginning intentions*. That is, the Chinese government intends to inaugurate a *beginning* which reconciles both the international norm of universality and the local reality concerning human rights. This can be observed in the words of a Chinese expert at a think tank:

“Human rights are universal, but what is the meaning of universality? The final target is the same thing: everyone should enjoy human rights [...] but for people in developed countries the periodical target is different” (2012, Interview with International Relations expert at a Chinese think tank, conducted by Chatham House interview, quoted in Sceats & Breslin, 2012, p. 8).

The attempt to project the China's reality as a developing country above the idea of universality is evident in the above statement. In fact, this is one of the fundamental principles embedded in the governmental documents. While implementing ICESCR, the Chinese government highlights the importance of considering the local reality in a consistent manner:

“China is still a developing country. In view of constraints relating to the level of the country's economic and social development, even though the Covenant has come into force in China, not all its articles have been fully realised” (First Periodic Report, 2003).

“When ratifying an international convention, States make declarations and reservations in line with domestic circumstances; this is consistent with international practice” (Second Periodic Report, 2012, E/C.12/CHN/2).

“Mr. Wu Hailong (Chinese delegate): His delegation would study the Committee's recommendations and turn helpful ideas into policy in light of China's specific conditions. The Covenant provided a principled framework for the progressive realisation of economic, social and cultural rights in light of the specific conditions in a given State party, leaving ample policy space for implementation in countries with different levels of social development. China had always maintained that there was no universally applicable model of development and no fixed route to development. China had shown that a country could follow its own road to modernisation. The protection of human rights was an important component of social and economic development and could only advance in line with the specific situation in a country and the people's will. The Chinese Government and people

had charted a way for human rights development with Chinese socialist characteristics and provided effective protection to 1.3 billion people” (Summary record of the 18th meeting, 52 Session of CESCR. E/C.12/2014/SR.18).

The emphasis on the peculiar local conditions in China was also given prominence in the White Papers and NHRAPs:

“The principle of pursuing practicality: The Chinese government respects the principle of universality of human rights, but also upholds proceeding from China's national conditions and new realities to advance the development of its human rights cause on a practical basis” (NHRAP, 2012-2015).

“The basic principles for formulating and implementing the Action Plan are as follows: Pushing forward the work in accordance with the law and bringing China’s human rights work under the rule of law; pushing forward the work in a coordinated way, and promoting the comprehensive and coordinated development of the people’s various rights and interests; pushing forward the work in a pragmatic way, and integrating universal principles on human rights with China’s realities...” (NHRAP, 2016-2020).

“The CPC and the Chinese government approach human rights from a historical, dialectical and developmental perspective, and take advantage of the strengths of socialism with Chinese characteristics while bearing in mind the overarching condition that China is still and will long remain in the primary stage of socialism, integrating universality with particularity” (CSCIO, 2018).

As it has been reflected in the above quotes, the *authority* of the Chinese government rests on the justification of its special historical, economic, social and political conditions. This is a process of repetition of, and addition upon existing *beginnings*. To be specific, it has already been commonly agreed that China is a developing country with its own philosophical, cultural backgrounds, and its socialist economy (Kim, 2014; Peerenboom, 1993), which entails a *beginning* upon which the government expands the argument further, to resist and undercut full acceptance of the universality of human rights. On the other hand, the notion of *molestation* is evident in its sensitivity to the local reality. From the standpoint of this research, the dreams of the full realisation of the entire spectrum of human rights, as it has been articulated in the ICESCR and other treaties, have an illusory element. Therefore the *molestation* by Chinese government offers practicality in the situation, by bringing the main message closer to the local reality. For instance, Peerenboom (1993) claims that the need for economic development as a prerequisite for

the fulfilment of civil-political rights has widely received support from Chinese citizens. Ruggie's (2007b) survey on Chinese corporate human rights approaches has confirmed this.

The discussion on human rights localism in the official account sheds light on the human rights accountability mechanism at the state level. The most prominent finding is that by *molesting* the ICESCR and other international human rights standards based on its interpretation of local reality, the Chinese government shows the *intention* to convert the standards to which it holds itself and businesses accountable into something more practical. Rather than spread equal attention over all human rights, the government prioritises certain ones which it deems more critical at the current stage of development. From this point another *beginning* is generated, on state duty to protect human rights, which consists of the attention to the right to development.

6.4.2.2 Right to development as the cornerstone

Alongside the assertion of the *authority* on the local human rights conditions, the Chinese government draws heavily on the particular right to development as the first and foremost local reality (Potter, 2007). Again, a pattern of repetition can be identified in which the *beginning* of this scope is initiated by repeating the previous ones. Two of them are prominent in this research: the first is the traditional Chinese culture on the people's need of a prosperous life and the second is the economic depression and extreme poverty which was caused by the invasion of foreign powers, the corrupt ruling class and the backward social system³⁷. In the 2016 special white paper on the right to development, the government states:

“The Chinese people are diligent, wise, innovative and progressive. In traditional Chinese culture, concepts such as “moderate prosperity” (Xiao-kang, 小康), “great harmony” (Da tong, 大同), “having ample food and clothing” (Fengyi zushi, 丰衣足食) and “living and working in peace and contentment” (Anju leye, 安居乐业) fully reflect the Chinese people's aspiration for and pursuit of a better, happier life. In the long course of history, the Chinese people have always striven for better and shared development opportunities, conditions and benefits.

³⁷ See Section 3.2.2.2.2 for more discussion.

Foreign aggression and expansion by Western colonialists completely destroyed conditions for development in China. Repeated invasions by foreign powers, particularly from the West, from 1840 to 1949, and China's corrupt ruling class and backward social system reduced China to a semi-colonial and semi-feudal society. There was constant warfare, an unstable society, economic depression, no security of livelihood, and extreme poverty... In these 110 years, the Chinese people struggled arduously for their right to development and equal access to development opportunity. The Chinese people are fully aware of the value of development and of their right to development" (CSCIO, 2016).

The link attached to the historical reasons is stronger and more direct in earlier Whiter Paper reports:

"In old China, aggression by imperialism and oppression by feudalism and bureaucrat-capitalism deprived the people of all guarantee for their lives, and an uncountable number of them perished in war and famine. To solve their human rights problems, the first thing for the Chinese people to do is, for historical reasons, to secure the right to subsistence... Without national independence, there would be no guarantee for the people's lives. When imperialist aggression became the major threat to their lives, the Chinese people had to win national independence before they could gain the right to subsistence" (CSCIO, 1991).

"China is a developing country with a population of 1.2 billion and relatively poor per-capita resources. It suffered foreign invasion, exploitation and oppression for a long time. The right to exist and develop thus historically became the urgent demand of the Chinese people" (CSCIO, 1995).

By setting this tone, the Chinese government formulates the *beginning* of differentiating the human rights baseline in China from other developed countries in the UN regime. Traditionally it has been observed in the official *texts* that to guarantee the right to development is the imperative task, upon whose satisfaction can other rights be fulfilled:

"The Chinese government continued to put the safeguarding and promotion of the people's rights to subsistence and development *on the top of its agenda*, and spared no effort to develop the economy, enhance the comprehensive national strength and improve the people's access to subsistence and development" (CSCIO, 2000).

"The right to development is an inalienable human right, symbolising dignity and honour. Only through development can we address global challenges; *only through development can we protect basic civil rights of the people*; only through development can we promote the progress of human society...Without the production and supply of material goods, *it is*

difficult or even impossible to realise any other human right. Development is a means of eliminating poverty. It provides necessary conditions for realising other human rights, and releases human potential. The right to development is incorporated into other human rights, while the latter create the conditions for people to facilitate development and realise the right to development. Safeguarding the right to development is the precondition for realising economic, cultural, social and environmental rights, and obtaining civil and political rights” (CSCIO, 2016, emphasis added).

It is clear in these documents that the Chinese government prioritises the right to development over other rights such as civil-political rights. This is one of the main reasons that it has been criticised as interpreting the UN standards selectively by subordinating certain human rights in the hierarchy of rights. There are mutual *molestations* happening here, in which critics (most of the voices come from Western developed countries) *molest* the Chinese human rights context (Potter, 2007) by projecting their *authority* onto the right to development issue; meanwhile the Chinese government *molests* the UN standards based on their *authority* over the local reality. The second one is of particular interest here in this research because it is from this viewpoint the Chinese government *intentionally* constructs the business-related human rights issues in a characteristic way. Previous studies also shed light on this issue. Ruggie’s (2007b) survey shows, Chinese companies tend to support the right to development more frequently than other companies by referring to the achievement of harmonious development of the company, as well as the society and environment, and sometimes this argument is coupled with the notion of the duty to give back to the society (e.g. through philanthropic means). To some extent, this explains the confusion between the two topics of CSR and corporate responsibility to respect human rights at the Chinese national level.

6.4.3 ISO 26000 and UNGPs: indirect linkage

In this section I add another dimension for analysis, which is the official government standard on CSR, which indirectly refers to the UNGPs. It is argued that in China the BHR issues are not independently captured by governmental policies, but are integrated with the CSR domain (Gao, 2009; GBI, 2014; Graafland & Zhang, 2014; Lin, 2010; Moon & Shen, 2010; Wang & Juslin, 2009). This report focuses on the Chinese National Standard of GB/T 36000 which was published by the Standardisation Administration of China (SAC) on

2/6/2015 went into effect in 1/1/2016 and represents the *first* and the *only* authoritative governmental document on CSR in China, and the *only* governmental document implicitly refers to UNGPs. The GB/T 36000 is the Chinese translation of ISO 26000 which embeds its core ideas and shares the same discourse. As the ISO 26000 explicitly draws upon, and is fully aligned with the UNGPs, it bridges the UNGPs and Chinese national discourse (Atler, 2011; Fine, 2011; Ruggie, 2013a). This section aims to analysis the *molestations* of the UNGPs at the Chinese national level by comparing the two documents of GB/T 36000 and ISO 26000.

6.4.3.1 Brief introduction to 36000

When introducing the current status of implementing the UNGPs, the SRSR specifically highlights the alignment between the UNGPs and ISO 26000 because “The significance of ISO standards is that they have particular appeal in Asia...such as China” (Ruggie, 2013a, p. 141). This is true, considering that China has traditionally been involved in the drafting process of ISO standards, including ISO 26000. The GB/T 36000 reflects China’s appeal to the ISO standards as it is basically an “Official Chinese version” of ISO 26000 with its own diversities (*molestations*). On the other hand, as the baseline of adopting ISO standards, any deviations from the basic principles of ISO are strictly prohibited. Therefore, following this baseline, the 36000 shares the same structure and core notions with ISO 26000, including the human rights section. Also, it should be pointed out that both the ISO 26000 and GB/T 36000 are voluntary principles with no legal standing, and only provide guidance to organisations (including business) on social responsibility issues.

6.4.3.2 Evidence of *molestation*

6.4.3.2.1 Overview: omissions and combinations

The human rights section in the GB/T 36000 features omissions from the *texts*, and also combines or extracts the key ideas from different sections. Occasionally these rearrangements and *molestations* happen to a great extent, and the structure of the document is reshaped. As it is indicated in Table 6.2, complicity as the key issue in both UNGPs and ISO 26000 has been completely removed. The *texts* on several other issues, such as due diligence, the grievance mechanism, the human rights risks and the focus on

vulnerable groups of people are greatly reduced. Hence the *molestation* registered here is significant. Overall there are three broad categories of reasons explicitly used by the GB/T 36000 to justify the *molestations*: (1) To better “localise” the international standard of ISO 26000 in the “Chinese context” and to observe the “levels of economic and social development of China” and to “satisfy the objective need of the social responsibility practice for all kinds of organisations” (p. 50); (2) To follow the “requirements of local laws, regulations and practices” (p. 51); (3) To simplify the *texts* by removing unnecessary explanations and examples (p. iii).

Table 6.2 The omissions and combinations in GB/T 36000

GB/T 36000		ISO 26000	
Section	Title	Section	Title
7.3	Human rights	6.3	Human rights
7.3.1	Human rights and social responsibility	6.3.1	Overview of human rights
		6.3.1.1	Organisations and human rights
		6.3.1.2	Human rights and social responsibility
7.3.2	Principles and considerations	6.3.2	Principles and considerations
7.3.2.1	Principles	6.3.2.1	Principles
7.3.2.2	Human rights: Considerations	6.3.2.2	Considerations
		6.3.3.1	Due diligence: Descriptions of the issue
		6.3.4.1	Human rights risk situations: Descriptions of the issue
		6.3.6.1	Resolving grievance: Descriptions of the issue
		6.3.6.2	Resolving grievance: Related actions and expectations

Continued Table 6.2 The omissions and combinations in GB/T 36000

GB/T 36000		ISO 26000	
Section	Title	Section	Title
		6.3.7.1	Discrimination and vulnerable groups: Descriptions of the issue
		6.3.7.2	Discrimination and vulnerable groups: Related actions and expectations
	Absent	6.3.3	Human rights issue 1: Due diligence
	Absent	6.3.3.2	Due diligence: Related actions and expectations
	Absent	6.3.4	Human rights issue 1: Human rights risk situations
	Absent	6.3.4.2	Human rights risk situations: Related actions and expectations
	Absent	6.3.5	Avoidance of complicity
	Absent	6.3.5.1	Avoidance of complicity: Description of the issue
	Absent	6.3.5.2	Avoidance of complicity: Related actions and expectations
	Absent	6.3.6	Human rights issue 4: Resolving grievances
	Absent	6.3.7	Human rights issue 5: Discrimination and vulnerable groups

6.4.3.2.2 The notion of human rights

One of the most significant differences between the *texts* is the description of human rights and the role of business in human rights impacts. The ISO 26000 provides a relatively comprehensive introduction of this issue:

“Human rights are the basic rights to which all human beings are entitled. There are two broad categories of human rights. The first category concerns civil and political rights and includes such rights as the right to life and liberty, equality before the law and freedom of expression. The second category concerns economic, social and cultural rights and includes such rights as the right to work, the right to food, the right to the highest attainable standard of health, the right to education and the right to social security.

Various moral, legal and intellectual norms are based on the premise that human rights transcend laws or cultural traditions. The primacy of human rights has been emphasised by the international community in the International Bill of Human Rights and core human rights instruments. More broadly, organisations will benefit from a social and international order in which the rights and freedoms can be fully realised.

While most human rights law relates to relationships between the state and individuals, it is widely acknowledged that non-state organisations can affect individuals' human rights, and hence have a responsibility to respect them” (ISO, 2010).

Meanwhile the *texts* of GB/T 36000 are brief:

“Human rights are the basic rights to which all human beings are entitled. While protecting human rights is primarily the state’s duty, it is widely acknowledged that non-state organisations can affect individuals' human rights, and hence have a responsibility to respect them, including respecting human rights within their sphere of influence” (SAC, 2015).

GB/T 36000 omits the expressions regarding the universality of human rights which “transcend laws or cultural traditions”. This is underpinned by the Chinese government’s argument that respect for the local realities of different countries should be taken into consideration when developing international regulations and standards³⁸. According to the standards against which states and organisations shall be held accountable, while ISO 26000 explicitly refers to the international human rights instruments like the IBHR, the Chinese version *intentionally* avoids such an expression. Part of the reason can be found in

³⁸ See Section 3.3.4 for detailed discussion on the Chinese government’s stance on human rights.

the statement of the drafters Yu & Chen (2015, in Chinese): “During the drafting process, we found that where the ISO 26000 has the most significant impact in China, majority of them origin from ISO 26000 setting the international norms of behaviour as the global baseline and the criteria of judging the responsibility of organisation. Therefore, we modified the concept of international norms of behaviour to reflect the conditions in China.”

6.4.3.2.3 The corporate human rights responsibility

Regarding the overall discussion of the corporate responsibility to respect human rights, both the *texts* of ISO 26000 and GB/T 36000 are aligned with the UNGPs. However, ISO 26000 deliberates on the fundamental role of the state in protecting human rights through legislative avenues, and elaborates on the procedures to discharge human rights accountability. Also, it should be noted that the notion of SOI is reintroduced in the *texts* with the emphasis on the extension of corporate responsibility to the actors in the business relationships:

“States have a duty to protect individuals and groups against abuse of human rights, as well as to respect and fulfil human rights within their jurisdiction. States are increasingly taking steps to encourage organisations based in their jurisdiction to respect human rights even where they operate outside that jurisdiction. It is widely recognised that organisations and individuals have the potential to and do affect human rights, directly and indirectly. Organisations have a responsibility to respect all human rights, regardless of whether the state is unable or unwilling to fulfil its duty to protect. To respect human rights means, in the first place, to not infringe the rights of others. This responsibility entails taking positive steps to ensure that the organisation avoids passively accepting or actively participating in the infringement of rights. To discharge the responsibility to respect human rights requires due diligence. Where the state fails in its duty to protect, an organisation should be especially vigilant to ensure that it meets its responsibility to respect human rights; human rights due diligence may point to the need for action beyond what is necessary in the normal course of business.”

“The baseline responsibility of non-state organisations is to respect human rights. However, an organisation may face stakeholder expectations that it go beyond respect, or it may want to contribute to the fulfilment of human rights. The concept of sphere of influence helps an organisation to comprehend the extent of its opportunities to support

human rights among different rights holders. Thus it may help an organisation to analyse its ability to influence or encourage other parties, the human rights issues on which it can have the greatest impact and the rights holders that would be concerned...An organisation's opportunities to support human rights will often be greatest among its own operations and employees. Additionally, an organisation will have opportunities to work with its suppliers, peers or other organisations and the broader society. In some cases, organisations may wish to increase their influence through collaboration with other organisations and individuals. Assessment of the opportunities for action and for greater influence will depend on the particular circumstances, some specific to the organisation and some specific to the context in which it is operating” (ISO, 2010).

Meanwhile the *text* of GB/T 36000 is more brief, and lacks detail. Specifically, the role of the state and the complementary responsibilities of business are removed from the *texts*. Further, the issues of sphere of influence and the business relationship are obscure:

“Organisations have a responsibility to respect all human rights. To respect human rights means, in the first place, to not infringe the rights of others. This responsibility entails taking positive steps to ensure that the organisation avoids passively accepting or actively participating in the infringement of rights. To discharge the responsibility to respect human rights requires due diligence to track, evaluate, prevent and deal with the actual or potential human rights impacts caused by the organisation itself or its peers” (SAC, 2015).

This quote illustrates the most significant difference between the two *texts*. In short, GB/T 36000 provides an introduction of due diligence which covers most aspects but lacks further clarification on how to operationalise it. As to the role of the international human rights laws and norms, they are continuously omitted from the discussion. Also, the boundary between the state duty and corporate responsibility is obscure, with the state’s positive potential missing from the discussion. The practical issue of how to assess the responsibility linked with the human rights impacts within the business relationship has not received sufficient attention in the GB/T 36000, which is only referred to as “the organisation itself or its peers”.

6.4.3.2.4 Freedom of association and collective bargaining

According to the UNGPs and the Interpretive Guide (OHCHR, 2012`, p. 78), the issues of freedom of association and collective bargaining are among the most complex and

difficult obstacles to the effective translation and implementation of international norms in the local context. Companies often face the dilemma of conflicting requirements, which sometimes impedes the corporate capability to uphold human rights responsibility. ISO 26000 provides an overview of this problem:

“Although these rights are legislated for in many jurisdictions, an organisation should independently ensure that it addresses the following matters:

Freedom of association and collective bargaining: Workers and employers, without distinction whatsoever, have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. Representative organisations formed or joined by workers should be recognised for purposes of collective bargaining. Terms and conditions of employment may be fixed by voluntary collective negotiation where workers so choose. Workers' representatives should be given appropriate facilities that will enable them to do their work effectively and allow them to perform their role without interference. Collective agreements should include provisions for the settlement of disputes. Workers' representatives should be provided with information required for meaningful negotiations” (ISO, 2010).

Here again, GB/T 36000 only briefly touches the topics of freedom of association and collective bargaining:

“The organisation shall respect the workers' rights to establish and join trade unions under the relevant Chinese law. The organisation shall respect the right to organise activities independently under the relevant Chinese law, and shall provide appropriate facilities. Workers' representatives and trade union's rights to participate collective bargaining shall be respected by the organisation. Workers' representatives and trade unions should be given appropriate facilities that will enable them to do their work effectively and allow them to perform their role” (SAC, 2015).

The rights of freedom of association and collective bargaining are relatively sensitive in China, and the discourse in GB/T 36000 is in alignment with the national discourse. That is, GB/T 36000 highlights the premise that enjoying such rights is no less than to follow the relevant Chinese laws and standards, whereas the ISO 26000 emphasises the importance of non-interference. Moreover, the ISO 26000 tends to put more weight on the fact that the purpose of forming a trade union is to achieve collective bargaining, whereas the GB/T 36000 neglects this purpose.

6.4.4 Discussion

This section reflects upon the stance of the Chinese government towards the international human rights *texts* by examining two categories of documents. The first category includes the official communications between the Chinese government and the UNHRC, which represents the official interpretation of the UN human rights *texts*. From the viewpoint of Said's work, the *beginning* of human rights inscribed in the UN *texts* is to a certain extent repeated by the Chinese government, as we can see in the convergence in describing the universality of human rights, and also in the endorsement of IBHR (except ICCPR). This process also features the Chinese government's *intention* to *author* the *texts* in its own characteristic way, which is to underscore the local conditions and prioritise the right to development. In this way the UN *texts* are *molested* by the Chinese government, which displays both the constraining and enabling qualities. It is constraining because it builds obstacles to the exchange of ideas of human rights between China and international society, and also obscures the problem of the realisation of certain human rights using the reason of "local conditions and characteristics". It is enabling because government *texts* can flag up the weakness of the UN *texts* and bring them closer to the local reality and make them more believable.

The second category more specifically focuses on the *texts* on BHR. GB/T 36000 represents the only document at the Chinese national level which (indirectly) links to the UNGPs³⁹. Although GB/T 36000 is voluntary in nature, without any legal force, it signals that China is making progress in integrating the international human rights standards into the national regulatory system. However, there are still obstacles to the comprehensive translation and implementation of international standards like ISO 26000 (and UNGPs). As it has been shown above in the comparison between GB/T 36000 and ISO 26000, and to quote one of the major drafters of GB/T 36000, China's approach to adopting ISO 26000 is "No additions, only subtractions" (Yu & Chen, 2015, p. 8, in Chinese). Therefore

³⁹ There are other endeavours to introduce UNGPs in China conducted by business associations such as the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains published by China Chamber of Commerce of Metals Minerals & Chemicals Importers & Exporters (CCCIMC). It explicitly instructs Chinese MNCs operating overseas to "observe the UN Guiding Principles on Business and Human Rights during the entire life-cycle of the mining project" and to strengthen "the responsibility throughout the extractive industries value chain" (CCCIMC, 2015, p. 1). The importance of this document has been widely acknowledged and welcome by international society (e.g., UN) (Ruggie, 2017a, p. 50; 2017b, p. 19; UNWG, 2018, p. 17).

molestations are expected to be seen in GB/T 36000 in order to “bring ISO 26000 closer to China’s reality and characteristics” (Yu & Chen, 2015, p. 8, in Chinese).

6.5 The Alpha and Beta Codes of Conduct and Standards

6.5.1 Setting the scene: the codes of conduct

Applying the internationally drafted principles at the ground level is never an easy task, and the same is true of the UNGPs and the interpretive documents. The SRSG has explicitly recognised the obstacles to translating or contextualising the UNGPs in discursive regions with varying economical, social and political realities, by endorsing flexible means of implementation (Bijlmakers, 2018; Methven O'Brien & Dhanarajan, 2016; Ruggie, 2011b). Specifically at the company level, the SRSG suggests that for corporate responsibility to respect human rights to be institutionalised, it needs to be embedded in private regulatory CoCs through which the abstract principles can be materialised in order to guide the daily business operations (Bonnitcha & McCorquodale, 2017; Haines et al., 2012). Thus the companies are endowed with the position of contextualising and operationalising the rather abstract notion of corporate human rights responsibility through the utterance of the *texts* (CoCs).

In this study there are two actors in that framework: the MNC (Alpha) and its contractor supplier (Beta) operating in China, manufacturing Alpha products. According to the UNGPs Beta is in a business relationship with Alpha, and so whose human rights performance should be assessed by Alpha, following which the accountability relationship can be determined. In Said’s line of reasoning, both Alpha and Beta have the *intention* to enact their *authority* over the human rights responsibility from their point of view, which is reflected in the *molestation* of *texts*. Therefore this section aims to explore whether there are *molestations* in translating the human rights responsibility at the company level by studying the CoC.

6.5.2 From Alpha to Beta: evidences of *molestation* in the CoC

Alpha claims that it is committed to the supplier CoC regarding human rights protection, which is the strictest human rights standard in the electronics industry, constructed above

the national laws and drawing on internationally accepted principles, including the UNGPs (Alpha, 2018a). There are two interrelated documents named *Alpha Supplier CoC (ACoC)* and *Alpha Supplier Responsibility Standards* (hereafter Standards). The CoC outlines Alpha's expectations for the suppliers to respect human rights in daily operations. The Standards act as a supplement, to clarify Alpha's requirements in the CoC, and are deemed to be superior to the CoC when conflicting provisions arise. Beta establishes a relatively straightforward framework, employing a single document, which is named *Beta Social and Environmental Responsibility Codes of Conduct (BCoC)* to regulate all Chinese sub-contractors. While Beta maintains that the BCoC is fully aligned with its customer regulations (including the ACoC and Standards), their *texts* entail variations in the way that Alpha's *texts* are re-shaped or *molested* in several aspects.

6.5.2.1 The purpose of the document

The notion of human rights risk acts as the cornerstone for both the UNGPs and the interpretive documents. Both of them explicitly underscore the importance of viewing the risk that business operations pose to human rights, rather than the risk caused to the company in involvement in adverse human rights impacts. This human rights-oriented approach should guide the entire process of risk assessment and due diligence, which, in turn, should be the purpose of the CoC (UNHRC, 2011; OHCHR, 2012). The ACoC is in line with this approach, whose purpose is articulated as:

“...to require Alpha's suppliers to operate in accordance with the CoC are required to provide safe working conditions, treat workers with dignity and respect, act fairly and ethically, and use environmentally responsible practices wherever they make products or perform services for Alpha” (Alpha, 2018a).

Also, a “risk assessment” procedure is attached to each human right, requiring the suppliers to identify, assess and mitigate the risk associated with each, and communicate to the stakeholders (including workers) promptly.

On the other hand, however, the BCoC is constructed in a different way, which still highlights the human rights risk as the risk posed to business operations:

“Internally, our global code of conduct builds the SER (Social and Environmental Responsibility) as one of our core competencies; externally, the code of conduct shows the

core value embedded in our global operations. By upholding a high level of operational standard against this code, it helps to maintain and enhance our credibility in our customers' view and the social image. Moreover, we can be powerful competitors in both the electronic industry and the SER sphere" (Beta, 2018).

As the statement suggests, rather than focusing on the core value of human rights, Beta views the fulfilment of the human rights responsibility as the means through which to satisfy the external stakeholders (mainly customers like Alpha) and gain legitimacy to operate. It is clearly a *molestation* of the *text* on the purpose of the CoC, and falls back into the traditional management risk sphere. The constraining function of *molestation* is evident here, as under the guidance of this purpose it is not surprising that the protection of human rights gives way to reputation management needs and production requirements.

6.5.2.2 Lost in translation: The missing "how" in the BCoC

While translating the international standards into practice, one notable feature of Alpha's documents is the relatively high level of inclusiveness. The Standards are laid out in a 100-page document including 16 human rights, which basically covers all of those internationally recognised. Each standard is structured largely in accordance with the UNGPs, outlining the sections on definitions, policy commitment, risk management, operational guidance, training and communication requirements, etc. Extra explanations are provided when necessary. For instance, under the section of anti-discrimination two vulnerable groups of people are identified as women and people with medical conditions; each are followed by specific procedures to address the issue.

Theoretically, in order to operationalise the higher level standards from both Alpha and the internationally recognised standards, BCoC should strengthen these standards by *intentionally* incorporating the local reality into the *text*, therefore rendering it more practical. However BCoC is characterised by the high level of ambiguity, with a striking lack of information on the operational mechanism. For instance, each human right is approached by "prohibitions". That is, there are provisions requiring the suppliers "not to do" certain things—not to discriminate, not to compel workers to do excessive overtime, not to restrict workers' rights of association, etc. While this is aligned with the requisite requirement in the UNGPs to picture the human rights responsibility as negative duty,

nevertheless BCoC has failed to provide guidance on how to operationalise these requirements: how to assess these human rights risks, how to integrate and acting upon the findings, how to track responses and prevent recurrence, and how to communicate the results to relevant stakeholders. It is true that the UNGPs encourage a certain level of flexibility, to better address context-sensitive issues and enhance the applicability of the regulatory principles like a CoC. However the omission of critical information in the *text* of BCoC suggests that regardless of the recent development of BHR discourse at the international (especially UN) level, the corporate responsibility to respect human rights as depicted in the UNGPs has not found its way to permeate the Chinese supplier level. The Alpha Standards are re-shaped in the *text* of BCoC in a characteristic way, to depict human rights as potential risks posed to the business without providing meaningful, detailed and practical guidance on how to respect them in daily operations, especially in specific local contexts. This *molestation* further dilutes the effectiveness of Alpha Standards.

6.5.2.3 Lack of applicability at the local context

Following the above discussion, this section further explores whether the issue of the applicability of the CoCs at the local context has been entailed in the *texts* of both Alpha and Beta CoCs. The necessity to consider local contexts has been incorporated in both the UNGPs (Principles 23 and 24) and the interpretive documents. Two key issues, on the conflicting requirements and the prioritisation of human rights impacts, have been discussed in Sections 6.3.2.2 and 6.3.2.1. The ultimate goal of integrating the discursive local human rights conditions into the UNGPs, and thus the company's regulatory documents is, as it has been stated elsewhere, to find a way to uphold human rights to the greatest extent within the business sphere without being influenced by unfavourable local conditions. Based on this, it is argued that despite the fact that the issue of context has not received enough attention in both *texts*, its substance is further watered down in the BCoC. Further, Said's notion of *molestation* will guide the analysis to examine the translation or the codification of the issue of context in Alpha's CoC and Standards to BCoC.

6.5.2.3.1 Conflicting requirements

To begin with, both Alpha and Beta address the issue of conflicting requirements by stating that:

“This Code goes beyond compliance with applicable laws by drawing upon internationally recognised standards to advance social and environmental responsibility. When differences arise between standards and legal requirements, the stricter standard shall apply, in compliance with applicable law” (Alpha, 2018).

“The Beta Social and Environmental Responsibility Codes of Conduct (SER CoC) draws on the requirements of three parties. First, the requirements from industry association which Beta participates in and the relevant international organisations; Second, the requirement from the local laws and regulations; Third, the requirement of Beta itself as a business leader...By evaluating the inherent differences between the three actors, Beta commit to adhere to the strictest standard...Beta shall comply with the above principles and maintain close relations with local authorities, and ensure this document is coherent with the situation of the company whilst not goes against local law. If anything violates the law come to our attention, the company will actively inform the customers about the issue and the corresponding solution. We believe this will enhance the cooperation among the supply chain” (Beta, 2018).

Regarding the situation of conflicting requirements, the underpinning meaning in the UNGPs concentrates on the fundamental notion of human rights responsibility. In order to do this, the UNGPs prioritise the role of international human rights regulations above local laws, and require the company to go beyond the obligation of observing the latter. This perspective is reflected in Alpha’s statement, whilst the BCoC has *molested* this meaning to a certain extent. BCoC does explicitly stipulate the solutions in the case of conflicting requirements. However, in the event of a violation of the local law, BCoC requires the suppliers to be accountable to the customers (Alpha) first, rather than to seek ways to honour the stricter standards (i.e., international standards). This implies the business-oriented or customer-oriented approach taken by Beta. It can be observed in the *texts* of BCoC that the central position of human rights enacted at the international and Alpha levels is undermined at the Beta level. It has been *molested* or replaced by the attentive stance Beta takes to the supplier-customer relationship, which arguably hampers the ACoC at the ground level.

6.5.2.3.2 The severity of human rights

Unlike the UNGPs, which construct the human rights responsibility according to the broadly defined operational issues such as due diligence and remedy, both Alpha and Beta codes focus on each human right and the practical guidance follows at the end of each section. Overall, both CoCs assign the same weight to all human rights without identifying the salient ones. This is understandable considering the regulatory nature of the documents, which aim to set the benchmark of human rights against which impartial assessments can be made.

Apart from targeting each human right, each document provides overall guidance on the human rights management mechanism. The information on the prioritisation of human rights is largely omitted from the documents, except the following statements:

“Supplier shall assign the requirements as per Applicable Laws and Regulations and the Code and Standards to the facility functions and operations for which they apply. Each set of requirements shall be assigned to a directly responsible individual. Responsible individuals shall identify, assess, *prioritise*, and control risks related to their assigned requirements” (Alpha, 2018, p. 82).

“Risks assessment and management: Suppliers shall have procedures in place to identify the legal, environmental, health and safety, labour operations and ethical risks relating to the business operations. The relative importance of each risk shall be confirmed and appropriate measures shall be taken to control the risks identified, and the legitimacy shall be assured” (Beta, 2018, p. 8).

Whilst both documents indirectly acknowledge the need to prioritise the human rights risk, the quotes above intend to isolate its meaning from the prerequisite articulated in the UNGPs, which is, the commitment to respect for human rights to the greatest extent in unfavourable conditions, both internally and externally. The *texts* of BCoC seem to be in alignment with the ACoC in connecting the prioritisation of human rights with business operational risks. Nevertheless, as it has been shown in Section 6.5.2.1, the BCoC more decisively interprets the human rights risk as the risk posed to the daily business activities, reputation and the relationships with its customers. As a consequence it is highly likely that the notion of severity will be judged by the potential impacts on the company itself, rather than human rights. Table 6.3 presents the major themes emerged from both documents and the *molestations* registered in the BCoC.

Table 6.3 Representative data (From ACoC to BCoC)

Theme	First order code	Representative data
The purpose of the document	<p>ACoC: The notion of human rights risk; The rights-oriented approach</p>	<ul style="list-style-type: none"> Alpha believes all workers in our supply chain deserve a fair and ethical workplace. Workers must be treated with the utmost dignity and respect, and Alpha suppliers shall uphold the highest standards of human rights. Alpha is committed to the highest standards of SER and ethical conduct. Alpha’s suppliers are required to provide safe working conditions, treat workers with dignity and respect, act fairly and ethically, and use environmentally responsible practices wherever they make products or perform services for Alpha. Alpha requires its suppliers to operate in accordance with the principles in this ACoC and in full compliance with all applicable laws and regulations.
	<p>BCoC: Human rights risk as posed to business operations</p>	<ul style="list-style-type: none"> Internally, our global code of conduct builds the SER as one of our core competencies; externally, the CoC shows the core value embedded in our global operations. By upholding a high level of operational standard against this code, it helps to maintain and enhance our credibility in our customers’ view and the social image. Moreover, we can be powerful competitors in both the electronic industry and the SER sphere.
The missing “how”	<p>ACoC: The notion of human rights risk; The rights-oriented approach</p> <hr/> <p>BCoC: High level of ambiguity; Difficult to implement</p>	<p>-</p> <hr/> <p>-</p>

Continued Table 6.3 Representative data (From ACoC to BCoC)

Theme	First order code	Representative data
Conflicting requirements	<p>ACoC: Beyond the legal requirements; The stricter standard shall apply in the case of conflicting requirements</p>	<ul style="list-style-type: none"> • This CoC goes beyond compliance with applicable laws by drawing upon internationally recognised standards to advance social and environmental responsibility. When differences arise between standards and legal requirements, the stricter standard shall apply, in compliance with applicable law.
	<p>BCoC: The stricter standard shall apply in the case of conflicting requirements; Customer-oriented approach</p>	<ul style="list-style-type: none"> • The BCoC draws on the requirements of three parties. First, the requirements from industry association which Beta participates in and the relevant international organisations; Second, the requirement from the local laws and regulations; Third, the requirement of Beta itself as a business leader...By evaluating the inherent differences between the three actors, Beta commit to adhere to the strictest standard...Beta shall comply with the above principles and maintain close relations with local authorities, and ensure this document is coherent with the situation of the company whilst not goes against local law. If anything violates the law come to our attention, the company will actively inform the customers about the issue and the corresponding solution. We believe this will enhance the cooperation among the supply chain.
The severity of human rights	<p>ACoC: Assess the risk pose to human rights during the operations; Equal weight to every human right</p>	<ul style="list-style-type: none"> • Supplier shall assign the requirements as per Applicable Laws and Regulations and the Code and Standards to the facility functions and operations for which they apply. Each set of requirements shall be assigned to a directly responsible individual. Responsible individuals shall identify, assess, <i>prioritise</i>, and control risks related to their assigned requirements
	<p>BCoC: Assess the risk not only to human rights, but also to business operations; Control the risk, maintain legitimacy</p>	<ul style="list-style-type: none"> • Risks assessment and management: Suppliers shall have procedures in place to identify the legal, environmental, health and safety, labour operations and ethical risks relating to the business operations. The relative importance of each risk shall be confirmed and appropriate measures shall be taken to control the risks identified, and the legitimacy shall be assured.

6.5.3 The *molestation* of the accountability relationship

Accountability is at the core of the UNGPs, which requires companies to “know and show” they respect human rights. The UNGPs envisage a framework in which businesses actively shoulder the human rights responsibility by holding both themselves and other entities (e.g., suppliers) in the business relationships accountable, upon the recognition that they cause or contribute to the adverse human rights impacts, either directly or indirectly. In addition, the UNGPs also provide a comprehensive framework through which to discharge corporate accountability, mainly through due diligence and remediation. This section looks at the translation of the accountability relationship from Alpha documents and BCoC to tease out the evidences of *molestation* during this process. In line with Section 6.3.3, this section also draws on the four basic elements of accountability: Who should be held responsible? By whom? For what? How should this be done?

6.5.3.1 Who should be held responsible?

The *texts* of the UNGPs mainly comprise the corporate human rights responsibility around the role of companies, and provide additional instructions on dealing with the human rights impacts linked with the business relationships. In a word, the UNGPs argue that while suppliers shall be accountable for the human rights impacts, the company itself also bears the indivisible responsibility to mitigate the adverse human rights impacts in the actions of suppliers. This meaning is not preserved in the *texts* of the ACoC. Rather than holding itself accountable for the suppliers’ misbehaviours, Alpha transfers all the responsibilities to the supplier side without elaborating its role in this. This is reflected in the *texts* of the Alpha documents, in which Alpha takes the position of an “outsider” to make judgements on the accounting technologies, but rarely involves itself in the process. This angle of interpretation is enhanced in the BCoC. Despite the fact that Beta should take responsibility for upholding human rights standards in the workplaces, this message is largely absent in the *texts*. In fact, in the *texts* of BCoC, the term “responsibility” is rarely linked with concrete, specific and pragmatic guidance on the human rights issues. To the contrary, responsibility is usually used to refer to the term “social and environmental responsibility”. Without the *intention* to operationalise human rights responsibility, it is argued that the *texts* of BCoC represent another ritualistic approach to this corporate responsibility. In this approach the *intention* of the *texts* is largely to legitimise corporate

actions, which strengthens the relationship with the customers (Archel et al., 2011; Campbell & Miller, 2006; Haines et al., 2012; Scherer et al., 2006). Hence the *texts* of the UNGPs are watered down in both the ACoC and BCoC, leading to obscurity in the business commitment to respect human rights.

6.5.3.2 By whom?

Following the above section, Alpha takes the stance of laying against its suppliers the duty of monitoring and discharging accountability. The *texts* of the ACoC rarely stipulate the responsibility for Alpha itself to do so, and the due diligence it should take to ensure that human rights are respected. According to the ACoC, if the supplier wants to maintain the business relationship with Alpha, it must “know and show” it has followed the applicable laws and the ACoC by keeping a record and communicating the results to Alpha:

“All documentation shall be made available to Alpha for review upon its request.”

“Supplier shall report any fatality or other Incidents of public-concern (e.g., multiple people seriously injured) to Alpha within 24 hours of the Incident” (Alpha, 2018b, p. 48).

The failure to comply with the CoC will lead to sanctions including the termination of the business relationship with Alpha:

“Alpha will assess its suppliers’ compliance with this Code, and any violations of this Code may jeopardise the supplier’s business relationship with Alpha, up to and including termination” (Alpha, 2018a, p. 1).

Therefore, the accountability relationship is straightforward here: in order to remain the business relationship with Alpha, suppliers are accountable to Alpha’s requirements and the applicable laws. Failure to comply will lead to sanctions. In short, the *texts* of the ACoC underline the role of Alpha (customer) in the accountability relationship.

There is a shifting discourse in the context of Beta, in which broader stakeholders are specified in the *texts* of BCoC:

“Beta is committed to a varying of stakeholders including employees, customers, suppliers, communities, investors and NGOs” (Beta, 2018b, p. 1).

In certain situations Beta also identifies the “key stakeholders”:

“(Regarding the working hours) Beta is committed to the local law and perform procedures for consistent improvement. Beta will keep both internal management and external key stakeholders informed of the procedure. The key stakeholders include employees, law enforcements and relevant customers...” (Beta, 2018b, p. 4-5).

Apparently Beta attempts to satisfy different stakeholders by setting high standards. However, as it has been argued in Section 6.3.3.2, such an approach is dubious without a detailed and practical procedure on how to meet the specific requirements from different stakeholders. With the striking omissions in the *texts* of BCoC on the nature, scope and mechanism of accountability with these stakeholders, it is argued that the BCoC still represents an empty symbolism with little *intention* to initiate meaningful change at the ground level.

6.5.3.3 For what?

The UNGPs claim that human rights have the merit of being universal values, and companies shall seek ways to respect the entire spectrum of internationally recognised human rights because they can have an impact on all of them. Specifically, the UNGPs articulate an authoritative list of core human rights which is contained in the IBHR (UNHRC, 2011, p. 14). This message has been partially reflected in the *texts* of the ACoC and BCoC. Both of them refer to two main sources of the human rights responsibility: international human rights standards and the national law:

“Alpha requires its suppliers to operate in accordance with the principles in this Alpha Supplier Code of Conduct (“Code”) and in full compliance with all applicable laws and regulations. This Code goes beyond compliance with applicable laws by drawing upon internationally recognised standards to advance social and environmental responsibility. When differences arise between standards and legal requirements, the stricter standard shall apply, in compliance with applicable law” (Alpha, 2018a, p. 1).

In addition to this general statement, Alpha also provides a list at the end of the document of all the international principles which contribute to the CoC:

“This Code draws from industry and internationally accepted principles such as the Responsible Business Alliance (RBA) formerly known as the Electronic Industry Code of Conduct (EICC), Ethical Trading Initiative, ILO International Labor Standards, *UNGPs*, Social Accountability International, SA 8000, the ILO’s Code of Practice in Safety and Health,

National Fire Protection Association, OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, and OHSAS 18001” (Alpha, 2018a, p. 6).

Meanwhile BCoC also invokes the international human rights standards:

“This Code draws from internationally recognised standards including UDHR, ILO, Ethical Trading Initiative (ETI) and RBA” (Beta, 2018b, p. 3).

While the way of integrating these principles into the CoC is fuzzy, the *texts* of BCoC clearly refer to less international standards, without providing reasonable justifications on the criteria. This leads to the possibility that the BCoC *molests* the ACoC by way of adopting loose requirements and lowering the bar of human rights responsibility at the ground level.

6.5.3.4 How should this be done?

Following the discussion of the *molestation* of “How” in Section 6.3.3.4, this section further analyses the translation of the accountability mechanism from Alpha to Beta documents. The procedure for fulfilling human rights responsibility is diluted in the *texts* of BCoC. Although it mirrors the Alpha document in outlining 16 human rights, each human right is not accompanied by further instructions on how to operationalise it from the perspective of due diligence and remediation. The only evidence on how to implement is at the end of the document, which briefly mentions the issues of training, tracking performance (indicator system) and the grievance mechanism in one sentence. It seems Beta only intends to circulate a highly abstract version of human rights and environmental protection, which is in nature nominal. While it might be argued that such *molestations* possess the enabling potential by maintaining a certain level of flexibility and leaving room for local interpretations, it is highly likely that this is not the case on the ground level, and that the BCoC is no more than an over-ambitious dream of human rights, with little interpretation of how to realise it. To sum up, BCoC frames the discussion on the human rights accountability in a way which is largely detached from the Alpha documents. It has several elements corresponding to them, but significantly lacks the guidance to operationalise these elements. There is a missed opportunity here to utilise

the enabling function of *molestation* to bring the meaning of BCoC closer to the Chinese local reality.

6.5.4 Discussion

The CoC should be formulated with the aim of institutionalising and transmitting the more general norms and demands into practice (Macdonald, 2007; Zadek, 1998). Meanwhile, as a form of private regulation, the CoC should function as alternative legal regulation, to fill the “governance gap” in the international human rights regime (Campbell, 2006; Frynas & Pegg, 2003; Wettstein, 2009). Therefore theoretically the language of the CoC should exhibit only a small degree of *molestation*, and keep the accountability relationship intact. However, as has been demonstrated in the preceding section, the corporate responsibility to respect human rights in the UNGPs is watered down, both in the Alpha documents and BCoC. For instance, there are striking omissions in the BCoC of the information on due diligence, which represents the *molestation* of the accountability relationship sketched in the UNGPs. Also, while the Alpha documents assign relatively equal weight to each human right, in the context of BCoC certain human rights are more detailed, and others are marginalised and abstract in language. This is in a similar vein as other studies of supplier CoCs (Egels-Zandén, 2007; Sinkovics et al., 2016). Therefore, the constraining function of *molestation* is more evident at the business level, which hinders the accountability mechanism in the UNGPs from being integrated into the local reality.

6.6 Conclusion

This chapter has examined the question of how the meaning of the UNGPs, especially regarding the notion of accountability as an expression human relatedness, is translated, reinterpreted or contextualised through multiple levels of actors from international to national and local contexts. The theoretical framework of Said’s work has been employed to interpret the translating process from the perspective of *molestation* (Cooper & Ezzamel, 2013; Said, 1975/1997). This chapter first explored the how the *text* of the UNGPs is interpreted at the UN level. The Interpretive Guide and FAQs represent the *only* two authoritative interpretations of the UNGPs, which draw upon the insights from early practitioners. This chapter has offered a detailed analysis of how the relatively general and

abstract information from the UNGPs is reproduced and made practical in the interpretive documents. It is suggested that several salient issues, such as the severity of human rights, dealing with conflicting requirements and the use of leverage are materialised in the *texts* of these interpretive documents. While the UNGPs sometimes lack detail regarding operationalisation, the interpretive documents fill the void by teasing out the feasible procedures to follow, ones which can also be integrated with the local reality (Benedek et al., 2007; Macdonald, 2011; McPhail & McKernan, 2011). By examining the accountability relationship based on four elements (who, by whom, for what and how) it is argued that the *texts* of the interpretive documents open up room for *molesting* the underlying concept of accountability as human relatedness in the UNGPs by providing more space for companies to manoeuvre within the framework. Such *molestation* is generated from the *intention* to enhance the flexibility and applicability of the original *texts* of the UNGPs in discursive operational contexts. Based on the interpretation of the two documents, companies are offered some extent of discretion to adjust the four elements of the accountability relationship, in relation to a range of factors such as the severity of human rights impacts, the nature of business relationship, the specific local legal requirements and the size and capability of the company itself. While such *molestation* has the potential to increase the applicability of the UNGPs by bringing the meaning of the *texts* closer to the local reality, it also endangers the effectiveness of the *texts* of the UNGPs, as only limited information on the accountability mechanism is communicated and transformed at the business level.

Next, the chapter examines the interpretation of the *texts* of the UN human rights discourse at the Chinese government level. The purpose is to sketch the Chinese national environment in which the meaning of the UNGPs is re-shaped and *molested*, which will eventually affect the behaviour of companies in respecting human rights (Li & Belal, 2018; Whelan & Muthuri, 2017). Until today there is no *text* evidence at the Chinese national level to directly and explicitly draw on the UNGPs, a link that can only be established indirectly through other kinds of documents such as the UN periodic review, HRNAPs and White Papers, which demonstrate the implementation of ICESCR. Also, another dimension is added to the discussion from the perspectives of ISO 26000 and GB/T 36000, which arguably represents a tentative attempt at convergence of the UNGPs and the Chinese local business context. The findings suggest that the Chinese government intends to engage in the UN human rights discourse in its own characteristic way, and hence initiate

a *beginning* of its own. That is, while claiming to uphold the international human rights principles as ICESCR, the Chinese government *intentionally* highlights the local reality as that of a developing country with its specific historical, cultural, social, economic and political realities. For instance, the prioritisation of the need to development implies that other rights are secondary, and should give way to development in the case of conflicting demands. Also, the unique political system leads to a particular mechanism for realising the freedom of association. Therefore the interpretation and the implementation of the ICESCR must reflect these realities. It is argued that both the enabling and constraining functions of *molestation* are manifested here. The distant UN principles can benefit from such *molestations*, which incorporate local perspectives and reality into the translation process, and render the UN *texts* more practical at the ground level. However, it is also possible that the *molestations* might embed compromises with the UN *authority* to disseminate universal rule of human rights. This dissemination is inevitably accompanied by the sacrifice of its original meanings, especially regarding the way accountability is performed at the ground level. The *molestations* in GB/T 36000 further reinforce this trend by omissions from, and reinterpretations of ISO 26000 from the perspective of local realities. Companies as social actors will be deeply influenced by such *molestations*, which in turn give rise to a number of complex issues, such as the conflicting requirements between the national and international human rights principles.

Finally, this chapter has offered a detailed analysis on how the *texts* of corporate human rights responsibility are enacted at the company level, and how its meaning is perceived by its suppliers. Two regulatory documents from Alpha and Beta were examined through the lens of Said's notion of *molestation*. The evidence shows that both documents attempt to institutionalise human rights accountability into the CoCs and the standards. However, the robustness of the concept of accountability as human relatedness is watered down in the Beta document. For instance, the description of each human right is strikingly abstract, which leaves the document almost impossible to be operationalised. Moreover the *texts* of BCoC have *molested* the rights-oriented approach in both the ACoC and the UNGPs in favour of the traditional risk management approach, which certainly hampers the enforcement of human rights accountability in the workplace.

Chapter 7

Local interpretations: Analysing interview and observation data

7.1 Introduction

After analysing the reinterpretation of the UNGPs in the *texts* at the UN, government and business level within Said's framework of *authority* and *molestation*, this chapter extends the discussion to examine the *molestation* on the ground level of the *texts authored* by upper level actors and addresses the second question:

After a series of *molestations* of the *text* of UNGPs, how and to what extent is it interpreted, contextualised and further *molested* in the form of spoken *texts* by local actors (Beta employees)?

In order to better understand how the *texts* on the aspirations of corporate human rights responsibility disseminated from higher levels are contextualised, reinterpreted, and, in short, *molested* by the local actors in China, this chapter examines a range of *texts* inscribed by local management in the forms of posters, labour contracts and the employee handbook (hereafter “*onsite texts*”) observed inside the supplier manufacturing complex. These *texts* are selected because they represent the main channels through which the human rights standards are communicated to the workers and managers. In addition, *texts* uttered by the local actors are collected through interviews and observations as important material to analyse the interpretation human rights accountability by local actors.

As it has been elaborated in the preceding document analysis chapter (See Section 6.3, p. 140, Section 6.4, p. 161 and Section 6.5, p. 176 in Chapter 6), in the process of making sense of the *text* of UNGPs, its meaning is always *molested*, which is evident in the interpretation and implementation of UNGPs in the UN interpretive documents, Chinese

government standards and the Alpha and Beta CoCs. While it can be argued that the *text* of UNGPs is structured in a specific way which contains the *intention* to facilitate the contextualisation by inviting the enabling function of *molestation*, the discursive field of polycentric governance still provides the background against which the actors enact their own ideas of the corporate human rights accountability (see Section 3.4 for the discussion of polycentric governance). By *molesting* the *text* of UNGPs, these actors *author* their own versions of it through deletions, additions and (re)interpretations of the *text*, hence establishing their *authority* over the *text*. Following this line of reasoning, it is argued that there is a “chain of *molestations* (as well as *authorities*)” which cascades down from the UN to the ground level. The metaphor of the “chain” here not only represents the structure of the different levels of *molestations* and *authorities* in this research, it also implies the possible heterogeneous contexts within each level—just as the rings individually woven into the chain might be made of completely different materials. It can be expected that a greater extent of *molestation* of the UNGPs will be observed in *texts* as we move closer to Chinese suppliers at the end of the chain, with the greater contextual distance from the UN, and the increased diversity of the backgrounds of the local actors.

7.2 Communicating the BCoC to employees

As has been pointed out, there are two clusters of *texts* relating to human rights at the supplier ground level. On the one hand, as workers are unlikely to directly engage with the original *text* of the UNGPs, as well as the Alpha and Beta CoCs (since they cannot access them, or simply do not know they exist), so the written documents of onsite *texts* are the sole source for the communication of the standards, methods and expectations which voice the company’s position on human rights. By *molesting* the upper level *texts*, these official interpretations have the *intention* to render the *texts* more contextual and practical, and to integrate them into existing management systems. On the other hand, the *texts* uttered by local actors (workers, managers and local government officials) represent their own interpretations of the onsite *texts*, based on their own context. Therefore, they also enact their *authority* over the *texts* by *molesting* them, which further guides their daily activities (Cooper & Ezzamel, 2013, p. 292; Said, 1975/1997, pp. 83, 84, 137, 157).

As has been indicated in Chapter 6, the BCoC document serves as the official interpretation of the relevant international (UN principles) and industrial guidelines and principles on human rights at the Beta level. Based on Said's framework, it may be argued that BCoC represents a *beginning*, which intends to stipulate the meaning of human rights responsibility at the company level (Said, 1975/1997). Rather than a faithful restatement of the other, similar *texts* disseminated by varied actors including the UN, Alpha and the Chinese government, Said claims that these *beginnings* are *molested*, which leads to either a partial materialisation of the *texts* or the deviation of corporate practice from global norms and aspirations (Cooper & Ezzamel, 2013). With the chain of *molestations* in mind, my analysis starts with the *authority* and *molestation* of the Alpha and Beta CoCs among the onsite *texts*, with several salient themes from Chapter 6 recurring here.

7.2.1 From the *text* of the BCoC to onsite posters: evidence of *molestation*

One major channel to communicate the BCoC to employees is the onsite posters which are designed to articulate the announcements, regulations and other materials relevant to the workers' rights (Hunter & Urminsky, 2003, p. 49). They are mainly located on the walls outside of the workshops, but some are also posted outside specific departments and offices. For instance, the announcements on the principles and the management system of trade unions can be witnessed outside the trade union office. Overall speaking, based on the purpose and the contents of the poster, they can be classified into three categories. The first poster is entitled as "Labour security", which contains five sections: Labour rights, Health and safety, Environment, Ethics and Management system (see Picture 7.1). The second cluster of posters includes the information on the trade union and the procedure of the grievance mechanism. The third cluster of posters communicates other issues, such as the benefits of joining the company, the rights of association, etc. These posters consist of another main section of textual information on the principles of corporate human rights responsibility at the ground level.

Derived from the *beginning* of the BCoC, the *texts* of posters represent another *beginning* to serve the purpose of educating workers on the company's human rights policy. Also, the posters act as a major channel through which people concerned about the labour

Picture 7.1 The poster on labour security inside the manufacturing facilities of Beta



Note: Some information has been removed from the picture for anonymity purpose

conditions can have a glimpse of the company's human rights policy. Based on the interviews and observations, the audience of the posters consists of workers who may be assumed to have little (if any) capability to understand the technical language of human rights accountability used in official documents like the BCoC. Therefore, the posters should have the *intention* to communicate the complex ideas and procedures with understandable language. Meanwhile, an enforceable accountability mechanism with clear, detailed guidance, ought to be communicated through the *texts*, allowing workers to use that as guidance without any difficulty. However, the analysis of the *texts* of posters reveals quite the opposite picture: rather than providing meaningful and understandable information, the *texts* of posters demonstrate the same level of abstraction and vagueness as the BCoC. From the perspective of Said's work (1975/1997, pp. 23, 83), the *beginnings* of the posters are the repetitions of previous ones such as the BCoC (see also, Cooper & Ezzamel, 2013, p. 291). Therefore, it is not surprising that the posters also fail to inform the workers on the procedure to the procedure for holding relevant actors to account.

Despite the similar level of abstraction and vagueness that the onsite posters have shown relate to the BCoC, there is some evidence that the *texts* of the posters *molest* the BCoC by providing more (and sometimes even less) information, as well as an alteration of its

meanings. This is mostly reflected in the individual section on the management system involved. While basically copying its contents from the BCoC, the poster shows a certain level of *molestation*. This is demonstrated in Table 7.1 which compares the *texts* of two documents.

Table 7.1 Comparing the *texts* between Labour Security poster and BCoC (Section on Management system)

Section	Labour security poster	BCoC
Introduction	Adopt or establish a management system to ensure the implementation of this code and other relevant laws and regulations, which leads to the mitigation of operational risks. The management systems should also facilitate continual improvement. ISO14001, OHSAS18001, EMAS (Eco-Management and Audit Scheme) can all be useful sources for reference.	Beta has established management systems whose scopes are related to the content of this Code. The management systems shall be designed to ensure (a) compliance with applicable laws, regulations and customer requirements related to suppliers' operations and products; (b) conformance with this Code; and (c) identification and mitigation of operational risks related to this Code. The management systems should also facilitate continual improvement.
Company commitment	Beta commits to draft and implement a statement on social and environmental responsibility. This will ensure Beta to adhere and devote itself to the consistent improvement regarding the social and environmental responsibility.	Corporate social and environmental responsibility statements affirming commitment to compliance and continual improvement are endorsed by each company's executive management.
Management Accountability and Responsibility	Company will appoint the business units and person to ensure the effective operation of this management system, and undertake periodical audits.	Clearly identify company representatives responsible for ensuring implementation and periodic review of the status of the SER management systems. Executives review the status of the management systems on a regular basis.

Continued

Table 7.1 Comparing the *texts* between Labour Security poster and BCoC (Section on Management system)

Section	Labour security poster	BCoC
Legal and Customer Requirements	Establish a set of management procedures to identify, search and understand the relevant laws and other relevant requirements which are applicable to this announcement.	Identification, monitoring and understanding of applicable laws, regulations and customer requirements
Risk Assessment and Risk Management	There is a need to establish a system to manage the operational risk in relation with the environment, health and safety and the activities of employees, and to evaluate the relative importance of the risk. Based on the observance of the law, appropriate procedures and actions shall be taken to manage the existing risk. The risk evaluation regarding health and safety issues must include the warehouse, shortage facilities, manufacturing equipments, laboratories, testing places, bathroom, kitchen, dining hall and dormitories.	Processes to identify the environmental, health and safety, and labor practice risks associated with operations. Determination of the relative significance of each risk, and implementation of appropriate procedural and physical controls to ensure regulatory compliance to control the identified risks.
Performance Objectives with Implementation Plan and Measures	Written standards, performance indicators, targets and implementation plans, including a periodic assessment of performance against those objectives.	Written standards, performance objectives, targets and implementation plans, including a periodic assessment of performance against those objectives.
Training	Relevant educational training shall be provided to workers and managers.	Programs for training managers and workers to implement policies, procedures and improvement objectives. Core curriculums such as orientation training and SER CoC training should be arranged for new employees, and employees in service should take at least two hours of CoC training per year.

Continued

Table 7.1 Comparing the *texts* between Labour Security poster and BCoC (Section on Management system)

Section	Labour security poster	BCoC
Communication	The company shall establish a channel to communicate clearly and accurately information about performance, practices and expectation to employees, suppliers and customers.	Processes for communicating clear and accurate information about performance, practices and expectations to workers, suppliers and customers.
Worker Feedback and Participation	Establish a feedback mechanism for workers on the procedure and implementation of this principle, for the aim for consistent improvement.	Ongoing processes to assess employees' understanding of practices and conditions covered by this CoC, to obtain employees' feedback on the practices and conditions, and to foster continuous improvement.
Audits and Assessments	Periodic self-evaluations to ensure conformity to legal and regulatory requirements, the content of this principle. The scope of assessment includes Beta and its suppliers. Beta will also cooperate with customers to take periodic audits on regulations in this document.	Periodic self-evaluations to ensure conformity to legal and regulatory requirements, the content of the CoC, and customer contractual requirements related to social and environmental responsibility.
Corrective Action Processes	Processes for timely correction of deficiencies identified by internal or external assessments, inspections, investigations and reviews.	Processes for timely correction of deficiencies identified by internal or external assessments, inspections, investigations and reviews.
Documentation and Records	Creation and maintenance of documents and records to ensure regulatory compliance and conformity to company requirements, along with appropriate confidentiality to protect privacy.	Creation and maintenance of documents and records to ensure regulatory compliance and conformity to company requirements, along with appropriate confidentiality to protect privacy.

Continued

Table 7.1 Comparing the *texts* between Labour Security poster and BCoC (Section on Management system)

Section	Labour security poster	BCoC
Supplier Responsibility	—	Process to communicate Code requirements to suppliers and to monitor supplier compliance to the Code.

7.2.1.1 The *molestation* the subject of accountability in the Labour security poster (No mention of “whom”)

As accountability entails the explanation of one’s behaviour, it is important to identify the subject of accountability as the prerequisite for its realisation (though the accountability is supposed to be discharged in an informal way, which is largely not the case according to the interviews and observations). Both Alpha and Beta CoCs provide information on identifying the major subjects accountable. Although BCoC already *molests* such information by disclosing less of it, such *molestation* is reinforced in the posters which fail to provide any practical guidance on the identification of the accountability subjects.

First of all, the accountability subjects are systematically omitted throughout the entire document, along with any explicit acknowledgement of the importance of identifying the duty-bearers. That is, the *texts* seem to assume that workers know clearly from whom they should demand accountability from managers, and thus have failed to include the mechanism on how to identify them on the ground level. However the interviews with workers suggest that this is not the case. Workers are not always aware of the identity of duty-bearers. Therefore a two level *molestation* is taking place here: the poster *molests* the higher level texts by twisting and removing certain information on how to identify the duty-bearers. Meanwhile the workers and managers will *molest* the poster based on their knowledge and experiences, no matter how ineffective and inaccurate they might be. The same question of “Do you know whom should you go to if you have grievances?” has been addressed to most interviewees. While to some extent the answer depends on their

past experiences, most of them seem to be confused about the accountability subject. For instance, some of the workers say they will go straight to the line-supervisors if they have any grievances, even if the complaint is about more senior managers. Instead, some argue that line-supervisors can't be trusted because they are under the command of their superiors. In this case they should invite the Employee Care Centre to intervene. Finally, there are huge amount of workers who lack the knowledge and the motivation to seek accountability from the beginning. The most common answer I received is: "I don't know whom should I seek accountability from, nor do I care about it. Because we are all here to make money. As long as I get paid, I'm OK with anything."

The only reference in the *texts* to the duty-bearer is at the end of the poster, in the section on "Management Accountability and Responsibility":

"Company will appoint the business units and person to ensure the effective operation of this management system, and undertake periodical audits. "

It is obvious that the statements are too abstract to provide any meaningful guidance on the identification of responsible managers. The reason is twofold. First, the nature of the text is to demonstrate to workers and managers about to whom should they discharge accountability if their rights have been violated. Considering the fairly complex management system of Beta and huge amount of managerial positions involved, the words "business units and person" fail to explain the mechanism of how to identify the duty-bearers. Second, it should be noted that this statement is addressed to the ground level workers, who have very little knowledge about the mechanism behind the accountability system established by Beta. Hence much more detailed and understandable terms and explanations shall be included. Such expression of "business units and person" is basically a void information which does not provide any practical guidance or mechanism to help workers on how the person can be identified, and through what mechanism.

Moreover, in other references the accountability subjects are simply stated as "Beta" or "Company". Whilst there is a possibility of workers resorting to informal channels to resolve their issues by approaching their superiors directly, the interviews with workers indicate otherwise. Workers who have tried to seek help through the grievance mechanism have also encountered difficulties. This will be further discussed in Section 7.3.2. Therefore, it can be argued that these *texts* are not intended to mention the

predefined representatives from whom workers can demand accountability. This *molestation* is even more detached from the workers' reality, considering that in most circumstances they are vulnerable, in the sense of lacking power and resources (Krueger, 2008, p. 119; Lin, 2007; Pun et al., 2016). It is commonly believed that Chinese workers are usually at a disadvantage in terms of bargaining power, since there is a lack of adequate institutional mechanisms for enabling them to participate in the accountability system (e.g., the ineffective role of trade unions, the paternalistic relationships between workers and managers), and workers often lack the basic knowledge and skill to understand the accountability procedure (Chan et al., 2015; Krueger, 2008, p. 119). Hence, the drafting of the BCoC should take this reality into consideration by paying special attention to their needs. Unfortunately, as we have seen above, this is not the case.

7.2.1.2 The *molestation* of the accountability procedure in the Labour security poster (No mention of “how”)

Similarly, there is a conspicuous absence of any mention of the mechanism through which the subject can give, and others can demand, the reasons for their conduct. It is argued in Chapter 6 that this notion is already diluted by its weak presence in the BCoC. The *text* of the poster further *molests* this, leaving the accountability mechanism as empty promises with little enforceability. In addition, the *authority* articulated in both the UN and Alpha *texts*, of human rights as a moral obligation which trumps all other economic interests is *molested* by the emphasis solely on legal obligations. Based on the document analysis in Sections 6.5.2, 6.5.3 and 7.2, the main argument here is that the moral dimension of human rights as embedded in the text of UNGPs is molested and replaced by the legal principles which does not reflect the practical demands of workers and managers. The argument concerning the legal and moral dimensions of human rights is significant throughout the thesis. It is based on the idea that when converting the text of UNGPs into more practical texts such as governmental regulations and corporate codes, the government and the corporations have the intention to molest the moral nature human rights by emphasising the legal duty. The Section 3.2.1.3.1 sets the landscape the above argument for the thesis, and Chapter 5 and 6 provide empirical evidences for the molestations.

More specifically, the *texts* are useless for enabling workers to familiarise themselves with how the system works, not to mention how to use this system to protect their rights. To begin with, the mechanism is couched in lofty and sometimes technical terms, which probably can hardly be understood by workers. For example, the poster repetitively uses expressions such as “periodical audits” and “performance indicators”. It is hard to imagine workers will have enough knowledge to understand the correct meaning of these terms, let alone to utilise them to hold managers accountable. Even if they do understand, then it is questionable to what extent they can put this information into practice for defending their rights. Second, the poster fails to provide practical guidance for demanding accountability which is appropriate to the workers’ local context. For instance, the structure and wording of the posters are largely copied from the BCoC, which is a formal official regulatory document aiming for further contextualisation and reinterpretation to fit the local reality. As it has been argued above, the *texts* of the BCoC are in many respects deficient for revealing meaningful and applicable information concerning human rights accountability. Furthermore, even if the poster merely acts as another version of the BCoC and inherits all these flaws, it also fails to incorporate workers’ pattern of thinking and their realistic demands into the *texts*. This is where the accountability procedures deviate from the workers’ reality. From Said’s perspective, the nature of the CoC invites the enabling function of *molestation*, so as to yield more robust results by integrating local norms and local reality into the implementation process (Hamilton & Knouse, 2001, p. 84; Ip, 2009a, p. 220; Kaptein, 2004, p. 27; Sinkovics et al., 2016, p. 644). This is also in line with the spirit of the UNGPs, which call for “meaningful consultation with potentially affected groups and other relevant stakeholders” (UN, 2011, Principle 18). Unfortunately, this is not the case in the onsite poster, and the enabling function of *molestation* is largely absent from the *texts*.

Therefore, while the BCoC initiates a *beginning* to manipulate and obfuscate the mechanism to discharge accountability, the *texts* of onsite posters *molest* the BCoC to a certain extent by providing an even more elusive picture, with a high level of opacity. Indeed, in reality the poster has largely “copied” the practice of the BCoC. The constraining feature of *molestation* is evident here, in failing to incorporate the local reality into the *texts* through providing understandable information with which workers can use to hold managers accountable, and at the same time dispelling any obscurity that exists in the BCoC.

7.2.2 From the BCoC to Beta's Employee Handbook: evidence of *molestation*

The Beta Employee Handbook (hereafter “the Handbook”) *intends* to convey the main messages in the BCoC to all Beta employees, both workers and managers. These are mainly distributed to workers in two ways: either during their induction or upon request. It is an official document with 100 pages covering “all” the aspects of a worker’s life in Beta, from the regulations on wages and overtime, to various disciplines workers are required to follow. Compared with the regulatory posters, the Handbook is explanatory in nature, and is supposed to provide more detailed information on human rights accountability to the workers, while maintaining an alignment with the BCoC and the posters. Hence, it is argued that this *text* entails one of the *beginnings* of human rights responsibility at the supplier level, which (to some extent) repeat the *beginnings* initiated by actors on upper levels (i.e., Beta). Meanwhile *authority* is established in these *texts* by deviating from the meaning of human rights accountability in the source *texts*. This section explores this process of *molestation* of accountability relationships taken from the *texts* of BCoC and the RBA codes to the *texts* of the Handbook.

7.2.2.1 The elusive accountability relationship in the BCoC

The issue of accountability has been reflected in Section 6.5.3, in which it is argued that the *text* of the BCoC takes a conventional and ritualistic approach to identifying the accountability relationship regarding the human rights issues. That is, rather than actively seeking ways of upholding the accountability mechanism to improve labour conditions, the *texts* of BCoC actually maintain and legitimise the existing power inequality between the workers and Beta (see, for example, Islam et al., 2018).

To begin with, as a regulatory document which serves as the comprehensive guidelines for materialising corporate human rights responsibility, the BCoC contains surprisingly insufficient information unequivocally stating the subjects of responsibility. The document begins:

“As a member of the international business community and the RBA (Responsible Business Alliance), Beta recognises and is committed to social and environmental responsibility...Beta is hence committed to ensuring that our business is in all respects

conducted in conformance with ethical, professional and legal standards. With the aim of becoming an SER compliant supply chain partner with customers, Beta declares in its CoC policy to respect all industrial rules, applicable laws, human rights, environmental conservation, and safety of products and services in the countries and regions in which it operates, and to conduct its business activities in an honest and ethical manner.” (Beta, 2018b, p. 1)

From the perspective of the UNGPs, this commitment is still basic in nature (Shift, 2017, p. 14). The commitment is set out from the position of the “business community and the RBA” rather than stemming from respect for universal human rights. Also, it contains a high level commitment without further clarification either on the scope of these rights, or the particular stakeholders involved. Therefore, although public commitment from the company constitutes a benchmark in the UNGPs for assessing the integration of corporate human rights responsibility, in the *texts* of the BCoC the essential elements of a mature human rights commitment are still largely missing or need to be improved significantly.

Two dedicated sections named “Responsibility” and “Management Accountability and Responsibility” provide further explanations of the stance Beta takes in defining the nature of its responsibility to human rights. Table 7.2 summarises the accountability relationships sketched in these *texts*:

Table 7.2 The accountability relationship in BCoC

<i>Texts from BCoC</i>	Accountability relationship
<p>BCoC determines the responsibilities of the Group’s functionaries and business groups in substantiating the CoC principles. The Chairman of the Beta Global SER Committee (hereinafter, “BGSC”) and all business group heads (general managers) are the main sponsors of this CoC policy. The executive of BGSC will monitor adherence to this CoC policy under the guidance of the BGSC Chairman. The SER teams of all business groups are responsible for entrenching and monitoring compliance with this Code, and providing feedback to BGSC regarding local practices contravening the CoC policy (Responsibility Section, p. 1-2).</p>	<p>The SER teams are held accountable by the BGSC executives for implementing and monitoring the BCoC.</p>

Continued Table 7.2 The accountability relationship in BCoC

Texts from BCoC	Accountability relationship
<p>General managers of all business groups should require related management who are most tied to the local conditions and constraints to build capabilities in both SER training and auditing knowledge to promote the audit mechanism (Responsibility Section, p. 2).</p>	<p>“Related management who are most tied to local conditions and constraints” are held accountable by the “general managers of all business groups” for training and auditing of SER knowledge.</p>
<p>Clearly identify company representatives responsible for ensuring implementation and periodic review of the status of the SER management systems. Executives review the status of the management systems on a regular basis (Responsibility Section, p. 2).</p>	<p>Company representatives are held accountable by the executives for implementing and reviewing the status of SER management systems.</p>

As it is indicated in the excerpts, there are accountability relationships underlying the BCoC which generally assign the responsibility to a party, and claim this party is obliged by another party to perform certain tasks. However, the language used in BCoC is strikingly vague and unenforceable. At least three issues are salient here. First is the ambiguous nature of the actors involved in the accountability relationship. They include all business group heads (general managers), the SER teams of all business groups, the related management and the company representatives. Based on the description in the *texts*, all of them are key actors who should bear clear obligations for human rights compliance. However, the *texts* fail to provide more meaningful and actionable information on the nature of these actors and how to identify them in practice. For instance, what does “related management who are most tied to the local conditions and constraints” mean? It seems the *texts* here imply actors with extensive knowledge of local conditions and constraints, but an enormous number of people would meet these vague criteria, making selection an unfeasible task.

What is even more pronounced here is the missing word “how”. Common phrases including “responsible”, “require” and “review” are too vague to provide any meaningful and enforceable guidance for holding relevant actors accountable. For instance, it is stated

that “the SER teams...are responsible for entrenching and monitoring compliance with this Code”, “General managers...should require related management...to build capabilities”, “...to identify company representatives responsible for ensuring implementation (of certain procedures).” But the mechanism by which to fulfil these requirements is absent, making it simply impossible to operationalise these principles without significant complementary guidance and explanation. Previous studies also reflect this tendency, arguing that due to the voluntary nature of the CoC, it suffers from the drawback of lack of transparency and applicability, even though it contains strong references to the authoritative international instruments (see, e.g., Egels-Zandén, 2007; Haines et al., 2012; Yu, 2009). In addition, the information on specific, strong sanctions has been removed from the *texts* (currently a common issue with company texts, as scholars have witnessed) (Egels-Zandén, 2007, p. 53; Methven O'Brien & Dhanarajan, 2016, p. 553; Miller, 2013, p. 36; Yu, 2009). Hence, even if someone is deemed to have failed to uphold the BCoC, without an effective mechanism of monitoring and sanction it is easy to dodge the accusations. Moreover, the wording of “clearly identify company representative responsible” seems suspiciously like an attempt to circumvent any direct link with the responsibility for human rights.

Finally, the vagueness of the *texts* extends to the description of the benchmark against which to discharge accountability. The duty allocated to the responsible party is too often superficial and lax, leaving too much room for manoeuvre and manipulation. For example, when defining the tasks of the duty-bearers, it is stated that (please see Table 7.2) “(someone) are responsible for entrenching and monitoring compliance with this Code”, “(someone should) build capabilities in both SER training and auditing knowledge to promote the audit mechanism”, “(someone are) responsible for ensuring implementation and periodic review of the status of the SER management systems”. However, the exact meaning of “entrenching”, “monitoring”, “build capabilities” and “ensuring” are insufficiently explained, leaving room for despotic managers to justify their violations of the BCoC.

7.2.2.2 The *molestation* in Handbook

Moving from the BCoC to the *texts* of Handbook, a significant shift seems to be taking place—the audience of the *texts* has changed. The Handbook serves the aim of

communicating the *texts* on human rights responsibility to workers and line managers without erosion of the BCoC. Thus the *texts* ought to be constructed in an understandable and enforceable manner, which in turn should lead to a clear description of the accountability relationships to Beta’s employees (Graafland & Zhang, 2014, p. 37; Yu, 2009). However, this is not the case in the Handbook. Table 7.3 presents the main expressions taken from the *texts* of the Handbook regarding human rights and the accountability relationship underneath.

Table 7.3 The accountability relationship in the Handbook

<i>Texts from Handbook</i>	Accountability relationship
Beta fully adopts the social and environmental responsibility (SER): to ensure the occupational health and safety, protect workers’ rights and take responsibility to the environment; Beta has established the BGSC, who is responsible for the founding and optimising of SER system (Social & Environmental Responsibility Section, p. 72).	BGSC is held accountable by “unknown actors” for the founding and optimising of SER system
The Participants of RBA codes shall adopt or establish a management system whose scope is aligned with the contents of this code. This system should be designed to ensure (a) adhere to the relevant legislations and the customers’ requirements; (b) adhere to this code; (c) identify and mitigate the operational risks in relation with this code. It should also leads to consistent improvement (RBA Section, p. 74).	The Participant (Beta) is held accountable by “unknown actors” for establishing a management system coherent with the RBA code
Ethics: To meet social responsibilities and to achieve success in the marketplace, Participants and their agents are to uphold the highest standards of ethics (RBA Section, p. 76).	The Participant (Beta) is held accountable by “unknown actors” for upholding the highest standards of ethics

Consistent with BCoC, the Handbook has also adopted the notions of SER, BGSC and RBA codes and in turn developed some kind of accountability mechanisms around them. However, the information on the accountability subject is highly abstract, and detailed descriptions are missing, which makes it almost impossible for workers to identify the necessary duty-bearers. In addition, the *texts* of the Handbook also fail to provide a clear

and meaningful statement on the accountability relationship. This is a glaring omission, considering that the audience of the *texts* is composed of workers who have little knowledge or capacity to make sense of the vague and technical language employed in the Handbook.

To begin with, the accountable subjects (both individuals or organisational bodies) are either absent or vaguely described, which can be seen as *molestation* of the *texts* from BCoC. While the latter has provided a fairly short mention of key actors, such as BGSC executives, company executives, general managers of all business groups and “Related management who are most tied to local conditions and constraints”, none of them is reflected in the *texts* of Handbook except the BGSC, which is still an empty word to the workers, based on the feedback from the interviews⁴⁰. Rather, the Handbook further *molests* the topic of subjects of accountability by omitting any explicit discussion of their nature. For instance, the Handbook states that “Beta has established the BGSC, who is responsible for the founding and optimising of SER system.” However, it doesn’t explain who represents the BGSC on the ground level, what is the exact meaning of the SER system, and who should hold the BGSC accountable. In a word, this is a highly incomplete and ritualistic description of the accountable subjects, which fails to provide practical information to workers which they can use to identify the direct duty-bearers and demand accountability. It can be said that even less information is contained in the *texts* of the Handbook compared with the BCoC. Furthermore, most of the Chinese workers at Beta lack basic knowledge about the SER. Instead of simply borrowing the concept from the BCoC and RBA codes, it would be if the Handbook had explained to the workers who these actors are in plain and understandable language. This is where the Handbook clearly falls short.

Perhaps an even more obvious omission is the question of “how”. That is, the process through which workers can hold the relevant people accountable is kept away from them —assuming that it actually exists. Recall that the *texts* of BCoC also suffer the same problem, in that they only vaguely depict the structure of accountability, without revealing much specific information on how to implement the mechanism in daily operations. This tendency can also be witnessed in the Handbook, with even less information given. For instance, the Handbook states that “Beta fully adopts the SER: to

⁴⁰ See Section 7.3 for the discussion on interview findings.

ensure the occupational health and safety, protect workers' rights and take responsibility to the environment; Beta has established the BGSC, who is responsible for the founding and optimising of SER system." (Social & Environmental Responsibility Section, p. 72) Indeed these *texts* explicitly frame an accountability mechanism stressing the respective role of different stakeholders; however it is impossible for workers to know how to demand accountability from managers after reading the *texts*. With little demonstration of the procedure that workers can follow, the Handbook further *molests* the BCoC to an even higher level of ambiguity and vagueness. Based on the interviews with workers, on most occasions the accountability mechanism is nothing more than a void promise, with the sole exception of the grievance mechanism.

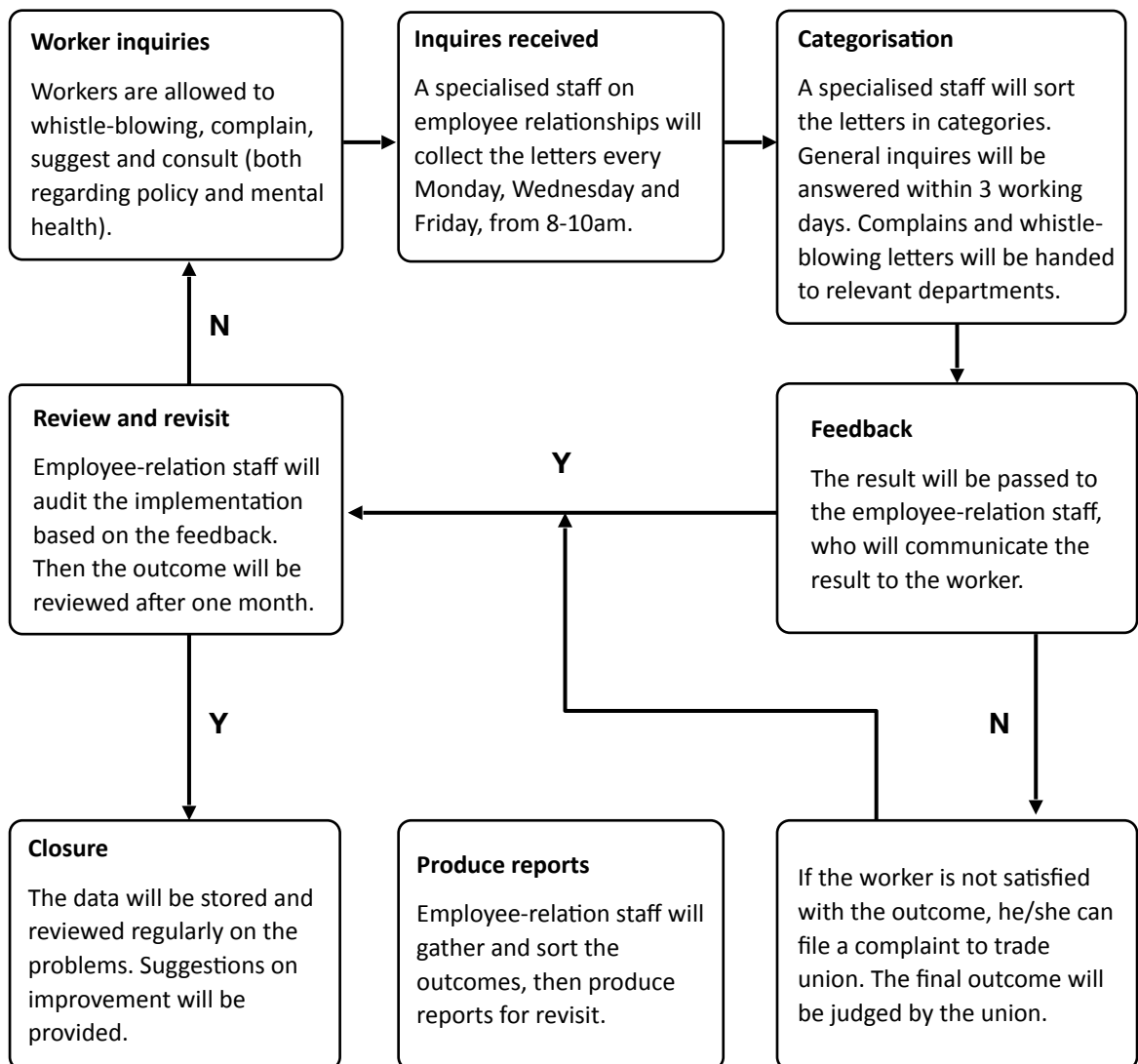
In addition, the BCoC provides a rough and also highly abstract description of the implementation of the accountability mechanism by stipulating a 12-step management system, consisting of commitment, management responsibility, legal requirements, requirements for customers, risk evaluation and management, target improvement, training, the employee feedback, communication, participation and grievance, auditing, correction, documentation and filing, and the responsibility for suppliers. More importantly, the BCoC includes a brief introduction under each step to summarise the key ideas and practical issues. However, most of these have been removed from the Handbook, leaving only the titles of the steps, which mean nothing more than a vague and symbolic notion to the workers.



Picture 7.2 The poster on the grievance mechanism (with the broken Suggestion box on the left hand corner)

Note: Some information has been removed from the picture for anonymity purpose

Figure 7.1 The workflow of grievance mechanism displayed in the poster



Note:

1. The complaints and suggestions must be based on the truth, with clear and accurate statements;
2. All the grievances must adhere to the relevant laws and the regulations of the company;
3. Employees are encouraged to include their real name, employee number, department and the contact information. But anonymous complaints are also accepted;
4. The office of “Employee relationships” will uphold the principle of “Fair, Just, Confidentiality and Legitimacy” during the processing of the complaints.

7.2.3 The *molestation* of the grievance mechanism in the poster

Remediation is essential for the company to address the existing adverse impacts caused by its operations, and more importantly, it aims to identify and mitigate any legitimate concerns before they escalate into major human rights abuses (UNGPs Principle 29).

Therefore, workers should be allowed to express any grievances whatsoever, not necessarily ones that have already occurred. This notion is embedded in the *texts* of the Alpha and Beta CoCs. The *molestations* are evident during the interpretation of these *texts*.

Specifically, a poster demonstrating the workflow of the grievance mechanism and accompanied by a “Suggestion box”⁴¹ can be spotted at the entrance of every factory in Beta (see Picture 7.2, translation in Figure 7.1). The *text* on the grievance mechanism is one of the few cases in which the onsite posters provide more detailed and operationalised information than BCoC and the Handbook. As a crucial mechanism through which workers can express their grievances and seek remedy, the importance of the grievance mechanism (as a form of both juridical and non-juridical remedy) is underscored in the *text* of the UNGPs as the third pillar (Mares, 2018; McPhail & Adams, 2016, p. 667; Ruggie, 2013a). Also, it is manifested in the ACoC which has been reflected upon in Section 6.5. However, the *beginning* of the remedy is not espoused in the *text* of BCoC. The remaining *text* in the section titled “Worker Feedback and Participation” also display a high level of ambiguity.

“Ongoing processes (including effective grievance mechanism) should be conducted to assess employees’ understanding of practices and conditions covered by this CoC, to obtain employees’ feedback on the practices (including the violations) of the CoC. Also, this helps to foster continuous improvement” (p. 8).

While the notion of the grievance mechanism is mentioned in the above *text*, the underpinning message concentrates on the implementation of the BCoC, rather than the issues or grievances related to their human rights. Indeed the *texts* of the BCoC do cover the major human rights issues, however they are far from inclusive, and thus there is a significant piece of information missing from the above *texts* which would bridge the BCoC with the daily human rights issues most relevant to workers’ concerns.

Based on this observation, it is argued that the role of accountability is largely missing or misinterpreted. To begin with, who the subjects of accountability are, is unclear. No information has been revealed on “*whom*” should be accountable for processing the

⁴¹ The Suggestion box is imprinted with the *text* of “Trade union letter-box”. However, several of them are damaged, with a broken door or missing lock. Based on these conditions, it can be presumed that they have been out of use for a long time and are thus largely redundant.

grievances. Also, as it is suggested above, the degree of worker participation and feedback can be judged by their poor understanding of the CoC, and their complaints about violations of it, both of which bear out the earlier criticisms of the BCoC texts. However, I fail to see the link between workers' knowledge of CoC and the grievance mechanism. That is to say, the *texts* of BCoC partially divert the "*for what*" question to the contents of the BCoC, rather than to the grievance mechanism itself. Finally, the question of "*how*" is absent from the text, an issue the BCoC has in common with other CoC.

The local *texts* entail a *beginning* quite distant from the *beginning* represented in the BCoC. Instead of adhering to a similar extent of ambiguity and the codes-oriented approach, the onsite poster depicts a detailed and seemingly feasible workflow for workers to file grievances and track the responses (see Figure 7.1). Adhering to the effectiveness criteria for non-judicial grievance mechanisms articulated in the UNGPs (UNGP, Principle 31), the discussion of the *texts* can be organised around three criteria. To begin with, the *texts* are easily accessible to all employees, as they are located at conspicuous places on the site. However, although there is no ample evidence to suggest that this "Suggestion box" mechanism is no longer on the agenda of the company management system (e.g., trade union), as it can be seen from Picture 7.2, there are certainly redundant suggestion boxes at many facilities. This denotes the possibility of "window-dressing" onsite. If that is the case, then accessibility simply will be a void promise. Second, on the issue of predictability, the poster communicates a step-by-step process to guide workers through the entire mechanism. Detailed information is provided, such as the person/department in charge of collecting the letters ("a specialised staff on employee relationships"), the time and frequency of such events (every Monday, Wednesday and Friday, from 8-10am), and the time frame for responding (within 3 working days, and the final outcome will be reviewed after one month). Such information provides a clear and publicised procedure to assist workers who have little knowledge for understanding the mechanism of this system. However, it is argued that there are still places which place obstacles in the way of workers' full comprehension of the *texts*. For example, workers without prior knowledge about the grievance mechanism might be confused by the shapes and arrows; that is to say, the essential meaning of the flowchart, as well as the meaning of "N" and "Y". Third, the issue of transparency is also salient in the procedure. The UNGPs require keeping the relevant parties to a grievance informed about the process, and stipulate that sufficient information shall be provided regarding

the performance of the mechanism. This notion of transparency is systematically missing from the poster. Apart from the “Feedback” stage, in which the result will be communicated to the worker after the investigation, during the entire process there are no *texts* regarding the channel through which the internal governance can be made visible to workers. Hence it is doubtful that the grievance mechanism is able to engender a sense of trust and confidence among them. Nevertheless, a paradoxical state of affairs should be noted here. As it will be discussed shortly, both the *texts* of BCoC and the poster value the anonymity of the workers and explicitly accept anonymous complaints. It is obvious that practising this principle denotes workers will not be identified. However it would be difficult (if not impossible) to provide any feedback to the workers without information of their identity, and thus transparency is nil. Hence both workers and Beta management seem to be stuck in the middle. Fourth, rather than just seeing the grievance mechanism as a passive or retrospective action, the *texts* of the UNGPs highlight its proactive potential, by means of which the same issues can be prevented from re-occurring. Hence the *texts* of the UNGPs propose the need for continuous learning, and press for identifying the lessons, for the sake of improvement. The *texts* of the poster are coherent with these *texts* by setting up three phases after the “Feedback” stage: “Review and revisit”, “Closure” and “Produce reports”, which have the *intention* of generating suggestions for improvement.

Benefiting from the more practical and detailed *texts* in the poster, the accountability mechanism is articulated at a higher level of clarity than exists in the BCoC. First of all, the subjects of accountability are defined as “Employee-relation staff” and the trade union. Based on the interviews with workers, and the observations during the research, both of these are accessible through designated offices or counters onsite, and workers interviewed have clear knowledge where to find them. This represents a noteworthy step towards the contextualisation of the rather abstract description in the BCoC. Second, the process of “*how*” is illustrated to the workers as a step-by-step workflow, with clear timeframes and expected outcomes. Whilst there are places where the meaning of the *text* is unclear (e.g., the meaning of “N” and “Y”), it can be said that the *text* on the poster provides an understandable explanation, which workers can use to track the entire process of accountability. Finally, regarding the question of “*for what*”, the *text* of the poster is coherent with the BCoC. That is, the *texts* are formed in a relatively mandatory tone, requiring workers to “adhere to the relevant laws and the regulations of the

company.” Arguably, this sets the bar unnecessarily high for this discourse and potentially leaves room for manipulation.

Furthermore, the BCoC includes a dedicated section on the protection of the identity of the whistleblower, and a non-retaliation policy:

“Unless regulated in law, then programs/regulations should be put into position to ensure the confidentiality and protection of supplier and employee whistleblower are to be maintained. Anonymous complaints with clear and specific descriptions of person/time/place/event are to be accepted and protected by the company. The grievance mechanism shall be established to ensure employees can express grievance and questions freely without concerning about retaliation” (p. 3).

Notes on the poster reiterate this principle:

“The complaints and suggestions must be based on the truth, with clear and accurate statements; All the grievances must adhere to relevant laws and the regulations of the company; Employees are encouraged to include their real name, employee number, department and the contact information. But anonymous complaints are also accepted.”

Both *texts* articulate that workers are allowed to report anonymously. However it seems both *texts* have “additional terms” added to the principle. By stating “Anonymous complaints with clear and specific descriptions of person/time/place/event are to be accepted and protected by the company” in the BCoC, it is unclear whether these *texts intentionally* set the bar for “legitimate” grievance, and exclude other complaints from identity protection. The message is enhanced in the poster, emphasising that all complaints and suggestions must be “based on the truth, with clear and accurate statements, and must adhere to relevant laws and the regulations of the company.” Indeed there are cases where workers irresponsibly exploit the grievance mechanism to provide false information and mislead the investigation for personal reasons. However, the *texts* in the BCoC and poster can also be easily misused as the excuse to reject reasonable grievances from aggrieved workers. Moreover, the *texts* of the poster fail to provide more information on the meaning of “relevant laws and the regulations of the company.” For instance, questions should be asked about what laws and regulations are at play here, and what do they say about the grievance mechanism and how to judge the legitimacy of the grievances based on these laws and regulations? These are all vital practical pieces of information absent from the *texts* of BCoC and the poster.

Speaking overall, the *texts* of the poster represent a step towards the implementation of the grievance mechanism on the ground level. By depicting a step-by-step procedure, the poster attempts to illustrate the key elements of the mechanism to workers who usually have little or no knowledge about the logic behind this system. That is, the question of “how” in the accountability relationship is to a certain extent addressed by the poster *texts*. From this point of view, the enabling feature of *molestation* is evident here, which suggests that the *texts* of the poster operationalise the ones from the BCoC by providing more localised information. However, it should be noted that certain information (e.g., anonymity and confidentiality) are still disseminated at a similar level of abstraction. This entails a missed opportunity to contextualise the regulatory *texts* in the BCoC into more understandable and practical *texts* for workers.

7.2.4 Summary

At this point, I have examined how the *texts* of corporate human rights accountability inscribed as the *texts* of BCoC are reshaped and reproduced at the ground level in the case of the employee Handbook, two posters on general human rights policy, and the grievance mechanism respectively. This section attempts to summarise the results from the theoretical point of view of Said’s framework.

According to Said (1975/1997), the *beginning* represents an *intentional* departure from the past, and establishes a new order, which is also built upon the repetition of, and the complex interplay with, previous *beginnings*. This pattern can be observed from the analysis of the *texts* above. On the one hand, the target audiences of the two groups of *texts* are different. As it has been discussed in Section 6.5, BCoC is constructed to serve the purpose of communicating the regulations to the external stakeholders, such as buyer companies (customers) and the public. Therefore, as we can see, the accountability relationship sketched in the *texts* is aspirational and abstract, emphasising the commitment from top level managers to uphold human rights responsibilities. However, the employee Handbook and onsite posters have the different *intention* of disseminating the information among the employees. Hence, they embark on a *beginning* on the ground level, with a view to operationalising the accountability relationship originating from the upper level *texts* by injecting local elements into it. Therefore, the wording should be actionable by, and understandable to the workers. In a word, the local *texts* represent a

beginning with their own *intentions* of rendering the discursive utterings of the human rights *texts* of BCoC actionable. On the other hand, at the core of both clusters of *texts* is the same notion of human rights accountability, which intertwines with other threads of ideas (*beginnings*) such as the concept of human rights, and various regulatory frameworks. From this perspective, the *beginnings* on the ground level are not isolated, but are largely repetitions of previous *beginnings*.

Said (1975/1997, pp. 23, 83) contends that *authority* is ingrained in this process. That is, the ability to invent a *beginning*, to generate discontinuity from continuity through the *intentional* production of meaning. This entails *authorship*, within which repetitions, additions and deletions are involved—in short, the ability to decide the permissibility of the texts (Cooper & Ezzamel, 2013, p. 308). The *authors* of the BCoC and the onsite posters are certainly in a position to foster *authorship* by presenting their own version of human rights accountability; meanwhile maintaining a strong relationship with the other core elements taken from the diverse contexts of the UN, national, and company levels. At the same time, such reinterpretation of the original *texts* also invokes displacement and customising of these *texts*, which are called *molestations* (Said, 1975/1997). During the process of reshaping the original *texts* of the BCoC into more local *texts*, the local actors perceive the BCoC from a certain angle which is by no means a faithful duplicate. Instead they steer away from the *beginnings* initiated by the BCoC by reinterpreting and highlighting or deleting certain *texts* based on the local reality, as we have seen in the discussion of the Handbook and onsite posters. Arguably, both the enabling and constraining functions of *molestation* are evident here.

To begin with, Said (1975/1997, pp. 24, 90) argues that as writing is a “dream”, a “truth-resembling fiction” and hence the *texts* are always distant from reality, and the full *authority* is nil. Therefore Cooper & Ezzamel (2013, p. 292) describe *molestation* as the “practical counterpart” when the original *texts* are put into practice, which is known as the constraining feature of *molestation*. In the case of this research, it is argued that the aspirational *texts* in the BCoC represent the “dream” of corporate human rights accountability, in terms of the four elements. During the communication process from the top down, the *texts* are *molested* by local *texts*; which means the original *texts* will never be fully insisted upon by the local interpreters—rather, sacrifices and collisions will arise. For instance, the systematic absence of the accountability subjects in the Labour Security

Poster presents a *molestation* of the BCoC which *intentionally* distils the latter into a set of largely unenforceable rights with little or no information on the identification of whom should workers appeal to.

On the other hand, the enabling function of *molestation* is also embedded in the local *texts*, which implies that during the (re)interpretation of the BCoC *texts*, the local *authors* also enhance the credibility of the original *texts* by examining them in the light of local reality and interpretations, and render the *texts* more practicable and actionable. In this sense, the corporate human rights accountability depicted in the BCoC *texts* will be less of a “dream”, but is incorporated with believable elements. This enabling function of *molestation* is witnessed from the poster on the grievance mechanism. By providing a more illustrative framework which guides workers throughout the entire process, the *text* of the poster *molests* the *texts* of BCoC on the grievance mechanism, and lends them practicability within the local reality.

Following this logic, the onsite posters have largely honoured the *authority* of BCoC; however these *molestations* can also be observed (to a smaller extent): (1) As accountability entails the explanation of one’s behaviour, it is important to identify the subject of accountability (except when the accountability is discharged in an informal way, which is not the case according to the interviews and observations). The poster *molests* this by removing the information on the subject’s identification; (2) Accountability is more than a set of indicators and expectations which await to be achieved, it is inevitably contextualised in the “social structure, cultural values, and modes of organisation” (Gallhofer et al., 2015c, p. 864; Mathews & Reynolds, 2001; McKernan & MacLulich, 2004, p. 348; Roberts, 2009, p. 963, see also Schweiker, 1993, p. 237). According to the interviews and the observation, two of the most influential local contextual factors are the existence of hierarchical relations (Confucianism), and the power asymmetry between workers and managers. It undermines the realisation of accountability as a “socialising” process which emphasises moral obligations and human relatedness (Roberts, 2001, p. 1554). However, the *text* of the poster “decontextualises” the relationship, by largely copying the requirements (expectations) of human rights from the BCoC without reflecting upon the extra procedures needed to address the local issues. In other words, the enabling function of *molestation* is hampered; (3) The missing out of “how” is even more significant, leaving the accountability mechanism as merely empty expectations; (4)

The *authority* of human rights as a moral obligation which trumps all other economic interests, articulated at the UN and Alpha levels, is changed, and is now solely described as a set of legal obligations. The ethical dimension of accountability has been lost during *molestation*.

7.3 Texts uttered by speaking: interview analysis

This section moves to consider another dimension of *texts*: the *texts* uttered through conversations. As Cooper & Ezzamel (2013, p. 291, 310, see also, Quattrone, 2009, p. 101) suggest, one appealing feature of Said's framework is the focus on the *texts* both in the form of inscriptions (written *texts*) and of utterings (spoken *texts*). Said (1975/1997, p. 332) uses the phrase "language in use" to describe "our continuous mode of life—and the circular system of signs that surrounds speech at any one moment", which he claims to be the "prestige" of *text* (Said, 1975/1997, p. 197). More specifically, in the context of this research, the *texts* on the corporate human rights accountability relationships pronounced at the upper levels (i.e., UN level, national level and company level) can be connected (either directly or indirectly through mediators) with the diverse statements spoken by local receivers (i.e., workers, managers and government officials), who have the *intention* to enact their own *beginnings* over these *texts*. More importantly, it is argued that the "thinking" behind the *texts* (which is manifested by spoken words) has the potential to be converted into "acting" (Cooper & Ezzamel, 2013, p. 309; see also, Evans, 2004; Shearer, 2002, p. 545). That is, the *texts* disseminated from the upper level actors, in the form of the BCoC, the Handbook and the onsite posters, will exert influence on the local actors by encouraging or discouraging them to perform certain actions (e.g., file a grievance, be reluctant to accept excessive overtime, become motivated to organise themselves for collective bargaining, etc.) across temporal and spatial distances (Cooper & Ezzamel, 2013, p. 310). On the other hand, the local actors also *molest* these *texts* by invoking the local cultural, social and economic realities which arguably determine the outcome of their behaviours. Meanwhile, drawing on the notion of "accountability in action" devised by Oakes & Young (2008) and Parker (2014), this section attempts to extend the discussion of human rights accountability from the *texts* to the observable actions of local actors. It is argued that while the local actors enact their own *beginning* of human rights accountability by performing certain actions, at the same time

their actions also entail the *molestation* of the accountability relationship in certain ways which are linked with local contexts.

Following this rationale, I intend to structure the discussion around the major themes arising from the interviews with workers, managers, government officials, and two labour experts who have more than ten years of experience in labour conditions at Beta. Also, my personal reflections drawn from participant observation inside Beta will serve as another information source for verifying the themes from the interviews, as well as to generate new themes which the interviews have not covered.

7.3.1 The overtime paradox

This is the major theme arising from the interviews, and is at the core of the labour rights debate in China, as well as in other developing countries (see, e.g., Egels-Zandén, 2007, p. 51; 2014, p. 66; Franceschini et al., 2016, p. 425; Yu, 2008, p. 517). Regardless of the clear limits of overtime set by the *texts* of Alpha and Beta CoCs and onsite posters, these texts have been systematically *molested* by both workers and managers. First, legal obligations, rather than moral obligations, dominate in the expectation/benchmark against which to hold businesses accountable. That is, as the legal minimum wage is insufficient for daily expenses, workers have no choice but to do overtime. However, the company invokes legal standards merely to justify its behaviours, and provides an account based on this. Second, under these circumstances workers are motivated to do the overtime, and a consensus has been formed between workers and managers. The decoupling of the company policy from practice can be observed here, as Beta engages in symbolic actions (double book-keeping) to deceive the Alpha auditors, in order to obtain legitimacy from the latter.

To begin with, the *texts* of BCoC explicitly stipulate the limits of the working hours and the overtime:

“(7) Working Hours: Beta recognises that unreasonable overtime for workers will result in reduced productivity, increased turnover, and increased injury and illness rates. Except in emergency under some unusual situations, a workweek shall be restricted to 60 hours including overtime, and workers shall be allowed at least one day off for every six days worked as stipulated in the RBA CoC. Based on that minimum requirement, Beta shall also

comply with local laws in this regard and develop gap closing and improvement plans on a continuous basis that are made known to the business group management. Beta shall also conduct review/discussion sessions with key stakeholders including employees, law enforcement agencies and relevant customers to ensure legal observance globally and locally. In addition, overtime shall be voluntary, and vacation, leave periods, and holidays should be rendered consistently with applicable laws and regulations” (p. 4-5).

Also, the BCoC has a section on the wages:

“(6) Wages and Benefits: Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. The basis on which workers are being paid is to be clearly conveyed to them in a timely manner via pay stubs or similar documentation” (p. 4).

Moving from the BCoC to the poster on “Labour security”, a transformation can be seen in the way that the *texts* of the BCoC are communicated down to the workers and managers. The section on working hours states that:

Under normal circumstances:

1. The working hours per week shall not exceed 60 hours, with at least one day off after 6 consecutive days. Under no circumstances shall the weekly working hours exceed the legal maximum time.
2. Vacation and other legal public holidays will be implemented according to the present legal requirements.

Aligned with the pattern of the BCoC, the section on the regulation of wages is also included in the poster:

Workers will be paid the wage, bonus, overtime payment according to the law, and shall be provided with all the legal benefits:

1. The standard wage shall not be lower than the local legal minimum wage.
2. All kinds of fines are forbidden.
3. The payment shall be made clearly and timely.

It is evident that less information is contained the *texts* of the poster. Most obviously, the accountability subject of Beta is systematically missing from the poster. Instead of explaining the rationale for setting the limits of the working hours, and announcing the active role Beta will play to ensure the its smooth implementation in the local context, the *texts* of the poster are structured in a top-down manner to simply “inform” workers of the boundaries and the limits. The human rights are largely interpreted as a negative duty here in the poster. In addition, these *texts* heavily rely on the law as the benchmark to justify the legitimacy of the level of wage and working hours on the ground level, which means the “moral” dimension of human rights is largely pulled away from the posters. As we will see shortly, this directly contributes to the *status quo* of the persisting practice of excessive overtime pervasive in Beta factories. Also, the voluntary nature of overtime stated in the BCoC is removed from the *texts* of the poster, as well as the *texts* of the overtime rates in the BCoC.

However, this situation undergoes a fundamental shift from the written *texts* to the spoken words of local interviewees. In other words, the local actors’ perceptions of the official *texts* exhibit a great degree of divergence (i.e., *molestation*). This can be approached from the aspects of wages and working hours respectively.

7.3.1.1 The insufficient basic wage

First, from the angle of the implementation of the standards on wages and benefits, it can be said that they have been successfully enforced in all Beta sites investigated. That is, all wages are paid fully and timely, including the basic wage and the overtime payment at the rate set by the law. To be specific, based on my onsite observation in the workshops, workers are required to swipe in and out every time they attend the assembly line, and their identity will be further verified by fingerprints. By doing so, their working hours are accurately logged into the system, with which the wage rate and amount can be confirmed. Thanks to this system, the wage paid can be precise to the units of minutes. That is to say, if workers did extra ten minutes of working, they will be paid accordingly. Therefore, it can be said that, from the dimension of the standard implementation with regard to the wages, little (if any) *molestation* has been observed on the ground level.

However, this does not lead to the satisfaction of workers which necessarily eliminates the room for *molestation* from their spoken words and further manifested by their actions. A common theme generated from the interviews and observations of workers suggests that almost all of them find the wage level too low to support a decent life in the city:

Beta just pays us the local legal minimum wage, I think it is 1900 this year, it was 1800 last year. They will never violate the law in this regard, but we have to do the overtime to make a living in this city (Site 1, Beta, Cai).

We travel thousands of miles from our home to make money. So if there is overtime we will be happy to do it because the basic wage is too low (Site 2, Beta, 5).

We want to do the overtime because the minimum wage is too low. Beta will not violate the law by paying below this standard, but you cannot survive with just the basic wage (Site 2, Beta, 6).

The normal working hours are eight hours per day. But you can't make money by just relying on these eight hours. You can just earn around 1800, which is based on the local legal minimum standard. You will have to do the overtime (Site 1, government official).

Also, the interviews with the two Beta experts are in line with the finding:

We used to demand that Alpha doubled the wage of Beta workers. It might sound aggressive and crazy, but if you really understand the context, you will no longer think so. For example, a Beta worker at Shenzhen can only make around 5000-6000 RMB per month, based on the load of overtime. But the basic wage is just around 2400, which is the local minimum wage, which means he earns the rest solely by doing the overtime. But if you want to survive in a city like Shenzhen, you have to make more than at least 4000 per monthly. Our demand is trying to say that even if you meet the minimum wage, it will not be possible for workers to live on that wage. The inflation has almost doubled in Shenzhen during the past five years, such as housing prices. But the local minimum wage has only risen from 2100 to 2400 (Beta Expert N).

The conflicting situation is apparent in the quotes. That is, the basic wage is normally too low to support a decent life for workers, therefore workers have to do the overtime to make ends meet. On the other hand, the extant basic wage level in Beta fully adheres to the China Labour Law as well as the *texts* of poster, hence makes it impossible to legally hold Beta accountable for the situation. From this perspective it can be argued that the *beginning* initiated by the poster on the wage is absent among the local actors in the local

context. While it is commonly believed that Beta will uphold its commitment to the regulations in the poster and the law, this is largely a void promise to workers under the influence of local social and economic factors because they are compelled (or motivated) to interpret the *texts* from their own perspective and take actions accordingly. That is, to seek the chance to do more overtime.

7.3.1.2 More overtime wanted: *molesting* the regulations

The second aspect of the dilemma is logically coherent with the first one and some elements have been reflected in the quotes which indicate that workers have to do the overtime. Furthermore, interviews with both workers and managers show that some workers are not only passively compelled to do the overtime, rather they intend to actively seek the chance to do it:

We follow the China Labour Law by forbidding the compulsory overtime, but workers are willing to do that. This can be regarded as a private contract we've made with the workers themselves. All we need to do is to fully fulfil this contract (Site 1, Beta manager, 1).

Sometimes workers are reluctant to take the rest as we suggested them to do. They want to do more work. This all falls under the heading of "the architecture of economics". Without those foundations, there is no way to focus on CSR. Of course you can talk all about social responsibility when you are rich (Site 1, Beta manager, 2).

Moreover, the manager has the privilege to report in your overtime. If you piss him off, he will cancel your overtime and thus you will not receive a penny from it (Site 1, Beta, Si).

Economically, our workshop is not performing well. But the wage level at the moulding workshop is higher, so they do not encourage workers to do overtime because if so they have to pay more. So if there is a chance there to do extra overtime, people just rush for that (Site 1 Beta, Ying).

The conflict between the regulation on the overtime and workers' desire for it is evident from these quotes. Sometimes this conflict is so strong that workers and managers are motivated to bypass the "strict" monitoring system as well as violating the law by adopting the double-booking practice.

Sometimes during the peak season we need to do excessive overtime, like 80 hours overtime per month, and then workers are required not to swipe in using their card and

fingerprints, but to sign the form. The overtime will be paid as bonus. In this way there will be no record of overtime in the system. Alpha will send someone to check this, but they only look at the information in the system (Site 1 Beta managers)

This situation has happened before, in 2014, that is, workers were required not to swipe in using their card and fingerprints and the overtime would be paid as bonus. Occasionally this still happens now. If there are mountains of orders, they will do this. But it becomes much less than before because Beta wouldn't take this risk. Personally I believe it is Alpha who pushes the improvement of the working conditions. Because in other workshops supplying BMW and Xiaomi, the excessive overtime is a common practice. But you know what, workers want to work there because they can make more money out of it. Alpha is the only one requesting this (limited overtime). In other departments workers still only have one day rest in a month (Site 1 Beta worker, Si).

This trend is further confirmed by one Beta expert who conducted field investigations in more than ten Beta sites in China and interviewed hundreds of Beta workers. She provided cogent arguments on the dilemma workers are facing which makes them crave for the overtime.

Sometimes I fully understand why these workers want to do the overtime, because they want money and this is the only way to increase their income. Their goals are to get married, to provide better education for their children, to take care of my parent when they are old, that's why they want money so badly. This makes perfect sense. But now they have no choice but to do the overtime consistently. My focus here is whether they are doing this voluntarily or compulsorily . We have met workers who've committed suicide because the managers decided to cancel their overtime for bad impressions they have about the workers! The result is the workers chose to end their lives because you don't want them to do the overtime. There is clearly a dilemma here which is deeply rooted in practical reasons. That is, I can't live without money. If there's no overtime for me then I have no choice but to transfer or resign, both give me tremendous pressure (Beta expert K).

This statement provides tenable reasons and motivations underpinning workers' words and actions. That is, workers are economically vulnerable because of uncertainties and family burdens, a fact which is not sufficiently captured in the existing laws, the BCoC and the poster. In this case, there is a mismatch of the *intentions* between the upper level *texts* and the ones uttered by workers, which leads them to take actions completely

against the purpose of holding Beta and Alpha accountable for their human rights abuses. That is, pursuing the opportunity for overtime and falsifying the overtime records through double-book keeping.

7.3.1.3 Discussion

This section focuses on the salient issue of wages and overtime. It is argued that the *beginning* at the Beta level exhibits a particular way of constructing and communicating the regulation on wages and working hours through *texts*. That is, it *intentionally* emphasises the importance of law as a source of legitimation, and sets a low level of basic wage just above the legal level to motivate workers to do the overtime. Drawing on the legal *authority* rather than the moral code, the *texts* of the BCoC and the poster establish their *authority* accordingly. This *beginning* encounters mixed attitudes and interpretations on the ground level.

On the one hand, the *beginning* on the wage level is fully embraced by the local actors, which all comply with these minimum requirements. However, workers, managers and experts also *molest* these *texts* by arguing that they are more like a void promise and a legitimacy tool, considering these are flawed standards, since they do not provide sensible and meaningful guarantees for workers' decent standard of living.

On the other hand, due to the influence of local economic factors, the *beginning* regarding the overtime has been *molested* to a great extent. Whilst both the BCoC and the poster articulate the limits of overtime, workers perceive them as barriers which prevent them from earning more. Meanwhile managers either utilise them to further exploit the labour force by encouraging the overtime, or use them as a disciplinary method to punish workers. Either way, it is clearly reflected in their spoken *texts* that they *molest* the *texts* on the limits of overtime, not as respecting human rights, but as a way of exploitation and control. This is further manifested in their actions of double book-keeping and pursuing for more overtime. Ironically, as it is observed from the interviews, although Alpha has the tendency to enforce the ACoC by conducting audits, such efforts are defective, and the results are offset by the local practice of falsifying records. Indeed, it also remains to be seen to what extent are these commitments from Alpha firm are real.

Based on this analysis, it is argued that the accountability relationship embedded in the upper level *texts* with regard to the wages and working hours has undergone fundamental shifts at the ground level. Workers rarely accuse Beta (managers) of violating the minimum wage standard, because the standard is fallibly made and can be easily met. Workers are also reluctant to hold their managers accountable for excessive overtime. Conversely, they do have the tendency to do so in the face of insufficient overtime. It seems the conventional logic of accountability is defective here. The reasons are twofold. First, the laws and standards are manipulated, as the source of legitimation cannot be used as a fair benchmark. Second, workers are at an economically disadvantageous position which doubles their vulnerability to exploitation.

7.3.2 The grievance mechanism: a mixed picture

As we can see from Section 6.5, this notion is embedded in the *texts* of the Alpha and Beta CoCs. Furthermore, Section 7.2.1 and 7.2.3 reveals that both the enabling and constraining features of *molestation* are embodied in the *text* of the onsite poster on the grievance mechanism. Based upon these findings, this section moves closer towards the end of the “chain of *molestations*” with focus on the *texts* uttered by the local actors including workers and managers.

During the observation in the Beta factories, the feedback from workers on the use of the grievance mechanism revealed a somewhat mixed picture: most workers are aware of their existence, yet the majority have never used them, because they lack the *intention* to do so. For those who have resorted to the grievance mechanism, many of them expressed their disappointment or distrust for these procedures. Also, it seems there are two coexisting channels serving the same remedial purpose: the Employee Care Centre and the trade union. Technically speaking, they should be parallel, and generate the same outcome, that of remedy. Yet based on the interviews and observation, they seem to be heterogeneous, and thus lead to the confusion or misinterpretation by workers about their nature and the interrelationship between the two. This section aims to provide a fresh perspective for explaining these findings, based on Said’s notions of *authority* and *molestation*, with special focus on the accountability relationships.

7.3.2.1 Workers' intentions: Confucian thinking and management

As it has been reflected in Section 3.2.2.1, the interplay between traditional Chinese Confucianism and the discourse of human rights nowadays generates varying forces, both enabling and suppressing the consilience between local human rights *texts* (both spoken and written), behaviours, and the international norms and expectations. Put it more specifically, the notion of *Wulun*, and the ethics of hierarchy provide fertile ground for paternalistic management styles, and workers are integrated into strongly coherent groups with collective norms, which in turn fosters submission. As we will see in the following discussion, this arguably hampers the workers' willingness to express their grievances through official channels. Meanwhile the government's revival of the notion of harmony draws the discourse back on track by promoting the sense of equality and justice, which enhances the need to respect human rights at the workplace. Nevertheless, at the same time it also invites the possibility of reinforcing the dominant role of legitimate *authorities*, and in turn further discourages workers' motivation to complain.

To begin with, the sense of collectivism and the hierarchy are manifested on the ground level. Beta is characterised by its rigorous approach to clearly defined management levels (employees are categorised into fifteen levels from assembly line workers to the CEO). Workers on the assembly lines are classified as the lowest level, which constitutes most of the Beta employees. For most of the time, workers are under the direct management and supervision of line supervisors, who are in turn answerable to the team supervisors, and then to section supervisors, etc. This is a mature management system, and is widely employed in all industries, and has proved to be effective in managing mass production. By clear segmentation of the work task, and rigorous quality management, the ground level clearly demonstrates a mixture of Taylorist and Fordist styles of production, which has greatly improved the efficiency (Lüthje et al., 2013, p. 186; Pun et al., 2016, p. 174). However, this enables a permissible environment for harsh discipline and the absolute obedience from the below to flourish (Chan, 2013; Lucas et al., 2013). This trend is pervasive in the workshops I observed in Beta, and is manifested in three significant ways.

- (1) Military-style discipline is widely employed, which means little more than reinforcing the sense of control and manipulation. That is, workers are often required to perform, or refrain from performing, certain actions, both inside and outside of workshops. For instance, they are always required to stand in lines

while the line supervisor is speaking before and after the shift, and if the manager asks “How are you?”, the reply must be the workers shouting in unison “Good! Very good! Very, very good!”, which is also observed by other researchers at various Beta sites (Pun et al., 2016, p. 173); workers are not allowed to rest their feet on the table leg, which is purely a personal requirement by the line managers, and irrelevant to the production process, safety regulations or ergonomics; workers are not allowed to speak loudly inside the workshops. Sometimes even whispers on the assembly lines will meet severe criticism from managers. This discipline extends beyond the workshops, when security personnel shout at workers who casually step outside the pedestrian crossings.

- (2) Apart from the official categorisation system employed by Beta, the hierarchy of management is also manifested on the ground level, with the different colours of the work clothes indicating the identity of the person. Hence it is argued that the authority of the managers is reinforced by visually segmenting them from the workers. Moreover, the communications between workers and their superiors are a feature of the chain of command. The rule is obedience, and the tone used by the managers is usually harsh, non-negotiable and non-questionable. Though it is true that some communication concerns technical issues which workers have little knowledge of, nevertheless this indeed fosters the authority of the managers, and renders workers reluctant to challenge managers’ positions. Besides, there are many occasions when workers are reproached for other reasons irrelevant to the manufacturing tasks, and they have no choice but to unconditionally obey. Moreover, the discipline is addressed to the entire group of workers in the same workshop, which makes workers involved to unconsciously follow without voicing any dissent.
- (3) Furthermore, I have observed and recorded several speeches delivered to the workers at meetings before and after their shifts, and clearly the notion of collectivism is embodied within these *texts* uttered by managers. Mostly the managers will highlight the position of working within a united and collectivist group:
 - (Background: The day shift has ended and workers stand in lines in front of the line supervisor who is giving the speech) “You are all here to make money, right? Then

do yourself as well as others a favour and follow my orders! Because if you don't obey, then I'm just going to be taking more time of yours by repeating it over and over again! I'm sure you are all hungry, so do us a favour and don't piss me off again!"

- (Background: The line supervisor is addressing to the new workers) "My mother used to tell me: you can only fill your bowls when there is food in the pan. Our company is like a pan, and each of us is like a bowl. We can only get paid when our company is strong."

From the perspective of a Chinese researcher, these phrases of valuing the collective interests are frequently used in everyday life. However in the context of the workplace it arguably fosters an atmosphere of unconditional obedience. In the face of the entire group, even if individual workers have grievances, they tend to conceal them and adhere to the "interests" of others. In addition, based on my observations, managers often rebut workers' demands by referring to the "others". For instance, workers who have refused to do overtime are required to do "what others do", and have a sense of "belonging to the group".

7.3.2.2 The mixed picture: positive and negative functions of grievance mechanism

Apart from pointing out the Confucian collectivist thinking which arguably hampers workers' motivations to complain, this section aims to further explore the perspectives of both manager and worker on the function of the grievance mechanism, based on my semi-structured interviews. This generates rather mixed results, which can be summarised as: workers are normally skeptical about the positive influence of the grievance mechanism, while managers tend to praise the efficiency of it.

To begin with, around half of the workers interviewed lack the knowledge or experience of using the grievance mechanism. The majority of them had joined Beta less than three months before, and hence claimed that "I haven't paid attention to this." Many of them seemed to be indifferent about the role of the grievance mechanism, with unspecified reasons. It is doubtful whether in practice they would be motivated to resort to the official channel to express any grievance, considering several interviewees indicated that

“Workers will just quit if they are unhappy, nobody is forcing them to stay.” For those who have such experience, the majority (around 70%) of them are not satisfied with the process or the result. Two major themes stand out. One of them is the distrust of the protection of their identity. As they are in a workplace under the dominance of hierarchical relationships, it takes courage by workers to file a complaint about their superiors, and it is vital to provide a channel for anonymous complaints. If this is not possible, then at least workers’ identity must be protected. However, from the workers’ feedback, they must provide their personal information, otherwise their complaint will not be registered. There are cases when workers have been retaliated against for filing a complaint. A worker states that:

“You surely can complain about your supervisors, only if you are planning to resign soon and not afraid about them getting back at you. Otherwise, I would never complain about my supervisors because I still have to keep my job” (Site 3, Beta worker, 3).

The other theme is that the feedback from the grievance mechanism is confined to existing management practice. That is to say, if the issue workers complain about is an institutionalised problem or a common practice, then the grievance mechanism will not be able to provide any assistance to them. Instead, the most common feedback they get is “That is how things work here.” For instance, one worker used his experience to demonstrate this:

“I used to be puzzled about the bizarre management practice here in our workshop, where workers are not allow to talk during work, and they must walk with both hands behind their back. So I telephoned the Employee Care Centre and you know what I got? They simply said ‘That’s how we manage things!’ This is absolutely useless and I swear I will never use it again.” (Site 1, Beta worker, Si)

Second, and contrary to the workers’ perceptions, managers provide a different picture. While most of the managers had only been indirectly involved in the grievance mechanism, most of them expressed their confidence for it, based on the experience of others. Basically, they contradicted the two themes expressed by the workers. On the matter of anonymity, although managers admit that a worker’s personal information will be collected, they also argue that it is strictly confidential, and will not be used against the complainant:

“It is true that workers are required to provide their Employee ID, but the company will never disclose it, no matter how hard you try. The phone operator will ask you whether you want them (the people whom you complain) to know your identity, if you don’t want them to know, they will never find out. The staff from the helping centre will directly call the supervisor of the people you complain, and they will check the result of the complaint. Do not think you can do whatever you want just because you are in charge, anyone under your command can end your career and you don’t even know who he is. Our boss restrained himself a lot just because of this. Also, this grievance mechanism directly answers to no one but to the top managers” (Site 4, Beta manager, Z)

In line with this statement, many managers confirmed the influence of the grievance mechanism by pointing out the case that many managers who had been proved to be responsible for the workers’ grievance were sanctioned in the form of bonus deduction. Hence, what is indicated here is differing outcomes from different locations, local contexts and management styles, even within the same company. This further contributes to the complexity of the issue of the grievance mechanism on the ground level.

7.3.2.3 Summary

Speaking overall, workers have the general knowledge of how to use the grievance mechanism, in the form of a hotline. However, their feedback reveals the *molestation* of the onsite *texts* inscribed by posters. In particular, the traditional Confucian thinking and the military management style lower their moral expectations, and foster the atmosphere of obedience, which renders workers subservient to managers and reluctant to complain. Those who do complain through the system are largely unsatisfied, and accuse the system of serving the management’s purposes rather than workers’ interests, and they are unwilling to use it again. Accountability as human relatedness should have the potential to foster the sense of reciprocal dependence by providing an account to others of oneself and one’s activities. However, the *texts* generated by workers and managers suggest that there are certain barriers ingrained in the culture, as well as management practices which *molest* the Alpha and Beta CoCs by undermining the accountability relationships. That is, workers often lack the motivation to demand the reasons for conduct in the first place. The concern “for truth, fairness, and justice” in the moral aspect of accountability is largely absent on the workers’ side. Also, both managers and workers are largely “result-

oriented” and are likely to ignore the process to achieve the result. Therefore, they intend to *molest* the procedure of the grievance mechanism as stipulated in the poster by focusing only on the result, regardless of the legitimacy of the process, such as the protection of workers’ identity.

7.3.3 “Generalised others”: the case of overtime

When applying the notion of accountability as human relatedness and clarifying the accountability relationships accordingly, one challenge is to construct the corporate moral and legal human rights obligations to others without imposing a sameness on the other (McKernan & MacLulich, 2004, p. 343; Messner, 2009, p. 923). In the context of this study, that is to say managers always tend to have preconceived perceptions about workers’ demands, and always to regard workers as homogeneous actors with generalised demands. It is argued that such generalisation is often deceiving, and will render the accountability mechanism defective.

Perhaps the most significant example from the field investigation is the generalised workers’ demands for overtime. It is true that the interviews and observations suggest that the majority of the workers are willing to sacrifice their time after work to earn extra money. However, it would be wrong to generalise the situation to claim that all workers at all times have the same demand, and in turn to build an accountability relationship based on this presumption. In fact, based on my investigation, there are several circumstances in which workers are reluctant to do the overtime, such as feeling exhausted, personal issues, or just simply not being in the mood. However, in most cases these factors are (*intentionally*) neglected from the perspective of managers. The result is that managers do not acknowledge that they are accountable for the excessive overtime, and hence lack the motivation to provide an account for that. It is argued that in this extreme case both the legal and moral obligations for workers’ right to rest and leisure are systematically *molested* by managers, by employing the flawed reasoning of “generalised others”.

7.4 Conclusion

This chapter has set out to explore the adaptation and dissemination of the *beginning* of corporate human rights accountability at the ground level. This has been approached by examining two categories of *texts*: *texts* as inscriptions in the form of onsite *texts*, and *texts* as utterances embodied in interviews and observations (Cooper & Ezzamel, 2013, p. 291; Said, 1975/1997, p. 197). This study locates accountability in the setting of social system, with its core as shared expectations for conducting certain actions (Parker, 2014). The accountability is thus rendered, in the sense of sociability and connectedness with others, by giving and demanding accounts for one's actions (Letiche & Lightfoot, 2014, p. 56; Roberts, 2003, p. 260; Shearer, 2002, p. 570). Said's theoretical framework of *authority* and *molestation* is utilised to explain the how the accountability relationships enacted in higher level *texts* are *molested* by local actors.

The findings suggest a general trend of enlarging the idea of the constraining function of *molestation* from the the Alpha and BCoC to onsite *texts*, to the *texts* uttered by local actors, where the elements of the accountability relationship become absent, distorted and abstracted. The sense of accountability as human relatedness embodied in the *text* of UNGPs is drawn out during this process. To be specific, the *beginning* represented by the well-organised stipulations on its scope and nature in the UNGPs is *molested* in the onsite *texts*. The valuing of accountability as an activity for establishing the moral identity by giving an account to the demands of others is replaced by the undercurrent of instrumental practice, such as adhering to the "company regulations" and local laws. As important and sufficient as these mechanisms are, there is a tendency that the real demands of others and interrelatedness between real people will be ignored by giving way to rule-bound procedures (Letiche & Lightfoot, 2014, p. 115). Just as the analysis of the posters suggests, by removing the "whom" and "how" from the *texts* they are largely intended to serve the management's purpose in the Chinese social and cultural contexts, a change which can be explained by the constraining function of *molestation*. Meanwhile a limited enabling function of *molestation* can be observed in the grievance mechanism poster and the interpretations of local actors. This arguably renders the procedure of demanding an account actionable and practical, so that workers can use it to discharge accountability and protect their rights.

The *texts* uttered by workers and managers generate a mixed picture. While the complex economic and social factors contribute to the fact that workers *sometimes* prefer to work overtime for the payment, this does not negate the fact that their rights are violated, in both the legal and moral sense. The accountability mechanism is largely absent in this regard. More importantly, that should not necessarily lead to the impression that *all* workers are willing to do overtime at *all* times. Hence the genuine concern for the real needs of others is dismissed, and replaced by the generalisation of others. Furthermore, as the traditional culture of Confucianism to some degree provides a permissible environment for the violation of human rights by fostering obedience, the role of accountability is further hampered as is manifested in the evidence of *molestation* in workers' words.

Chapter 8

Conclusion, limitations and ways forward

8.1 Introduction

This chapter aims to summarise and discuss the findings generated in Chapters 6 and 7 (Section 8.2). By reflecting upon the theoretical, conceptual and empirical approaches of this study, the chapter also explains its contribution to existing research, as well as providing recommendations for UN, state, and business policy makers, and other interested parties (Section 8.3). In accordance with this logic, the limitations of the research are discussed (Section 8.4). Upon the contemplation of these limits, suggestions for further research are proposed (Section 8.5).

8.2 Summary of findings

This study sets out to explore the contextualisation, or more especially, in Said's terms, the interplay of *authority* and *molestation* of the *text* of an international BHR framework, namely the UNGPs, within the supply chains of MNCs in China. The notion of accountability as an expression of the quality of human relatedness is positioned as a central element of such interplay. Drawing on Said's notions, a framework has been put forward with the purpose of teasing out the "chain of *molestations*" which features in this process, which originates actors at many levels, including the UN, the Chinese government, Alpha, Beta and local actors in the shape of Beta employees. The two research questions proposed below are consistent with this structure:

1. How and to what extent is the meaning of the UNGPs' text, as it cascades down, interpreted, contextualised and molested in the form of formal written texts from the UN level through the national, Alpha, and industrial association levels to the ground level of Beta?

2. After a series of molestations of the text of the UNGPs, how and to what extent is it interpreted, contextualised and further molested in the form of spoken texts by local actors (Beta employees)?

In order to address these questions, Chapters 6 and 7 have offered an elaborated analysis and discussion of the role of the texts, both inscribed and uttered by the various actors. It is argued that the idea of responsibility for human rights, equated with the responsibility for others' welfare, is embodied in the text of the UNGPs, which sets the tone for all the accountability relationships within these other texts. Such accountability relationships are given shape, contextualised, and molested by each of the audiences for the UNGPs, and then further observed, collected and analysed in the form of texts disseminated by them accordingly. In Said's terms, a text's authority is constructed by the interplay of the roles of author and reader (Table 8.1 summarises the findings).

Table 8.1 Summary of main findings

Levels	Texts	Main findings
UN	Interpretive Guide; FAQs	<ul style="list-style-type: none"> • The premise of document analysis is that the text of the UNGPs stipulates the accountability relationship in a specific way that demonstrates the corporate human rights responsibility as the quality of human relatedness. During the process represented by the two UN interpretive documents, this accountability relationship is (re)framed in certain ways and by certain terms. This is where the molestation comes in. • Overall, the molestation registered here at the UN level is of a small extent when comparing it with other levels. While the accountability relationships sketched in the UNGPs are largely retained in the interpretive documents, the latter still molest the relationships by adding, replacing and contextualising the texts. More specifically, the interpretive documents further clarify the subject of accountability by reinforcing the positions of the terms “severity”, “human rights risk” and “stakeholder engagement”; they provide extra guidance for the process of the discharge of accountability by posing a solution to the concept of conflicting requirements and the notion of “leverage”; they dispel the misunderstandings on the nature of CSR and BHR. • The enabling function of molestation is pronounced here, as the interpretive documents render the text of UNGPs more practical and actionable. However the constraining quality is also embodied in the way in which corporate realities occasionally take over, by overriding the human rights requirements requirements, and thus leave room for manoeuvre.

Continued

Table 8.1 Summary of main findings

Levels	Texts	Main findings
Chinese government	Communications with the UN; National Human Rights Action Plans; White Papers; GB/T 36000 (ISO 26000)	<ul style="list-style-type: none"> Two broad categories of texts are examined at the national level: the overall statements of the Chinese government toward human rights issues (i.e., communications with the UN; NHRAPs and White Papers) and more specifically the pronouncements on corporate human rights responsibility (i.e. GB/T 36000). Texts in the first category cannot be compared directly with the UNGPs, while the second category can only be indirectly connected with them through ISO 26000. Texts in the first category set the foundation for the official government position on human rights, which represents a beginning that is further repeated, reinforced and molested in the texts authored by local corporations and actors. Each of them presents its narrative regarding human rights in its own characteristic way, emphasising its own local conditions. This is especially true of social and economic rights and the right to development. This beginning is inherited by the second category texts. Through the link of ISO 26000, GB/T 36000 attempts to contextualise the UNGPs at the Chinese local level. While largely adhering to the structure and the main ideas of ISO 26000, the accountability relationship is molested through a tendency to use abstract expressions, prioritise “local conditions” and the omit the subject of accountability. While GB/T 36000 brings the UNGPs closer to the Chinese context, the constraining function of molestation can also be observed here as the text hampers the practicality of the UNGPs.

Continued

Table 8.1 Summary of main findings

Levels	Texts	Main findings
Alpha Beta	ACoC; Alpha supplier standard; Beta SER CoC	<ul style="list-style-type: none"> • The corporate regulatory texts represent the official interpretations by Alpha and Beta of the UNGPs (both directly and indirectly). The UNGPs intentionally encourage corporations to incorporate their own local contexts during the implementation of the UNGPs. Hence the role of molestation (in its enabling function) is officially acknowledged by the UNGPs. • The findings reveal how the constraining quality of molestation expands when transferred from the Alpha to the Beta texts, with the accountability relationship being either intentionally or unintentionally re-formed, re-phrased or even re-constructed. Most significantly, the idea of human relatedness embedded in the UNGPs is molested by the BCoC, which replaces the idea of responsibility for others' welfare by its purpose of legitimacy enhancement. Also, the detailed statements in the UNGPs on how to discharge accountability by means of "due diligence" and "remedy" are largely missing from the BCoC. On the part of Alpha, while its ACoC and supplier standards largely observe the UNGPs, they intentionally shift the responsibility from Alpha itself to its suppliers, and distance Alpha itself from being accountable.

Continued

Table 8.1 Summary of main findings

Levels	Texts	Main findings
Local texts	Onsite posters; Employee Handbook; Interviews; Participant observation	<ul style="list-style-type: none"> • Two categories of texts have been collected and analysed at the ground level: texts inscribed by corporations as onsite posters and Handbook, and texts uttered by local actors during interviews and observation. At this level the texts cannot be compared with the UNGPs, as they do not refer to them, but to upper level texts such as CoCs and national labour laws. In other words, the greatest extent of molestation happens at local level. • Basically, the local written texts are highly symbolic, restating the core requirements of the CoCs but missing out the relevant information on who should be responsible, and how to operationalise these requirements. Therefore the findings underscore the conspicuous evidence of the constraining function of molestation here. Nevertheless, the enabling potential of molestation can also be seen from the onsite posters, especially that on the grievance mechanism which arguably contextualises the aspirational remedy in the CoC and renders it practical. • The spoken texts generate a different picture, which features both the overtime paradox, the dominant Confucian ideology and the tendency of managers to generalise workers' needs. The accountability relationship as sketched in upper level texts (i.e., UN, Chinese and corporate levels) is molested or even occasionally replaced by something more localised. It is true that such molestation has made the texts more actionable and believable, and rescues them from being a "dream" of human rights, but this has been done at the sacrifice of the accountability relationship in the upper level texts.

8.2.1 Question 1: the *molestation* of the UNGPs in formal texts

In order to address the first research question, this study analyses the texts authored by the UNWG (Interpretive Guide and FAQs), the Chinese government (communicating texts with UN, White Papers and GB/T 36000), and the Alpha and Beta CoCs. According to the

SRSR, it was never the intention of the UNGPs to be a “one size for all” instrument, but rather to aim for regulatory convergence by integrating them into both state and corporate regulatory frameworks (Ruggie, 2014; 2017a, p. 14). Thus, the thesis adds to the extant literature (e.g., McPhail & Adams, 2016) by expanding the focus from corporate reports to international and national documents. By doing so, the research takes a more nuanced approach by means of exploring the *molestation* of the UNGPs from Said’s perspective. It underscores the idea that every text involves authorship, which repeats, adds and deletes, but also recodes, reinterprets, and in short, molests the previous texts (Cooper & Ezzamel, 2013, p. 308; Said, 1975/1997). Rather than concentrating only on the restrictive or disabling quality of this process (see, e.g., Siddiqui & Uddin, 2016), the research claims that this molestation has both enabling and constraining potential: it is enabling in the sense that it contextualises the text and renders it practical and believable (Said, 1975/1997, p. 24), but it is also constraining, as it is a counterpart of the authored text which implies the limitations and the contestability which arise when putting that text into practice (Cooper & Ezzamel, 2013, p. 292). This is an important conceptual revelation that, in this study, has been useful in articulating the notion of accountability as human relatedness expressed in contextualised texts.

From the perspective of accountability as the expression of the quality of human relatedness, the findings in Chapter 6 and the first part of Chapter 7 provide an interesting insight, while we reveal the process and the extent of molestation of the UNGPs presented in various texts. The notion of human relatedness entails answerability to others as measured against the benchmark of human rights (Letiche & Lightfoot, 2014; Roberts, 2001), which is stipulated in the text of UNGPs through concepts such as human rights impact, severity, leverage, due diligence, remedy and so on.

The analysis of the formal texts suggests that both the enabling and constraining functions of molestation are evident. A recognition of the enabling role of molestation can be observed in the text of the UNGPs, in the sense that a pragmatic approach underlies them, embodied in the flexibility of their language. This offers a certain level of discretion in defining the accountability mechanism⁴² (Backer, 2012; Ruggie, 2013a). From the perspective of the formal texts, an enabling molestation is also manifested in the UN interpretive documents, the Chinese government texts and the corporation CoCs, which

⁴² See Section 4.4.5 for the discussion.

all intentionally recognise the importance of local contexts. More specifically, corporations are provided with further practical and applicable guidance on the evaluation and justification of several key issues, including the human rights severity and prioritisation of human rights, the solutions to deal with conflicting requirements, the nature and extent of leverage and responsibility throughout the business relationship, the reinforcement of the moral dimension of human rights responsibility, the differences between BHR and CSR, the implementation of due diligence and the operationalisation of the grievance mechanism. By contextualising these rather abstract and aspirational concepts by comparison with local reality, the formal texts render the text of the UNGPs more practical. Also, the Chinese government localises the “dream” of realising universal human rights by molesting the texts of the UN human rights regulations and ISO 26000 from its own angle. That is, the Chinese government authors the texts on human rights in its own characteristic way, which emphasises social/economic rights and the right to development. By doing so, the governmental texts, through molestation, rescue the concept of human rights from being a dream, and so render it more believable and achievable in the local context (Cooper & Ezzamel, 2013; Said, 1975/1997, p. 24).

Meanwhile, the findings show that the constraining function of molestation is also embedded in the same set of texts. Most significantly, accountability as an expression of the quality of human relatedness, as stipulated in the UNGPs, is diluted both in the texts authored by governments, and those by Alpha and Beta, which results in a merely superficial adaptation, and a “business-as-usual” approach. Specifically, it is argued that the UN interpretive documents sometimes take a favourable stance towards “corporate reality” and tend to persuade corporations to respect human rights out of their own economic interests, hence having the potential to downplay the moral argument. Similarly, the overall position of the Chinese government reflects its emphasis on human rights with “Chinese characteristics”, which leads to the possibility of watering down some human rights arguments by deeming them “not fitting with Chinese social and political practices”. With respect to the business guidelines, Chinese government documents have introduced a reduced version of corporate human rights responsibility, which features the omission of several aspects in ISO 26000 (and further, in the UNGPs). The greatest extent of molestation is manifested in the Alpha and Beta CoCs and onsite documents, in which Alpha intentionally diverts the responsibility by transferring it onto Beta, and systematically deviates from its duty to be accountable. Meanwhile the BCoC and onsite

documents largely diverge from the human relatedness implications of accountability by (intentionally?) misinterpreting the purpose of the document, and retreating into the economic and customer-oriented approach, rather than one based on human rights. In addition, these texts are highly aspirational, with very broad statements on the protection of human rights. Moreover, the onsite documents provide strikingly limited information, which renders the accountability mechanism highly incomplete and impractical. Furthermore, the ethical meaning of human rights is impaired and replaced by the legal obligations, which arguably lower the bar of human rights responsibility. Even worse, instead of upholding the moral obligations to others, as in the sense of Levinas' work (Levinas, 1981, 1989), all these actors can "hide behind" the texts and shield themselves from outside doubts and criticisms by resorting to the text of the UNGPs. By doing so, the power asymmetry between them and the workers is not reduced, but instead reinforced.

8.2.2 Question 2: the molestation of the UNGPs in uttered texts

In order to address the second research question, this study goes beyond the traditional focus on the formal pronouncements disseminated by governments and corporations, and gives the local people a voice. This is accomplished by analysing the texts uttered by workers and managers (Cooper & Ezzamel, 2013; Quattrone, 2009). It is expected that the text of the UNGPs has not penetrated to the ground level, considering that their systematic implementation is still in its infancy in China. This expectation is supported by the empirical evidence collected from Beta. Rather than being directly exposed to the UNGPs, their meaning is re-shaped, consumed and molested by levels of actors, including Alpha and Beta, as it is demonstrated in Chapter 6. It is argued that a "molested version" of the UNGPs has found its way onto the ground level as a physical presence in onsite posters and the Employee Handbook. Hence the texts uttered by workers (in the form of spoken words) and managers are not examined in accordance with the UNGPs, but are evaluated against these local texts inscribed by Beta.

Overall speaking, local actors' texts are more strongly connected to the local social, cultural, economic and political contexts rather than to the onsite posters and the Handbook. In other words, the extent of molestation evidenced here is rather substantial. By interacting with workers and managers by means of interviews and observation, the

study is able to trace a number of aspects that may lead to molestations. They are in nature specific to the local characteristics, consisting of the economic circumstance of the low wage levels, the role of intervening legal authority, the cultural heritage of Confucianism, and the management style of harsh discipline. Following the line of reasoning above, both enabling and constraining functions of molestation have roles to play. The enabling potential is mostly demonstrated in the contextualisation of upper level texts, such as the CoCs; that is, by bringing in the local cultural, social and political factors, the regulatory and aspirational texts authored by the Chinese government, Alpha and Beta are all rendered actionable. For instance, successful examples of the use of the grievance mechanism suggest that the local molestations are interfering with the fulfilment of human rights obligations by their emphasis on the local context.

However, it can be claimed that the constraining function of molestation is more influential and dominant here. More specifically, due to the economic conditions⁴³, workers are placed in a vulnerable position to be exploited through the low level of the basic wages, which is reinforced by the employers' neglect of international moral standards and human rights obligations. The consequence is that the workers are forced to undertake excessive work in ways that they appear to be "willing" to do, in order to keep up a certain standard of living. Moreover, the traditional Confucian thinking of collectivism and hierarchical relationships are exerting a subtle and intrinsic influence on both workers and managers, hampering the workers' motivation to protest, and fostering a permissible atmosphere for obedience and exploitation. This is further consolidated in the strict disciplinary control management style of Beta.

Drawing on Said's work, all these sources of molestation are captured in the texts as uttered by the local actors, in the form of interview and observation data. The analysis of these texts, in Section 7.3, has shown how the enlarged constraining function of molestation at ground level has distorted and weakened the aspirational texts produced by upper level actors. During this process, the ethical dimension of accountability as the

⁴³ It is realised here that the economic development level is just one broad reason for the economically disadvantaged positions of workers. There are other reasons such as the unequal distribution of income, the defective social insurance systems, or even the hukou (household registration) system, which all contribute to, and consolidate the disadvantaged positions of workers (A. Chan, 1998, 2000, 2003; C. K.-C. Chan, Ngai, & Chan, 2010; Lucas et al., 2013; Lüthje, Hürtgen, Pawlicki, & Sproll, 2013; Xu, 2013). However for the purpose of this study they are not explicitly mentioned and discussed, but are nonetheless at work as underlying factors.

responsibility for others is systematically replaced by local pronouncements on the value of hierarchical order and obedience, as well as the prioritisation of economic benefits at the expense of human rights. In a similar way to the molestation of formal texts, managers can “hide behind” the established management systems and Confucian ideology to maintain the current status. Moreover, the findings suggest that managers also tend to legitimise and perpetuate the widespread practice of excessive overtime by (both intentionally and unintentionally) generalising the workers’ demands for overtime payment, despite empirical evidence that shows that workers have diverse demands (see Section 7.3.3).

To sum up, this research has shown how the meaning of an authoritative document concerning the UNGPs cascades down from the UN to Chinese ground level. Informed by Said (1975/1997), the study reveals the process in which accountability in the form of human relatedness authored by the UNGPs is molested; this takes place through texts in the form both of inscriptions and the utterances of various actors. The analysis of this study extends beyond a passive perception of interpretation, which often implies the restrictive sense of molestation, as a simple outcome of differences in translation. Instead both the enabling and constraining qualities of molestation are identified (Cooper & Ezzamel, 2013). In the case study of Alpha and Beta, it is demonstrated that the process of molestation of the text occurs naturally, both intentionally (as from the practice of excessive overtime and military management style) and unintentionally (as from the subtle influence of Confucianism which dilutes the moral obligations of human rights), or from an inability to comprehend the meaning of the onsite posters and Handbook even if they are in support of these rights. By molesting the upper level texts and authoring their own, the actors have the opportunity to contribute their own version of human rights accountability while retaining the link with previous texts, and the role of molestation lies beneath this process (Cooper & Ezzamel, 2013, p. 308). That can be both enabling (renders the aspirational texts more practical) and constraining (diverts from the original meaning of texts, pays lip service and weakens its authority).

8.3 Contributions and implications

8.3.1 Theoretical contributions: Said's work

This study benefits from being underpinned theoretically by Said's notions of *beginning*, *text*, *authority* and *molestation*. By focusing on the notion of "text", his concepts have been used to organise the analysis of the complex interactions of actors at numerous levels, with respect to human rights accountability (Cooper & Ezzamel, 2013; Said, 1975/1997). It is suggested that the study contributes to the existing research on the social and organisational context of accounting. The conventional positivist form of accountability, and the quantitative analytical approach, have been criticised by accountability scholars for being restricted to reflecting only certain forms of accountability (Gray, 2000, 2002; McKernan & McPhail, 2012). But the social and organisational orientation of accountability research critically addresses the methodological and theoretical limitations of positivism, and offers a broader scope for examining accountability notions and practices in different organisational contexts (Brown, 2009; Gallhofer et al., 2015; Gray et al., 2014; Lodh & Gaffikin, 1997; McNicholas & Barrett, 2005). While more recent research focuses on the textual information disseminated by corporations in the form of reporting, the theories underlying this research are largely dominated by the stakeholder theory (Donaldson & Preston, 1995; Gray, 2002) and legitimacy theory (Cho, Guidry, Hageman, & Patten, 2012; Cho & Patten, 2007; Deegan, 2002; O'Donovan, 2002) for explaining the motivation behind corporate disclosure (Brown & Fraser, 2006; Gray et al., 1995; Gray et al., 2009, p. 25; Owen, 2008, p. 247; Parker, 2005). As Brown (2009, p. 314) points out, the SEA research field is often "inadequately theorised to cope with difference and diversity" (McPhail & Adams, 2016; Tregidga, Milne, & Lehman, 2012; Unerman & Chapman, 2014). Said's work is utilised here to provide a fresh perspective to contribute to this "theoretical plurality" as discussed by Unerman & Chapman (2014) and Bebbington, Larrinaga-González & Moneva-Abadía (2008).

Said's theoretical framework captures the narrative pole of accountability, by focusing on the notion of "text" (Kamuf, 2007; McKernan & MacLulich, 2004; Roberts & Scapens, 1985). In this way, Said resonates with the conceptual framework, which sees accountability in terms of caring for, and taking responsibility for others with whom one has a rapport (Letiche & Lightfoot, 2014; Roberts, 2001). It also recognises the ethical

dimension of accountability (Schweiker, 1993; Shearer, 2002). According to McKernan & MacLulich (2004, p. 344), the premise of realising the moral responsibility of corporations (e.g., responsibility to respect human rights) depends on their capacity to create a narrative of themselves within a relation with others. Instead of looking at the question of “why” of corporate disclosure, Said’s work conceives this process of interaction as naturally occurring through authority and molestation, and delves into addressing the question of “how”. This perspective has prompted research to take a new turn in the exploration of an overarching document (e.g., standards, principles, as the UNGPs in this research) in a new context. Moreover, Said’s notions of *beginning*, *intention*, *authority* and *molestation* provide a useful conceptual platform from which to capture and analyse the complex interactions between various texts. As it is demonstrated in this research, different *beginnings* of texts can be projected as a “family tree” which features repetitions and continuity, as well as additions, collusions and sacrifices, i.e., *molestations* (Cooper & Ezzamel, 2013, p. 291). Furthermore, Said’s concept of *molestation* extends beyond the conventional comparative approaches of the (re)interpretation of texts. Instead, both the enabling and constraining functions of molestation are introduced in this study, and have allowed the construction of a more comprehensive analysis.

Finally, the study also contributes to Said’s theoretical framework by expanding his notion of *text* (Said, 1975/1997, pp. 196, 197, 205). As Cooper & Ezzamel (2013, p. 291) suggest, while Said mainly focuses on the text as novel and poetry, his theory is also applicable to various other types of text. Hence, this research contributes to the discussion by including regulatory texts, such as international principles, standards, governmental documents and the corporate regulations contained in CoCs (see, e.g., McPhail & Adams, 2016). Another fresh perspective for interpreting text has been provided, based on the spoken words of workers and managers. Moreover, as Said (1975/1997, p. 205) argues, the utterance or inscription of a text is not a solitary personal act, but requires participation in local contexts; hence this research provides fresh insights into the authority and molestation of texts, based on the situation where there are varied *beginnings* and *intentions* (in the social, political and economic sense) taking place between the readers and authors, which constitutes a new context for Said’s work.

8.3.2 Conceptual contributions: human rights accountability and UNGPs

As it has been reflected in Section 4.3.3, despite the fact that the SEA has been in existence for decades, and that the issue of human rights (or more specifically, labour rights) has always been an important topic, accountability scholarship has remained on the sidelines during the most recent developments in the international human rights sphere. This is especially so in the case of the UNGPs (McPhail & Ferguson, 2016, p. 530). This research answers the call for more systematic studies of the role of accountability in the UNGPs within specific contexts (Posner, 2016; Sinkovics et al., 2016) by looking at the implementation of the UNGPs in the Chinese context—which constitutes a good research subject, containing rich and unique evidence on the subject of human rights, and of the social and political environments. Also, both by reflecting upon the idea of accountability as the manifestation of human relatedness, and by using Said’s theoretical framework, the research departs from the current focus on the social reporting aspect of human rights accountability, which is a dominating force both in academia, and in organisations such as the GRI and Shift (GRI, Buhmann, 2018; 2016; McPhail & Ferguson, 2016; Parsa, Roper, Muller- Camen, & Szigetvari, 2018; Shift, 2017). In order to do so, it brings back into the discourse the ethics of accountability and the notion of human relatedness, which emphasise the responsibility to care for the others and to accommodate the needs and expectations of others with respect to human rights to the best of one’s abilities (Letiche & Lightfoot, 2014; Levinas, 1981, 1989). It is argued that this view of accountability is embodied in the UNGPs, in the way that the nature and scope of corporate human rights responsibility have been defined, together with the mechanism for fulfilling that responsibility⁴⁴. Hence, this research offers a fresh perspective for examination of the role of accountability in human rights, and more specifically concentrates on the UNGPs.

8.3.3 Empirical contributions: working conditions in Chinese supply chain

The working conditions in MNCs’ Chinese supply chains have attracted tremendous attention from academics from different disciplines, such as sociology and labour studies

⁴⁴ See Section 4.3.4 for more discussions.

(Chan et al., 2015; Chan & Selden, 2014; Ngai & Chan, 2012; Ngai et al., 2014; Pun et al., 2016), supply chain management (Lüthje et al., 2013; van Liemt, 2016), business ethics, and especially CSR (Anner, 2012; Clarke & Boersma, 2017; Egels-Zandén, 2014; Krueger, 2008; Locke et al., 2007; Lucas et al., 2013; Tan, 2009; Tsoi, 2010; Xu & Li, 2013). However, surprisingly this topic has not found its way into the study of the social perspective of accounting, and especially human rights accountability research (see one exception of Li & Belal, 2018)—as most accounting research in the Chinese context has targeted disclosures regarding large Chinese private companies or SOEs (Cheng, Lin, & Wong, 2016; Du & Gray, 2013; Li & Belal, 2018; Marquis & Qian, 2013; Noronha, Tou, Cynthia, & Guan, 2013; Patten et al., 2015; Whelan & Muthuri, 2017; Zhang, Gao, & Zhang, 2007). Hence, this research makes an important and timely contribution to the extant literature, by bringing in the MNCs' supply chain perspective.

8.3.4 Implications for policy makers: UNGPs in the Chinese context

Despite the fact that it has been eight years since 2011, the year the Chinese government officially endorsed the UNGPs, there remains a striking lack of theoretical, conceptual and empirical studies on their implementation in China. It is safe to say that the strategy of “wait and see” is less effective as the trend of incorporating the UNGPs is becoming irreversible. As it has been reflected in Section 6.4.3, the Chinese government has already proceeded to localise the UNGPs with prudence. In addition, MNCs like Alpha are also incorporating certain ideas from the UNGPs into their CoCs and management systems. Academic research is therefore in danger of lagging behind the development of the UNGPs in China. To my best knowledge this is the first research which systematically examines the contextualisation of the UNGPs in the Chinese context. Based on this argument, its findings shed light for the UN and other regulatory bodies on the current status of their implementation. It can provide suggestions for a method to better integrate the UNGPs into governmental standards and guidelines. It also generates insights into the way that the text of the UNGPs is molested through interpretations by different actors, which would help the MNCs as well as suppliers to better achieve policy coherence and effective implementation.

8.4 Limitations

8.4.1 Theoretical limitation: selective use of Said's work

Said's work, as introduced in Chapter 2, has proved to be instructive and enlightening in explaining the findings in a way which offers analytical insights into, and understandings of, the contextualisation of the UNGPs in China. Despite the fact that Said's notions, such as *beginning* and *intention* have been used to organise the overview of human rights literature in Chapter 3, this study does not perceive Said's work as a "manual", but has intentionally chosen to engage with the two particular concepts, those of *authority* and *molestation*, with special focus on the latter. This could be limiting in terms of the insights that have been arrived at. For instance, the notions of *beginning* and *intention* can be further utilised to better clarify and assess the nature of each beginning of a *text*. That would be useful to sort out the complex interplays between various *texts*. In addition, the role of *method* in Said's work has the potential for examining the mechanism behind the process of molestation, which in turn would shed light on the methodology issues for researchers. It is imaginable that a piece of research relying on other concepts, such as *intention* and *method* would generate either a different tone, or one with more comprehensive insights. This is one of the directions which further studies might take.

8.4.2 Conceptual limitation: human rights accountability and Levinas

The study of human rights accountability, especially with respect to the accountability in the UNGPs, is still at early stage. The extant literature on human rights accountability would benefit from broader accounting research, but new theoretical frameworks, conceptual formulations and empirical evidence are still forming. In that sense this research is limited to taking a certain perspective, that of accountability as human rights, based on the work of Levinas (1981, 1989). But the limitations of its approach to Said could also apply to Levinas. Among the rich legacies left by Levinas are his phenomenology, philosophy, religious hermeneutics and ethics (Bozga & Szigeti, 2006); this study intentionally engages with Levinas in the light of the concept of "relatedness". It would be interesting and enlightening to explore accountability as human relatedness

utilising some of Levinas' ideas to a greater extent. Future research can benefit, for instance, from other concepts of his, such as his concept of ethics, and of "otherness".

8.4.3 Empirical limitation: challenges from the ground level

8.4.3.1 Restricted access

One contribution of this research is that its field investigations into the working conditions in China reveal a picture which is usually hidden from outsiders. By utilising my personal relationships, and through the snowball sampling technique, I was able to engage with workers and managers, and depict the human rights conditions based on certain theoretical and conceptual views. Even so, conducting this research was a great challenge, and the issue of restricted access is still a major limitation. The difficulty of getting through gatekeepers is a significant challenge in accounting research studies (Brown, 2009; see, e.g., Gallhofer & Haslam, 2003), and specifically labour studies in the Chinese context (Chan & Siu, 2010). The situation in this research was more complex, due to the sensitive nature of the topic of human rights, and the formidable task of completing the investigations in six locations across China within a short period of time. All these contribute to the limitation that sometimes it became impossible to negotiate access, even with the help of personal relationships. Given more time, more efforts could have been made to reduce the negative influence of restricted access. This could be done by utilising social connections as before, but at the same time mobilising other resources, such as scholars and NGOs. Therefore, future research is needed to expand field investigations to include more Chinese supplier factories.

8.4.3.2 The pros and cons of being familiar with local context – some reflections

As a PhD student born and raised in China, I am strongly attached to the Chinese social, political and cultural contexts, and I consider myself quite familiar with the context which I investigated. This has both advantages and limitations. Recall the argument of the cultural relativism (Lewis & Unerman, 1999) approach to human rights discussed in Section 3.2.2.3.1—there is no stereotype of a "right" approach to realise human rights. As a Chinese I am able to capture, comprehend and analyse the local human rights issues from

the Chinese perspective (as both workers' and managers' perspectives) and contribute to the extant literature. It is a strength. However, I myself might have overlooked certain issues which are actually salient from the UN or international perspectives, since I may have been too immersed in the context. In this sense I might have also fallen into the pitfall of "generalised others". It would be helpful to "jump out" of the traditional Chinese thinking on human rights issues, and critically evaluate them from different angles, benefiting from different perspectives.

8.5 Suggestions for further research

8.5.1 Theoretical directions

8.5.1.1 Said's work on *beginning, intention and method*

Said's work provides a useful platform for this research, from which to explain the contextualisation of the UNGPs in China and the interplay between the UNGPs and other documents. As Section 8.4.1 argues, for the purpose of this research, certain aspects of Said's work (i.e., *authority* and *molestation*) are reflected on to a greater extent than other concepts (i.e., *beginning, intention and method*). Further work needs to be done to flesh out these elements and incorporate them into a "theory" rather than a "theoretical framework". It has been proved in this thesis that Said's work is particularly useful for research looking at the relationships between various documents, standards and reports (i.e., texts, Cooper & Ezzamel, 2013). In addition, the application of Said to interpreting the UNGPs is transferrable to other disciplines as well, such as the interpretation of law (see, e.g., White, 1981, 1987, 2007). Furthermore, as D. J. Cooper & Ezzamel (2013, p. 292) point out, another merit of Said's work is "his underscoring of writing as making possible, and as promoting, forms of human perception and behaviour". Hence, it sheds light on the research on accountability through actions (see, e.g., Oakes & Young, 2008; Parker, 2014; Roberts & Scapens, 1985).

8.5.1.2 Levinas's notion of "relatedness" and "others"

Levinas's work is briefly mentioned in this research to introduce the notion of relatedness and the responsibility for others (Levinas, 1981). It is based on the responsibility for

others that accountability is defined and given shape in this research. It is without doubt that Levinas has much to offer on the discipline of business ethics, especially on the topic of BHR, and corporate human rights accountability (Matušík, 2008; Strhan, 2012; see, e.g., Thomas, 2004). More specifically, it would be interesting for further studies to explore the way to better incorporate the notion of human relatedness into the social and organisational fields of accounting research, which might also illuminate the emancipatory potential of accountability (see, e.g., Bebbington et al., 2007; Gallhofer et al., 2015; Lehman, 1999; Li & McKernan, 2016; McNicholas & Barrett, 2005).

8.5.2 Conceptual directions

8.5.2.1 Counter-accounting and human rights

The role of CSOs (especially NGOs) in the Chinese context with respect to corporate human rights responsibility is worth exploring. The idea of holding the powerful corporations accountable for their adverse social and environmental impacts through third parties like NGOs has been studied under the rubric of “counter-accounting” (Denedo et al., 2017; Gallhofer, Haslam, Monk, & Roberts, 2006; Vinnari & Laine, 2017), “shadow accounting” (Dey, 2003), “external accounting” (Dey & Gibbon, 2013; Thomson et al., 2015) or “surrogate accounting” (Belal et al., 2015; Islam et al., 2018; Rubenstein, 2007). While the emancipatory potential of this accountability has been widely acknowledged, especially where there is significant power asymmetry between corporations and stakeholders, only recently has the notion of human rights accountability been incorporated into the counter-accounting literature, with the UNGPs as the reference point (Denedo et al., 2017; Gray & Gray, 2011; Li & McKernan, 2016; Sikka, 2011). The particular focus in the UNGPs on vulnerable stakeholders offers an invitation for accounting scholars to further utilise the potential of the UNGPs, and use counter-accounts to provide novel and effective mechanisms to hold corporations accountable.

8.5.2.2 Human rights accountability and UNGPs

As it has been reflected in Section 4.3.3, accounting scholars are lagging behind the research on the UNGPs, and this void in accounting literature is even more significant considering the implications of the UNGPs for human rights accountability, especially for reporting practice (Bijlmakers, 2018; Gray & Gray, 2011; McPhail & Adams, 2016; McPhail & Ferguson, 2016; Methven O'Brien & Dhanarajan, 2016). Specially, the 2015 UN Guiding Principles Reporting Framework (GPRF) represents a milestone in human rights reporting, and the first and only comprehensive guidance for corporations and stakeholders to communicate their human rights performance in accordance with the UNGPs (McPhail & Ferguson, 2016). As there is a body of evidence showing that corporations (especially, MNCs) are beginning to align their reporting with the GPRF (see, e.g., Shift, 2017), accounting scholars have a bigger role to play in this trend.

8.5.3 Empirical directions

8.5.3.1 Human rights in MNCs' Chinese supply chains

Using the embedded single case study approach, this research investigated one major manufacturer in the Chinese electronics industry across the time span of two years. Considering the complexity of the MNCs' Chinese supply chains, and the tremendous proportion of the total workforce they have absorbed (Chan et al., 2013; Lüthje et al., 2013), the Chinese supply chains deserve much more attention from both domestic and international scholarship from a broader range of disciplines, not merely limited to sociology and labour studies. More specifically, as it seems that interest in the electronics industry predominates the study of corporate socially responsible behaviour (such as those of human rights policy, or corporate social disclosure) (Kamminga, 2016; Lim, 2017; Patten et al., 2015; see, e.g., Ruggie, 2007b; Salcito et al., 2015; Tang & Li, 2009), more research is also needed to better understand the current status of other Chinese labour-intensive industries, such as garment or toy manufacturing. The same suggestion is applicable to such factors as the location of corporations (Lüthje et al., 2013; Marquis & Qian, 2013) and their nature (i.e., SOEs or private corporations, see, e.g., Li & Belal, 2018; Li & Zhang, 2010; Patten et al., 2015; Ruggie, 2007c; Whelan & Muthuri, 2017), or even the management style (Durden, 2008; Gray et al., 2014; Norris & O'Dwyer, 2004). More

urgently, from the perspective of human relatedness, it requires the researchers to enter the field and to interact with Chinese workers, whose voices have been marginalised (Chan et al., 2015; Krueger, 2008; see, e.g., Lin, 2007; Lüthje et al., 2013; Pun et al., 2016). It is also hoped that by doing so the pitfall of “generalised others” can be avoided.

8.5.3.2 The UNGPs in China

The UNGPs provide a great opportunity for researchers to investigate the exercise of corporate human rights responsibility in the Chinese context. Based on the findings of this study, there is no doubt that this important document is on the agenda of the Chinese government, and that initial steps have been taken to contextualise it within the government systems, such as the GB/T 36000. To look into this process would provide an exciting entry point for further studies (CRBF, 2015; GBI, 2014; Whelan & Muthuri, 2017; Wright, 2015). On the business side, while foreign MNCs ought to play the leading role in introducing the UNGPs into China (as we have seen in the case study of Alpha), evidence indicates that Chinese MNCs are beginning to embrace the shifting of the discourse in corporate human rights responsibility⁴⁵. Under the central government’s “go global” strategy, it is expected that more Chinese MNCs operating overseas will incorporate the UNGPs into their guiding frameworks. Therefore, it would be interesting to investigate the implementation of the UNGPs both in foreign MNCs operating in China, and in Chinese MNCs operating overseas.

8.5.3.3 The ground level: Confucianism and corporate human rights practice

The underlying argument of this study is that the realisation of human rights in China is heavily influenced by the local cultural, social, economic and political factors. While the last three have attracted most attention from business ethics scholars (Li & Zhang, 2010; Lu, 2009; Tsoi, 2010; Yin & Zhang, 2012), cultural factors such as Confucianism have been neglected within the business discourse (Ip, 2009b; Kim, 2014; notable exceptions include Lam, 2003; Li & Belal, 2018). The relevance of cultural determinants is clearly shown by

⁴⁵ The typical example include the explicit adaptation of UNGPs in the Guidelines for Social Responsibility in Outbound Mining Investments, which instruct the Chinese companies to “Ensure that all operations shall be in line with the UN Guiding Principles on Business and Human Rights during the entire life-cycle of the mining project” (CCCMC, 2015, p. 10).

the findings of the field investigations in this thesis; these suggest that the language and behaviours of both Chinese workers and managers are to some extent dominated by traditional Confucian ideology, as is shown by their collectivism and hierarchical relationships⁴⁶. One cannot help feeling, therefore, that rich empirical evidence is waiting to be generated, which would provide insights into the questions of “how” and “why” with respect to business ethics issues at ground level in China.

⁴⁶ See Section 7.3.2.1 for more discussion.

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Appendix 1: Consent Forms



RESEARCH INFORMATION SHEET (PARTICIPANT OBSERVATION)

Your consent to the researcher in this research is voluntary. For your consideration, please kindly read the following information carefully so that you may understand about the purpose of this research.

Research aims: This research sets out with the exploration of current working conditions in MNCs supply chains in China, based on which, it explores the role of third party: NGOs, media, consumer groups etc in improving the working conditions.

Description of the participant observation procedures: During the participant observation, the researcher will work in the factory as a formal worker. He will actively involved in the manufacturing process as other workers. What he will be observing is the working conditions including working hours and occupational health and safety environments.

Risks involved in participating: There should be no risk during the observation. The researcher will not interfere the manufacturing process which will continue as usual.

Confidentiality: The information obtained from the interviews will remain confidential. Research supervisors and examiners will also have access to the data but pseudonyms shall be used to protect the identity of the factory. In addition, to fulfil the requirements for the academic audit of research anonymised data from the participant observation will be stored on secure computers/phones known only to the researcher and research supervisors.

Output: The report of the study is expected to be published after all requirements set by the University have been fulfilled after September 2018. It may be accessible for researcher, supervisors, examiners, and the Aston University. Moreover, the results may also be presented at conferences and may be published in academic journals and other outlets of publications. The University Research Ethics Committee, Aston University, has approved this research. However, if you have any concerns regarding any ethical issues related with this study, you may contact the Committee Officer of the Aston Business School Research Ethics Committee (Dr. Elizabeth Bridges at e.bridges@aston.ac.uk).



研究内容告知书 (工厂内参与观察)

在本次调研中您对研究员的入厂许可是完全自愿的。为了研究可以顺利进行，请仔细阅读下面的信息，以便对本研究有全面的理解。

研究目的：本研究从对位于中国大陆的跨国公司供应链的调查出发，着重关注于第三方如非政府组织，媒体和消费者群体等等对于其供应链工厂的用工环境（工人工作时间，薪资，生产安全）改善的监督和促进作用。

关于参与观察的过程说明：在参与观察的过程中，研究员会与其他普通员工一样从事生产活动。在此过程中他会观察工厂的用工环境（工人工作时间，薪资，生产安全）。

在观察过程中的潜在危险：研究员在观察过程中不会造成任何危险。其不会对生产活动造成任何影响。

保密性：在观察过程中获得的一切信息将会被严格保密。此数据只有研究员自己，其学术导师和论文考核者有权力获得，但是所有涉及到工厂信息的内容都会被假名代替，以保护工厂的隐私。另外，应学术道德委员会的要求，在调研过程中所采集到的所有信息都会被储存在加密的电脑和手机设备中。只有研究员和其导师有权限查阅。

研究成果：本次参与观察研究报告的部分内容将会在2018年9月之后公布。届时研究者本人，其导师，论文考核者与英国阿斯顿大学将有权力获取其内容。另外，报告的部分内容将会在学术会议上展示与讨论，并在学术期刊上发表。阿斯顿大学及其学术道德委员会已审批通过了本研究。但如果您有任何疑问，请联系研究者本人或阿斯顿商学院学术委员会成员伊丽莎白·布瑞芝士博士。

联系方式：e.bridges@aston.ac.uk



RESEARCH INFORMED CONSENT FORM (PARTICIPANT OBSERVATION)

Research title	Social Accounting of the Working Conditions in Multinational Corporation Supply Chains in China: From the Perspective of Surrogate Accountability
Ethics approval number	
Investigator(s)	Guodong Cheng, Aston University, Aston Triangle, Birmingham, B4 7ET, UK
Researcher email	chengg1@aston.ac.uk

I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions.

I understand that the consent of participant observation is voluntary and that I am free to decline at any time, without giving reason.

I give my consent to the researcher to conduct participant observation in the factory.

I agree that the data gathered in this study may be stored (after it has been anonymised) in encrypted devices owned by the researcher and may be used for future research.

I confirm that prior induction will be provided, which includes all the necessary information on occupational health and safety issues. Also, safety equipments will be provided accordingly.

Please tick box

YES

NO

I agree to the use of anonymised quotes in publications.

Signature

Date



知情同意书 (工厂内参与观察)

研究题目	跨国公司中国供应链的用工环境：从社会会计的角度分析第三方的作用
道德许可编号	
研究员	程国栋，英国阿斯顿大学
电子邮件	chengg1@aston.ac.uk

我确认我已完整阅读并理解了研究内容告知书，并已就不清楚的相关事项进行了询问。

我明白此次同意工厂内参与观察完全属于自愿行为。如果我有异议，可以在任何时间拒绝调研请求，而无需给出任何解释。

我同意研究员的参与观察请求。

我同意此次参与观察所得到的数据在抹去隐私信息后被加密储存在研究员所持有的电子设备中，以便未来分析。

我确认在研究员进厂调研之前，将会为其提供必要的岗前培训。其中将涉及到生产安全的注意事项。并会为其提供安全生产所需要的全部防护措施。

请打钩

同意

不同意

我同意在学术出版物中匿名使用本次调研数据

签名

日期

Appendix 2: The Theme List

Theme	Sub theme 1	Note
Government	Government takes positive steps	The local government is making efforts to monitor and regulate the supplier companies.
	The Beta management is shielded from the government scrutiny	This is mainly because the Beta complex is largely isolated from the outside, with strict security measures to ensure there is no trespassing.
	Beta has a strong voice with respect to the government management	Beta contributes almost half of the government income in some provinces in China. Hence it has a strong voice.
CSR in China	Western corporations are also not doing well	Western corporations have been through the same development stage, as the Chinese corporations are doing right now.
	CSR is a Western concept	CSR is not applicable in Chinese context
	China is still developing	The priority is not CSR or human rights, it is economic development
The role of law	Beta strictly follows the China Labour Law	It implies that the corporate human rights responsibility can be fulfilled by following the law
The role of Alpha	The CoC of Alpha: It is working	ACoC is helping workers to claim more wages and better working conditions
	The CoC of Alpha: It is useless	Beta will not the ACoC since it is symbolic
	Social auditing: Auditors will not engage with workers	Auditors will be arranged to “inspect” preset working conditions
	Social auditing: Workers cannot get access to auditors	The auditors have “higher pay grades” and rarely show up on the ground level in the workshops.
	Social auditing: Workers are coached on how to respond to the questions	

Continued

Theme	Sub theme 1	Note
	Social auditing: Auditors take thorough investigations	Auditors are careful, they even inspect the kitchen!
	Training and induction	The normal process of induction
Recruitment and induction	Missing induction	There are occasions where inductions are not provided and workers are not informed about relevant regulations and principles with respect to their rights.
	The sillier (of the workers), the better	Beta prefers to recruit “silly” workers who obey orders and do not ask questions
	Recruitment agency	The recruitment agency has become a common practice
	High turnover rate at Beta	
	Ask for leave of absence	
Working hours	Restricting overtime as punishment	This is widespread practice in which managers will “punish” workers to cut their overtime, which decrease their income
	Workers depend on the overtime payment	This is a theme mentioned by most workers
	Workers want more leisure time	Occasionally, workers express their willingness to have more leisure time (to play, spend with family, etc)
	Current status of overtime	The excessive overtime is still a common practice
	Wage is confidential	
Wage	Wage level is too low	
	Beta always pays on time	Beta seldom (or never) delays in paying the workers (including the overtime payment)

Continued

Theme	Sub theme 1	Note
OHS		Several issues have been mentioned by workers such as strong light, noise, long time sitting, expose to chemicals, etc.
Child labour		No child labour is found
Grievance mechanism	Complaints make changes	Sometimes the problems are solved, and managers are hold responsible
	Complaints are useless	In other times, workers receive negative or passive reply
	Personal information must be provided	Workers must provide personal information (name or ID number) to make a complaint, otherwise the complaint will not be accepted.
	Workers are worried about confidentiality	The concerns are preventing them from filing complaints, or even do so if they decided to resign.
Trade union	Never heard of trade union	
	The role of trade union is to organise recreational activities	This idea is held by many workers
	Election	Overall, workers are skeptical about the process of election
Confucianism	The notion of “family”	Workers are encouraged to prioritise the collective interests: the interests of the “family”
	Personal relationships	The “relationships”, rather than the laws or principles, are valued: the worker-worker relationship and the worker-manager relationship
	Managers are superior and more powerful (workers are reluctant to complain)	The hierarchical relationship is manifested in Beta
	Traditional thinking is ingrained in workers and managers’ minds	Workers are “traditional” Confucian thinkers and practitioners.
	Punishment	

Continued

Theme	Sub theme 1	Note
Beta management style	Workers are not allowed to talk	
	Toilet breaks	Toilet breaks have strict rules: no more than ten (or less) minutes, no more than two (or three) people at the same time. This is to “keep the assembly line working”
	Workers are like machines	Highly repetitive, tedious work
	Military management style at Beta	Harsh disciplines, rude language
Promotion		Workers are hard to get promoted, yet they pay much attention to the possibilities and opportunities.
Recreational facilities	Recreational facilities are useful	
	Recreational facilities are useless	Workers are exhausted after shift, they will never use the football/ basketball courts.