Beyond Compliance?
The socio-legal consequences of section 54 of the Modern Slavery Act 2015



Thesis submitted to the Faculty of Law at the University of Oxford

for the Degree of Doctor of Philosophy

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Trinity Term 2022

c. 99,800 words

Abstract

When s 54 of the Modern Slavery Act was adopted in 2015, it was widely lauded as a breakthrough and a positive step towards holding businesses to account for labour exploitation in global supply chains. But the provision is not prescriptive and light on enforcement. It drew criticism for a lack of enforcement mechanisms and mandatory requirements. But prompted by calls to go 'beyond compliance', corporations scrambled to comply. This paradox raises empirical questions about the effects and implications of the provision. As a case study of light-touch regulation, what generalisations, if any, can be drawn from the effects of s 54?

This thesis empirically examines the response of actors involved in s 54's implementation, dissemination, and compliance. It casts doubt on the assumptions of regulatory ineffectiveness with complex, qualitative accounts of the wide-ranging effects of s 54 within corporations, in the UK and beyond. S 54 refocused corporate attention on social responsibility and altered corporate perceptions of legal, reputational, and practical risk. It produced ripple effects across industries and 'trickle down' demand for advisory services in global supply chains. S 54 is transnational. It has had effects on the UK's trade relations and responds to international norms such as the United Nations Guiding Principles on Business and Human Rights. In 2021, the Modern Slavery Amendment Bill was introduced to 'strengthen' the requirements of s 54, signalling a recursive move towards mandatory requirements. Theoretically, s 54 represents the 'double movement' in action, and a testament that a 'weak' law can create opportunities for ongoing dialogue and progress.

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Acknowledgements

Researching and writing this thesis has been a privilege, a humbling and (mostly) joyful experience. To my supervisor, Fernanda Pirie, thank you for your patience, encouragement, careful interrogation of my work - I could not have asked for a better supervisor. To my milestone examiners, thank you for challenging me with your valuable insights.

I have been so fortunate to have the support of many on this journey. Thank you to the informants who gave up time to speak to me. To friends and colleagues at the Centre for Socio-Legal Studies, Bonavero Institute of Human Rights, Linacre College, Corpus Christi College, the Faculty of Law and the Oxford Business and Human Rights Research Network (OxBHR), I am grateful for your support throughout.

To Anna, Anneloes, Angela, Elinor, Jessie, Mark, Sanya, and Steve, thank you taking time to read and comment on my work. You inspire me, and I am ever-humbled by your encouragement and friendship. To Stephanie, for getting me through the final stage of this giant essay with patience and persistence, I will always be grateful.

A third of this DPhil was done over pandemic lockdowns. There were some trying times. I want to pay tribute to all those who made life better: Katya for energising me, Celine for the all-caps text check-ins, Jessica for zoom writing sessions, Georgina for cupcakes and lockdown walks, Nadia for berry picking. I will fondly remember 'Centraldesk' for the shenanigans, Jessie and Nairn for the summer BBQs and cosy Christmases, and of course, Anna and Mark for WFDG. To Kishor, your unwavering

support sustains me. To my wider circle of supporters and friends whom I have not named, know that I am grateful for your friendship.

This thesis would not have been possible without the incredible support of my whole family. To all of my grandparents, this thesis is dedicated you. Your hardship and sacrifice produced the most precious gift: opportunity. To my Ama, I can still feel your effervescent love. I am blessed to have had it. I miss you so much.

To my father, thank you for inspiring me to think critically and encouraging my sense of adventure.

Most importantly, thank you to my mother. How lucky I am to be your daughter. Thank you for your love, wisdom and strength. I am, because of you.

Table of Abbreviations

AAFA	American Apparel and Footwear Association
BHR	Business and Human Rights
BHRRC	Business & Human Rights Resource Centre
CSO	Civil Society Organisation
CSJ	Centre for Social Justice
CSR	Corporate Social Responsibility
ESG	Environmental, Social and Governance
ETI	Ethical Trading Initiative
GET	Grocers for Ethical Trade
FTSE	Financial times Stock Exchange Index
GC	General Counsel
GLA	Gangmasters Licensing Authority
HQ	Headquarters
HRDD	Human Rights Due Diligence
ILO	International Labour Organisation
IOM	International Organisation on Migration
ISO	International Standards Organisation
JCHR	United Kingdom Parliament's Joint Committee on Human Rights
JCMS	Joint Committee on Modern Slavery
KPIs	Key performance indicators
MSO	Multistakeholder organisations
MSPEC	Modern Slavery Policy and Evidence Centre
NGO	Non-governmental organisations
OECD	Organisation for Economic Co-operation and Development
OHCHR	United Nations High Commissioner for Human Rights
PRI	Principles of Responsible Investment
PSCI	Pharmaceutical Supply Chain Initiative
SDG	United Nations Sustainable Development Goal
SRA	Social Responsibility Alliance

UN	United Nations
UNGC	United Nations Global Compact
UNGP	United Nations Guiding Principles on Business and Human Rights
UNWG	Working Group on Business and Human Rights

Table of legislation

United Kingdom

Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.....4 (n 240)

Bribery Act 2010.....1 (n 385), 2 (n 385), 3 (n 385), 4 (n 385), 5 (n 385), 6 (n 385), 7 (n 35, 386), 8 (n 384), 11 (n 387)

Companies Act 2006 .....172 (n 379), 173 (n 379), 174 (n 379), 414CA (n 380), 414D (n 381)

Coroners and Justice Act 2009.....s 71 (n 241)

Criminal Justice Act 1993.....

Financial Services and Markets Act 2000.....

Modern Slavery Act 2015.....s 54(4) (n 8), 54(5) (n 9, 49, 50), 54(6) (n 8), 54(7) (n 8), 54(8) (n 8), 54(11) (n 12, 280), 54(12) (n 280)

Sexual Offences Act 2003.....57 (n 239), 58 (n 239), 58A (n 239), 59 (n 239)

Australia

Modern Slavery Act 2018 (Commonwealth).....s 16 (n 518)

France

Duty of Vigilance 2018.....(n 497)

United States

California Transparency in Supply Chains Act 2010.....

Table of cases

AAA & Others v Unilever PLC and Unilever Tea Kenya Ltd [2018] EWCA Civ 1532 (QB)

Barber v Nestlé, 154 F. Supp. 3d 954 (2015)

Nerijus Antuzis & ors v DJ Houghton Catching Services Ltd & ors [2019] EWHC 843 (QB)

Okpabi & Ors v Royal Dutch Shell plc and Shell Petroleum Development Company of Nigeria Ltd [2021] UKSC 3

Vedanta Resources Plc and Konkola Copper Mines Plc. v Lungowe and others [2019] UKSC 20

人之生也柔弱.

A man is born gentle and weak.

其死也堅強.

At his death he is hard and stiff.

萬物草木之生也柔脆.

Green plants are tender and filled with sap.

其死也枯槁.

At their death they are withered and dry.

故堅強者死之徒.

Therefore the stiff and unbending is the disciple of death.

柔弱者生之徒.

The gentle and yielding is the disciple of life.

是以兵強則不勝.

Thus an army without flexibility never wins a battle.

木強則共.

A tree that is unbending is easily broken.

強大處下.

The hard and strong will fall.

柔弱處上

The soft and weak will overcome.

--- *Laozi, Dao De Jing, Chapter 76*

1. INTRODUCTION

1.1 S 54 of the Modern Slavery Act 2015

Supply chains fundamentally affect our lives, but most of us do not understand their complexity, fluidity, and the impact they have on our lives. Recent events have forced us to take notice: during the COVID-19 pandemic, and when 'panic buying' set in, shortages of toilet paper and personal protective equipment reminded us of how interdependent we are.[1] Throughout 2021, supply problems were rife in the UK due to a shortage of lorry drivers. The public was confronted with the significance of logistical links in supply chains, and those who were working in those parts of the industry were recast as 'essential workers'.[2] In February 2022, the war in Ukraine interrupted the production and flow of goods, threatening a global shortage of grains and basic agricultural products.[3] In the modern world, where few of us grow, forage, or hunt, supply chains are vital arteries in our social structures.

Supply chains are formed by a complex web of legal and non-legal instruments, from carefully negotiated contracts and partnership agreements to oral contracts and customary dealing. In practice, sub-contracted work is often further sub-contracted to

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[1] Dabo Guan and others, 'Global supply-chain effects of COVID-19 control measures', (2020) 4 Nature Human Behaviour 577.

[2] UK Government and Parliament, 'Under the immigration plan, treat HGV Drivers as skilled workers' <https://petition.parliament.uk/petitions/588566> accessed 21 August 2022 and Cromwell Truck Sales, 'Are truck drivers classed as key workers?' <https://cromwelltrucks.com/are-truck-drivers-classed-as-key-workers> accessed 21 August 2022.

[3] Ram Ganeshan and Tonya Boone, 'How the war in Ukraine impacts global supply chains' (*IPS Journal*, 26 April 2022), <https://www.ips-journal.eu/topics/economy-and-ecology/how-the-war-in-ukraine-impacts-global-suppy-chains-5894/#:~:text=Ukraine's%20economy%20is%20in%20disarray,significantly%20impacting%20the%20Russian%20economy> accessed 21 August 2022

smaller companies, to the extent that large multinational corporations can end up not knowing where their products originated. According to my corporate informants, it can take large companies up to three months to trace the provenance of one product and years to map out its supply chains. This phenomenon has been described by anthropologists as an 'ethic of detachment' where companies lose sight of who they are interacting with and the ethical and moral obligations they would otherwise have for other people.[4]

The obscurity of supply chains provides fertile grounds for exploitation. As the prominent anti-slavery activist Kate Garber said, human exploitation in supply chains is 'hidden in plain sight'.[5] Many suggest that modern slavery exists in global supply chains because of commercial pressures for faster and cheaper goods, which lead to exploitative labour practices. Steve New, an expert in supply chain management, attributes forced labour and exploitation to ruthless negotiations that drive down prices.[6] In short, the push for cheaper goods creates the conditions for modern slavery.

The problem is estimated to affect 40.3 million people worldwide, including 24.9 million in forced labour, of whom an estimated 16 million work in private sector supply

[4] Jamie Cross, 'Detachment as a Corporate Ethic: Materializing CSR in the Diamond Supply Chain' (2011) Journal of Global and Historical Anthropology 34, 36.

[5] Kate Garbers, TedxExeter 'Modern slavery, hidden in plain sight' (1 June 2018) <https://www.youtube.com/watch?v=xYQdZWj5G0g> accessed 21 August 2022; University of Hull, 'New study: Brits are blind to the signs of modern day slavery' <https://www.hull.ac.uk/work-with-us/more/media-centre/hidden-in-plain-sight#:~:text=Modern%20day%20slavery%20often%20plays,to%20increase%20wides pread%20public%20awareness> accessed 21 August 2022.

[6] Stephen John New, 'Modern Slavery and the Supply Chain: The Limits of Corporate Social Responsibility' (2015) 20 Supply Chain Management 697, 703.

chains.[7] Morally, the exploitation of human beings is unacceptable. Economically, such activities undermine the mainstream market because they are unreported and untaxed. It is, therefore, in the economic interest of state governments to tackle the problem. To address these issues, the UK government introduced s 54 of the Modern Slavery Act 2015 ('MSA') ('s 54'), a reporting requirement to encourage large companies towards 'transparency' in their supply chains and to take steps to address 'modern slavery'. The UK was the first country in the world to introduce such a requirement, and the first to use the phrase 'modern slavery' in law.

S 54 of the MSA requires any commercial organisation operating in the UK, wherever incorporated, with an annual turnover of £36 million or more to publish an annual 'slavery and human trafficking statement' ('MSA statement'). In this statement, the organisation must disclose the steps it has taken to prevent modern slavery in its supply chains, wherever located, or state that it has not taken steps in this regard. It must ensure that the statement is: (1) approved by the board, (2) signed by a senior director in the business, and (3) made publicly available either online via a prominent link on the company's homepage or in writing if the company does not have a website.[8] According to the explanatory notes of the MSA, these requirements were designed to ensure that modern slavery receives attention and appropriate support from senior management, who tend to be best placed to implement changes within a business. S 54 also has extraterritorial effects as it covers activities in supply chains 'wherever located'.

[7] International Labour Organisation, 'Global Estimates of Modern Slavery: Forced Labour and Forced Marriage' (*International Labour Organisation*, 2017) < https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf> accessed 21 August 2022.

[8] MSA, ss 54(4), 54(6), 54(7), 54(8).

S 54 does not prescribe exactly what information must be included. But it *recommends* six areas for disclosure: (1) organisational structure and supply chains, including the organisation's relationship with suppliers and the countries it sources goods and services from; (2) descriptions of organisational policies designed to prevent modern slavery; (3) the organisation's due diligence processes, impact assessments and evidence of any stakeholder agreement; (4) processes for assessing and managing risk, which can be specific to the country, sector, particular types of transactions and business partnerships; (5) performance indicators on preventing modern slavery; and (6) training conducted or proposed.[9] In effect, the law does not require companies to take a proactive approach toward their supply chains; instead, it encourages self-regulation through the disclosure of information.[10]

A 'failure to comply' under s 54 occurs when an organisation has not produced a statement or published it in the relevant financial year.[11] But the provision permits an organisation to state that it has taken no steps or is just beginning investigations. Technically, if a commercial organisation fails to publish an MSA statement, the Secretary of State may bring civil proceedings in the High Court for an injunction requiring it to do so.[12] However, it is difficult to know when a company has failed to comply as s 54 does not require statements to be submitted for approval nor are s 54 statements monitored by

[9] MSA, s 54(5).

[10] Home Office, Transparency in supply chains: a practical guide (*gov.uk*, 13 December 2021) < https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide/transparency-in-supply-chains-a-practical-guide> accessed 21 August 2022.

[11] Home Office (n 10).

[12] MSA, s 54(11).

the Home Office or any other government agency.[13] In early parliamentary debates, the government indicated that civil society should use s 54 to hold commercial organisations to account. Karen Bradley, the Parliamentary Under-Secretary of State for the Home Department, stated in 2014, during parliament's consideration of the Modern Slavery Bill that:[14]

> The government believes it is for civil society to put pressure on businesses that are not doing enough to eliminate modern slavery from their supply chains. The Government's new clause makes this as easy as possible by ensuring that disclosures are easily accessible. The link to disclosure must be in a prominent place on a business's website home page.

This approach was confirmed again in the Home Office's 2020 statutory guidance on 'slavery and human trafficking in supply chains', which states that '[i]t will be for consumers, investors and non-governmental organisations to engage and/or apply pressure where they believe a business has not taken sufficient steps'.[15] The system was clearly intended to operate with minimal state intervention. Some commentators to suggest that the provision is 'toothless' and 'weak'.[16] The light-touch nature of s 54 means that enforcement of the law is 'outsourced'. Some referred to it as no better than a 'repackaging

[13] At time of writing.

[14] HC Deb 4 November 2014, vol 587, col 704.

[15] Home Office (n 10).

[16] William Boddy, 'The Modern Slavery Act is Toothless' (*The Sunday Times*, 15 November 2018), <https://www.thetimes.co.uk/article/the-modern-slavery-act-is-toothless-c99sdl22p> accessed 21 August 2022.

of voluntary corporate social responsibility.'[17] But is it? Are these judgments fair? What has been the response to s 54? This thesis explores these questions empirically to reveal a more complex and nuanced account of s 54's effects.

During parliamentary debates, some members of parliament argued that the government should establish Britain as a 'world leader in the fight against modern slavery'.[18] The government's proposal to introduce the MSA received widespread support from businesses,[19] investors[20] and NGOs.[21] The rhetoric in the lead-up to its enactment referenced the Atlantic slave trade, reinforced the UK's commitment to human rights, dignity and fairness. Theresa May, then Home Secretary, declared the MSA a tool to prevent 'sickening and inhuman crimes are lurking in the shadows of our country.'[22] Many large companies, especially retailers, agreed that a legally binding provision on supply chain activities would bring about positive change.[23] Some commentators suggested that disclosure regulations could drive investments in new technology that monitor supply chains and enhance communication with suppliers, which could in turn support cost

[17] Interview with NGO director on 12 June 2019.

[18] Rt Hon Baroness Butler-Sloss, Rt Hon Frank Field MP and Rt Hon Sir John Randall MP, *Establishing Britain as a world leader in the fight against modern slavery* (Modern Slavery Bill Evidence Review, 2013).

[19] Home Office, *Modern Slavery and Supply Chains Consultation: Consultation on the transparency in supply chains clause in the Modern Slavery Bill* (Home Office, 2015).

[20] Paul Verney, 'Modern slavery in the spotlight: UN to back new blueprint, UK investors call for mandatory rules and Swiss firms face pressure' (*Responsible Investor*, 13 September 2019) <https://www.responsible-investor.com/investors-urge-support-ms/> accessed 21 August 2022.

[21] House of Lords and House of Commons Joint Committee on the Draft Modern Slavery Bill, *Report on the Draft Modern Slavery Bill* (2013-14, HL 166, HC 1019).

[22] Theresa May, 'Defeating modern slavery: article by Theresa May' (*gov.uk*, 31 July 2016) <https://www.gov.uk/government/speeches/defeating-modern-slavery-theresa-may-article> accessed 21 August 2022.

[23] Home Office, '*Modern Slavery and Supply Chains Government Response - Summary of consultation responses and next steps*' (Home Office, 2015).

savings and improve transparency. Many argued that it would 'level the playing field' between companies and by regulating large businesses, the changes would 'trickle down' to increase standards across industries.[24]

However, in practice, many commentators quickly concluded that the MSA would fall short of these hopes.[25] Even though s 54 represented a significant step towards regulating supply chain activities, NGOs and academic scholars were sceptical about the provision's effectiveness. The Independent Anti-slavery Commissioner, Kevin Hyland, reported in 2016 that much more would need to be done to avoid the MSA becoming a 'tick box' exercise.[26] In 2016, an NGO evaluation found that almost half of the Financial Times Stock Exchange Index ('FTSE') top 100 companies' MSA statements failed to comply with s 54 and stated that almost none of them demonstrated serious engagement with modern slavery issues.[27] The published statements failed to specify adequate risk assessments and due diligence.[28] Some scholars have suggested that s 54 is too vague and weak on monitoring and enforcement, which has fostered a practice of 'empty, airy

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[24] Marc Scott, 'EU corporate Disclosure Law will Enhance Supply Chain Efficiency', Supply Chain Management [website], <https://www.cips.org/supply-management/opinion/2015/august/eu-corporate-disclosure-law-will-enhance-supply-chain-efficiency> accessed on 28 November 2016.

[25] Business & Human Rights Resource Centre ('BHRRC'), 'FTSE 100 At the Starting Line – An analysis of company statements under the UK Modern Slavery Act' (*BHRRC*, 16 November 2016) <https://www.business-humanrights.org/en/from-us/briefings/ftse-100-at-the-starting-line-an-analysis-of-company-statements-under-the-uk-modern-slavery-act/> accessed 21 August 2022.

[26] Independent Anti-Slavery Commissioner, *Annual Report for the period 1 August 2015 to 30 September 2016*, presented to Parliament pursuant to s 42(10)(b) of the MSA (Independent Anti-Slavery Commissioner, 2016).

[27] Mark Dunn, 'Almost Half of FTSE 100 Firms Fail to Comply with the UK Modern Slavery Act' (*LexisNexis*, 10 October 2019) < https://bis.lexisnexis.co.uk/blog/categories/governance-risk-and-compliance/56-of-ftse-100-firms-fail-uk-modern-slavery-act> accessed 21 August 2022.

[28] *E.g*. the Cooperatives UK even produced a template for associated organisations to simply fill in the blanks: *"[Organisation] has a zero tolerance approach to any form of modern slavery" and "[Organisation] operates a supplier policy and maintains a preferred supplier list."*

statements that mean nothing.'[29] The 'disappointing results' have also been blamed on the Home Office's 'hands-off' approach towards implementation, monitoring and enforcement.[30]

During my research, however, I found that many businesses have responded positively to s 54. Many took steps to comply with the requirements, even without the threat of public sector sanctions. Surveys conducted by the Ethical Trading Initiative ('ETI') suggest that within a year of the MSA's enactment, twice as many company executives actively addressing modern slavery issues and 77% of the companies surveyed *now* think modern slavery exists in their supply chains.[31] Over the last six years, the type of activities being carried on in its name now far surpass its intended scope, and many businesses are working to introduce modern slavery initiatives and strategies across their supply networks. Corporate strategies such as surveys, audits, 'benchmarking', and 'heat-mapping' (or risk assessment) of particular countries, suppliers and products were being adopted, discussed and explored. These activities suggest that corporations were taking s 54 seriously through an effort to report.

The MSA statements have also attracted the attention of civil society including scholars, who have, over the last five years, examined them to gauge corporate compliance

[29] New (n 6), 701.

[30] House of Commons Committee of Public Accounts, *Reducing Modern Slavery, Thirty-Sixth Report of Session 2017-19* (2017-19, HC 886), 10.

[31] Quintin Lake and others, 'Corporate Leadership on Modern Slavery: How Have Companies Responded to the UK Modern Slavery Act One Year On?' (Hult Research in Partnership with the Ethical Trading Initiative, 2016); Jane Moyo, 'New Report and Survey Finds Modern Slavery Act Is Galvanising Leadership Action in Progressive Companies' (*Ethical Trading Initiative*, 27 October 2016) <https://www.ethicaltrade.org/blog/new-report-and-survey-finds-modern-slavery-act-galvanising-leadership-action-progressive> accessed 21 August 2022.

and behaviour. The scope of their research usually concerns particular sectors of the economy and a representative sample of companies. For example, one of the first studies examined the publication practice of '101 firms in the clothing and textiles sector.'[32] Since then, many others have attempted to analyse representative samples of modern slavery statements published by a different sectors over time.

To date, literature on s 54 has largely concentrated on whether the provision is effective or ineffective. Many studies have been critical of the lack of detail on preventative strategies[33] and a 'tick box' attitude to modern slavery statements.[34] Genevieve LeBaron, a political scientist and one of the first and most prolific scholars writing about modern slavery in the UK, compared s 54 with the UK Bribery Act 2010. She pointed out that s 54 obliges companies to report but places no obligations on them to take steps to prevent modern slavery. By contrast, the Bribery Act 2010 establishes the criminal offence of bribery if a person associated with a company bribes another, wherever that person might be, so long as the organisation they work for 'carries on a business, or part of a business,

[32] Mark Stevenson and Rosanna Cole, 'Modern slavery in supply chains: a secondary data analysis of detection, remediation and disclosure' (2018) 12 Supply Chain Management 81

[33] BHRRC, 'First Year of FTSE 100 Reports under the UK Modern Slavery Act: Towards Elimination? (BHRRC, 2017) <https://media.business-humanrights.org/media/documents/files/FTSE_100_Report_FINAL_0021Dec2017.pdf> accessed 21 August 2022; Ergon Associates, 'Modern Slavery Statements: One Year On' (Ergon, April 2017) < https://ergonassociates.net/wp-content/uploads/2016/03/MSA_One_year_on_April_2017.pdf> accessed 21 August 2022; Paul Vidican 'Eradicating forced labor in electronics: What do company statements under the UK Modern Slavery Act tell us?' (Know the Chain, 7 July 2020) < https://knowthechain.org/company_post/eradicating-forced-labor-in-electronics-what-do-company-statements-under-the-uk-modern-slavery-act-tell-us/> accessed 21 August 2022.

[34] Office of the Independent Antislavery Commissioner and Themis, 'Preventing Modern Slavery and Human Trafficking: An Agenda for Action across the Financial Services Sector' (2021), 25 <https://static1.squarespace.com/static/5c12a68fc258b4c36480afb6/t/6000daf6cc01164759cbf4cb/1610668806780/Preventing-MSHT-Full-Report.pdf> accessed 21 August 2022; H. Taylor, 'New Research: Compliance up but quality down – the concerning lack of engagement in modern slavery reporting from the UK agricultural sector' (*University of Nottingham Rights Lab Blog,* 30 October 2019) <https://blogs.nottingham.ac.uk/rights/2019/10/30/new-research-compliance-up-but-quality-down-the-concerning-lack-of-engagement-in-modern-slavery-reporting-from-the-uk-agricultural-sector/> accessed 21 August 2022.

in any part of the United Kingdom'.[35] LeBaron argued that strong sanctions such as financial penalties are necessary for modern slavery to be treated seriously.[36]

Other researchers sought to provide a more nuanced account. Stevenson and Cole identified responses that ranged from 'compliance only' to 'ethical leader' among textile firms,[37] while Voss et al observed differences in the breadth and depth of MSA statements between large and small firms.[38] Sarfaty delved deeper and examined empirically how supply chain regulations, like s 54, are 'translated' by management professional into practices and techniques: 'from qualitative, unstructured data replete with contestations over the determination of modern slavery on the ground; to quantitative indicators and scorecards of modern slavery risks; and finally, to polished statements that summarize corporate efforts to eradicate modern slavery in their supply chains.'[39] But still, they focus on compliance. Monciardini et al recently drew on the 'endogeneity of law' theory developed by Edelman, suggesting that the 'managerialisation' of modern slavery law may drive merely symbolic responses.[40] Again, their investigation into the food and tobacco

[35] Bribery Act 2010, s 7.

[36] Genevieve LeBaron and Andreas Rühmkorf, 'Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance' (2017) 8 Global Policy 15.

[37] Stevenson and Cole (n 32), 91.

[38] Hinrich Voss and others, 'International supply chains: compliance and engagement with the Modern Slavery Act' (2019) 7 Journal of the British Academy 61.

[39] Galit Sarfaty, 'Translating Modern Slavery into Management Practice' (2020) 45 Law & Social Inquiry 1027, 1028.

[40] Lauren B. Edelman, *Working law: Courts, Corporations and Symbolic Civil Rights* (University of Chicago Press, 2016).

industry's response to s 54 casts doubt over the effectiveness of light touch rules and organisational response strategies without the threat of sanctions.[41]

This thesis looks beyond the effective/ineffective dichotomy, recognising that the vague reporting requirements of s 54 can create space for interesting and unexpected effects. For example, changes in corporate monitoring processes, standards, the involvement of legal and other professionals, international debates and networks in which s 54 has been discussed, have in turn influenced further developments. My research explores the broader *empirical* effects of s 54. I ask, what are these direct and indirect effects? What can they tell us about our attitudes to and assumptions about the law and the social dynamics surrounding it? What can they tell us about the law and the social dynamics surrounding it? What does this analysis of s 54 reveal about this style of regulation and its role in society?[42]

1.2 S 54 and its normative antecedents

To understand the operations of s 54, its implementation and implications, I conducted an in-depth qualitative study. My empirical findings are presented across eight chapters. In the following section, I set out the literature relevant to my analysis. First, I address the concept of 'corporate social responsibility' ('CSR') and its relationship with corporate regulation. S 54 can be regarded as a development of long-standing attempts to promote CSR. More recent promotion of 'business and human rights' ('BHR') and my

[41] David Monciardini, Nadia Bernaz and Alexandra Andhov, 'The Organizational Dynamics of Compliance with the UK Modern Slavery Act in the Food and Tobacco Sector' (2021) 60 Business & Society 288.

[42] This style of regulation has been variously referred to as 'meta regulation'. The technique is referred to as 'meta-regulatory techniques', which involve entity regulation and principles-based and outcomes-focused regulation. These options leverage a matrix of social, legal and normative pressures to achieve results.

findings confirmed that broader movements had some influence on the reaction to s 54 and vice versa. Secondly, I outline the human rights standards relevant to 'modern slavery'. Thirdly, I consider the relationship between s 54 as domestic law, and international standards.

1.2.1 Reinforcing CSR through law

The initiative to impose supply chain transparency requirements did not spring spontaneously from the UK government. A common view among my informants was that s 54 is an extension of existing CSR measures. CSR came to prominence in the 1980s; it casts corporations as social actors, although notions around corporate responsibility may have first emerged in the 1950s from Howard Bowen's discussion on the ethical obligations of managers.[43] In reality, Bowen's ideas did not extend beyond philanthropy.[44] Towards the late 1960s and 1970s, the term 'Corporate Social Responsibility' became widely used, and a large body of literature on CSR dates from the 1960s. Clarence C. Walton asserted the importance of the voluntary character of CSR.[45] His insights corresponded with the rise in business conduct regulation for the protection of employees and consumers in the USA; for example, the Equal Pay Act 1963 and the Clean Air Act 1970 were all aimed at curbing corporate behaviour for the benefit of the wider population.[46] CSR's rise in the 80s and 90s can be attributed to growing concerns about non-ethical business conduct. Archie B.

[43] Howard Bowen, *Social Responsibilities of the Businessman* (Harper and Row 1953).

[44] Rosamaria C Moura-Leite and Robert C Padgett, 'Historical Background of Corporate Social Responsibility' (2011) 70 Social Responsibility Journal 528, 530.

[45] Clarence Cyril Walton, *The Ethics of Corporate Conduct* (Englewood Cliffs 1976).

[46] Moura-Leite and Padgett (n 44) 530.

Carroll articulated in 1991 that corporate social responsibility is constituted by economic, legal, ethical and philanthropic responsibilities.[47] Today, CSR is generally regarded as a set of internal corporate policies, voluntary codes and initiatives, which go beyond the law, and encourage companies to be accountable for the effects of conducting business.[48]

In substance, s 54 closely resembles and relies on existing CSR policies; for example, s 54(5) encourages reporting organisations to *outline* their 'policies in relation to slavery and human trafficking' and 'the training about slavery and human trafficking available to its staff'.[49] Many large multinationals had, since the early 2000s, written such policies as part of their CSR efforts. A reason for s 54's popularity among some businesses was that it required no additional effort from corporations with an existing CSR programme. In fact, for those 'with skin in the CSR game', as some of them put it, s 54 reporting need not be more than CSR reframed. In practice, MSA statements often replicate material from other public disclosures, including financial statements (especially descriptions of the corporate structure and supply chain).[50] Corporations that are serious about CSR thought s 54 would compel others, including their competitors and suppliers, to be put to the same expense of adopting CSR, thereby 'levelling the playing field', so the burden of CSR could be shared across the supply chain.[51] In accordance with this rationale,

[47] Archie B. Carroll, 'The Pyramid of Corporate Social Responsibility: Toward Moral Management of Organizational Stakeholders', (1991) 34 (4), Business Horizons, 39–48.

[48] Abagail McWilliams and Donald Siegel, 'Corporate Social Responsibility: A Theory of the Firm Perspective' (2001) 26 The Academy of Management Review 117.

[49] MSA, s 54(5)(b) and (f).

[50] MSA, s 54(5)(a).

[51] Home Office (n 23) and Joint Committee on the Draft Modern Slavery Bill (n 21) 86.

multinational corporations agreed that having good ethical supply chains would 'more than pay for itself'.[52]

There is no clear consensus about what CSR means. CSR could be regarded as voluntary acts of altruism, as well as business strategy, designed to outmanoeuvre competitors. This is sometimes referred to as 'doing well by doing good'. Broadly, and in this thesis, I use the term 'CSR' to mean two things: the normative idea that corporations ought to be responsible to communities, environment, employees, customers and shareholders, in ways that go beyond what is required by the law[53] and more specifically, CSR practices such as voluntary policies, programmes and other initiatives, which Edelman describes as 'institutional structures' that could be taken by the public, even the judiciary, to be an indication of genuine corporate responsibility.[54]

CSR involves 'soft' or legally non-binding standards, which often reflect international norms enshrined in the likes of OECD Guidelines for Multinational Corporations, the International Standards Organisation ('ISO') 26000 on CSR, and other discrete industry guidelines. Hemingway also showed that the social responsibility of a firm may be driven by the personal values of its individual managers.[55] In contrast, disclosure regulations can be indirect but usually enforced by public authorities. In the field

[52] Moyo (n 31) and Joint Committee on the Draft Modern Slavery Bill (n 21) 86.

[53] Abagail McWilliams, Donald S. Siegel and Patrick M. Wright, 'Corporate Social Responsibility: Strategic Implications' (2006) 43 Journal of Management Studies 1.

[54] Lauren B. Edelman and others, 'When Organizations Rule: Judicial Deference to Institutionalized Employment Structures' (2011) 117 The American Journal of Sociology 888.

[55] Christine A. Hemingway, 'Personal Values as a Catalyst for Corporate Social Entrepreneurship' (2005) 60 Journal of Business Ethics 233.

of financial reporting, where corporations are heavily regulated, Kim et al. found that socially responsible firms reported more transparent and reliable financial information to investors.[56] Other scholars found evidence to support Campbell and Vick's suggestion that CSR could improve the value of a company on the stock market once consumers and other stakeholders become more aware of CSR reputations.[57] For example, Fisman et al. found that social initiatives generate trust among consumers and a point of difference between competitors.[58] Porter and Kramer also found CSR to be a source of innovation and competitive advantage.[59] These aspects of CSR can make business more profitable. In some cases, CSR policies fill the gaps left by local law and ensure consistency between head offices and local branches.[60]

CSR mechanisms rely on what Van den Berghe and Louche identified as the 'invisible hand', which consolidates scrutiny and pressure from NGOs, media, trade unions, and consumers.[61] In the summer of 2020, after investigative journalists exposed

[56] Yongtae Kim, Myung Seok Park and Benson Wier, 'Is Earnings Quality Associated with Corporate Social Responsibility?' (2012) 87 The Accounting Review 761.

[57] Doreen McBarnet, Aurora Voiculescu and Tom Campbell, *The new corporate accountability: Corporate Social Responsibility and the Law* (1st edn, Cambridge University Press, 2007).

[58] Ray Fisman, Geoffrey Heal and Vinay B Nair, 'A model of corporate philanthropy' (2006) Wharton School, University of Pennsylvania research paper <http://d1c25a6gwz7q5e.cloudfront.net/papers/1331.pdf> accessed 21 August 2022.

[59] Michael E. Porter and Mark R. Kramer, 'Strategy and Society: The Link Between Competitive Advantage and Corporate Social Responsibility' (*Harvard Business Review*, December 2006) <https://hbr.org/2006/12/strategy-and-society-the-link-between-competitive-advantage-and-corporate-social-responsibility> accessed 21 August 2022.

[60] Andrew Pendleton and others, 'Behind the mask: the real face of corporate social responsibility' (*Christian Aid*, 2004). <https://baierle.files.wordpress.com/2007/11/behind-mask.pdf> accessed 21 August 2022

[61] Lutgart Van Den Berghe and Céline Louche, 'The Link Between Corporate Governance and Corporate Social Responsibility in Insurance', (2005) 30(3) The Geneva Papers on Risk and Insurance. Issues and Practice 425, 427.

shocking evidence of labour abuse within the factories of Boohoo in Leicester,[62] Boohoo declared that it would sever ties with hundreds of its manufacturers and suppliers.[63] It took a media scandal to achieve that result. The role of social actors is critical in holding corporations to account.

While social actors are important, their capacity to scrutinise corporate activities is often limited and patchy. For instance, Kurkchiyan and McBarnet found that CSR activities alone produce little to no change without the force of contracts.[64] But the application of policies may be limited to particular industries and highly variable.[65] In essence, CSR relies on the goodwill of companies, which can be inconsistent and discretionary. In 2001, Leila Salazar, the corporate accountability director of the NGO Global Exchange, told The Guardian: 'Nike has continued to treat the sweatshop issue as a public relations inconvenience rather than as a serious human rights matter'. Writing in 2008, academic Jeremy Moon lamented that the precise manifestation and direction of the responsibility

[62] Alison Levitt QC, *Independent Review into the boohoo Group PLC's Leceister supply chain* (24 September 2020), <https://www.boohooplc.com/sites/boohoo-corp/files/final-report-open-version-24.9.2020.pdf> accessed 21 August 2022.

[63] Sarah Butler, 'Boohoo severs ties with hundreds of UK manufacturers after critical review' (*The Guardian*, 25 March 2021) <https://www.theguardian.com/business/2021/mar/25/boohoo-severs-ties-with-hundreds-of-uk-manufacturers-after-critical-review> accessed 21 August 2022.

[64] Marina Kurkchiyan, 'Corporate social responsibility through contractual control?: global supply chains and "other regulation"' in Doreen McBarnet, Aurora Voiculescu and Tom Campbell, *The new corporate accountability: corporate social responsibility and the law* (Cambridge University Press, 2007)

[65] Burhan Wazier, 'Nike accused of tolerating sweatshops' (*The Guardian*, 20 May 2001) <https://www.theguardian.com/world/2001/may/20/burhanwazir.theobserver> accessed 21 August 2022; David J Doorey, 'The Transparent Supply Chain: From Resistance to Implementation at Nike and Levi-Strauss' (2011) 103 Journal of Business Ethics 587.

remain at the discretion of the corporation.[66] Aseeva deemed CSR to have failed to produce corporate accountability, and called for tougher legal liability.[67]

So how does s 54 relate to previous initiatives towards CSR? My informants suggested that s 54 was a natural extension or formalisation of CSR designed to encourage corporate responsibility for supply chains and to allow corporations a period of 'socialisation' before extending the provision to smaller companies. But s 54 is a piece of formal legislation, which resembles legal provisions such as the disclosure requirements in the Companies Act 2006. Part 15 of the Companies Act 2006 includes requirements relating to the preparation of the company's annual accounts, content requirements for the directors' report and the strategic report, and the requirements and options for the circulation and filing of accounts. S 172(1) of the Companies Act 2006 requires a director to act in the way he or she considers to be, in good faith, and which would be most likely to promote the success of the company for the benefit of its members. In exercising that duty, the director must have regard to the company's employees and the need to foster the company's business relationships with suppliers, customers, and others. The rationale for requiring companies to disclose in their strategic reports how directors have had regard to these interests is that it would encourage directors to think more carefully about how they are taking these matters into account and give shareholders more information with which to hold boards to account. Similar to s 54, the exact format of reports is discretionary and depends on each company's individual circumstances. The enforcement of the Companies

[66] Dirk Matten and Jeremy Moon, '"Implicit" and "Explicit" CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility' (2008) 33 Academy of Management Review 424.

[67] Anna Aseeva, *From Corporate Social Responsibility to Corporate Social Liability: A Socio-Legal Study of Corporate Liability in Global Value Chains* (1st edn, Hart Publishing 2021).

Act 2006 provisions is light touch. Even where apparent inconsistency between disclosure and the actions of the company is identified, allegations are typically difficult to prove and judicial intervention is rare. As commentators such as Georgina Tsagas have pointed out, disputes are typically dealt with negotiation conducted by the Financial Reporting Council. Accountability and liability through a more formal process does not always follow.[68]

Campbell and Vick highlighted the use of disclosure obligations to facilitate CSR. They pointed out that the company's interests and interests of shareholders are best served by maintaining 'positive' profiles in CSR, which generates value for businesses.[69] S 54's similarity with the Companies Act 2006's reporting requirement could be characterised as enforcing CSR through law. McBarnet and Schmidt suggested that holding corporations to account for CSR requires 'creative enforcement' facilitated by the unconventional use of existing legal provisions by NGOs and activists.[70] But is s 54 any different to existing CSR practices of self-regulation? Is there a change in substance or is the law a symbolic gesture? Whether s 54 is 'corporate social responsibility *through* law' or voluntary standards in legal guise, the light touch nature of s 54 can be attributed to its relationship with voluntary CSR and disclosure-style laws, which rely on private implementation and non-state

[68] Georgina Tsagas, 'S 172 of the UK Companies Act 2006: Desperate Times Call for Soft Law Measures – A Post-Scriptum (*University of Oxford Business Law Blog*, 22 September 2017) <https://www.law.ox.ac.uk/business-law-blog/blog/2017/09/s-172-uk-companies-act-2006-desperate-times-call-soft-law-0> accessed 21 August 2022.

[69] Kevin Campbell and Douglas Vick, 'Disclosure Law and the Market for Corporate Social Responsibility' in Doreen McBarnet, Aurora Voiculescu and Tom Campbell, *The new corporate accountability: Corporate Social Responsibility and the Law* (1st edn, Cambridge University Press, 2007).

[70] Doreen McBarnet and Patrick Schmidt, 'Corporate Accountability through Creative Enforcement: Human Rights, the Alien Tort Claims Act and the Limits of Legal Impunity' in Doreen McBarnet, Aurora Voiculescu and Tom Campbell, *The new corporate accountability: Corporate Social Responsibility and the Law* (1st edn, Cambridge University Press, 2007).

enforcement, rather than state-level command and control. My thesis explores the empirical effects of this style of regulation.

1.2.2 Modern slavery in law

The prohibition of slavery is recognised almost universally, acquiring the status of a norm in public international law.[71] Historically, slavery was considered to be an exercise of ownership rights in another person.[72] S 54 expressly refers to the 1926 Slavery Convention. But in addition to the property dimension, there can be other – and numerous – forms of human exploitation, which may or may not amount to ownership. The more encompassing term 'modern slavery' accommodates a broad range of activities aimed at, or resulting in, human exploitation. The term attracts criticism for its vague definition and questionable utility, in comparison with the forms of exploitation demarcated in various international law instruments.[73] According to the MSA, 'modern slavery' is an umbrella term encompassing 'slavery, servitude and forced or compulsory labour and human trafficking'.[74] Each of these offences is an offence in transnational criminal law, defined in international law, including the Protocol to the United Nations Convention against

[71] 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries', Report of the International Law Commission, 48th Session (International Law Commission 2001) 85 <http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf> accessed 21 August 2022; Jochen A Frowein, 'Ius Cogens', *Max Planck Encyclopaedia of Public International Law* (2013).

[72] Slavery Convention (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253, Art 1(1).

[73] Robert Plant, 'Modern slavery: The Concepts and their Practical Implications', (ILO, 2014) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_355052.pdf> accessed 29 August 2022. '["Modern slavery"] is an emotive term, and it has caused much debate as to what is covered. Slavery, forced labour and human trafficking are all defined in international legal instruments, which have enjoyed a high level of ratifications. The term "modern slavery" is not defined in international law.' *See* also an overview of critical voices in Janne Mende, 'The Concept of Modern Slavery: Definition, Critique, and the Human Rights Frame' (2019) 20 Human Rights Review 229, 234–239.

[74] MSA, Explanatory Notes.

Transnational Organized Crime, the United Nations Convention against Transnational Crime (the 'Palermo Protocol'), the Council of Europe Convention against Trafficking in Human Beings (the 'Convention on Action against Trafficking'), ILO Convention (No 29) Concerning Forced or Compulsory Labour and ILO Convention (No 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. But there is no consensus on 'modern slavery'[75] and no legal basis in international law.[76]

The MSA's explanatory notes attempt to clarify modern slavery as 'a brutal form of organised crime in which people are treated as commodities and exploited for criminal gain' and may 'take a number of forms, including sexual exploitation, forced labour and domestic servitude.'[77] From a labour law perspective, practices such as 'unfair recruitment' or 'wage theft' are captured by this description. From a public international law or criminal law perspective, these practices are intertwined with issues of migration, human trafficking and the sovereignty of states to restrict entry. This inclusive definition has led some to regard 'modern slavery' in s 54 as a catch-all for all forms of human rights abuse, including less extreme forms of exploitation, which can easily transform into more serious abuse, given that exploitation exists on a continuum of poor social, political, and economic conditions. [78] References to 'modern slavery' have become commonplace, often

[75] Annie Bunting and Joel Quirk, *Contemporary Slavery: The Rhetoric of Global Human Rights Campaigns* (Cornell University Press 2017).

[76] Genevieve LeBaron, *Combatting Modern Slavery: Why Labour Governance Is Failing and What We Can Do About It* (Polity Press 2020).

[77] Explanatory Notes to the MSA, para 4. Note, this is a different definition than the one used to generate the Global Slavery Index.

[78] Lisa K.E. Hsin, 'Modern slavery in law: towards continuums of exploitation' (2020) 26 Australian Journal of Human Rights, 165.

indiscriminately used – so much so that the highly successful musician, Kanye West used it to describe the music industry's 'unfair' treatment of artists, including himself, on Twitter.[79] It is also frequently used in academic studies[80] and policy documents, to refer to a variety of contemporary slavery-like practices.[81] Confusion over the interpretation of 'modern slavery' is a feature of the provision reaction to s 54, which plays out in unexpected ways, as I describe in Chapters 7 and 8.

In this thesis, I found it helpful to set aside doctrinal, definitional questions, and instead concentrate on how 'labour' could be understood in a socio-legal sense, as a matter of public interest and subject of legal protection. According to Karl Polanyi, whose work must be read within the context of Neo-Marxism, labour is a 'fictitious commodity' invented to facilitate the 'self-regulating' market.[82] As such, labour exploitation is the perverse result of commodification. Polanyi regards human activity as a natural element of human existence, and the basis for social relations. Therefore, commercialisation of labour undermines the organic inter-dependencies of social relationships.[83] In this thesis,

[79] Callie Ahlgrim, 'Kanye West says the music industry and the NBA are 'modern day slave ships' in new tweets: "I'm the new Moses''' (*The Insider,* 15 September 2020) <https://www.insider.com/kanye-west-music-industry-nba-modern-day-slave-ships-twitter-2020-9> accessed 21 August 2022.

[80] *See* e.g. Stevenson and Cole (n 32) (accepting the concept without protracted discussion of its content); Philippa Webb and Rosana Garciandia, 'State Responsibility for Modern Slavery: Uncovering and Bridging the Gap' (2019) 68 International & Comparative Law Quarterly 539, 540 (adopting an article-specific definition of modern slavery); Akshaya Kamalnath 'Transnational corporations and modern slavery: Nevsun and beyond' (2021) 21 Journal of Corporate Law Studies 491 (accepting the statutory definitions from UK and Australia).

[81] 'Transforming Our World: The 2030 Agenda for Sustainable Development' (United Nations General Assembly, 2015) Resolution A/RES/70/1, 20 <https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 21 August 2022.

[82] Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (2nd edn, Beacon Press 2002), 137

[83] Polanyi (n 83), 171.

accordingly, labour is taken to represent the activities of people, that warrants public protection, and not a resource to be maximised for monetary gain.

Karl Polanyi's account of the 19th Century industrialisation in *The Great Transformation* provides a macroscopic framework for understanding the effects of and changes proposed for s 54. In his theory of the 'double movement', Polanyi suggested that to expect payment for labour is not 'natural'.[84] He cited various sources, including anthropologist Robert Lowie's Social Organization in the Encyclopedia of the Social Sciences,[85] and argued that the usual incentives to labour are not gain but reciprocity, competition, joy of work, and social approbation. The commodification of labour, or putting a price on labour is, therefore, counter to social ordering and human relationships.

According to Polanyi, the economy is set up as a function of social organisation until the rise of the 19th century industrial revolution, which reversed the relationship between economy and society. Market process came to determine social structures. It follows that when labour is given in exchange for gain, market forces can overpower natural human behaviour, which can cause social forces to rebel. The object of rebellion was to 'embed' social values (such as reciprocity, competition, joy of work, and social approbation) into market practices. Polanyi argued that market societies are constituted by two opposing movements: *the laissez-faire* movement, which expands the market, and the protective countermovement that emerges to resist the 'disembedding' of the economy from naturally occurring social values, such as protection for workers. The 'dis-

[84] Polanyi (n 83), 277.

[85] Robert Lowie, 'Social Organisation', *Encyclopedia of the Social Sciences vol. xiv*, 14 states 'Nowhere in uninfluenced primitive society do we find labour associated with the idea of payment'.

embeddedness' of the economy from society is reflected in the institutional separation of economic operations.[86] Stiglitz explicitly states that historically, all groups in society have participated in this process.[87] He added that human social behaviour is influenced by more than simple self-interest, and human institutions are more varied than the market drivers. They include a broad range of 'social' motivations and emotions, which require a better understanding of the motives that underlie cooperation and reciprocity. This is Amartya Sen's idea about 'Rational Fools': 'The purely rational economic man is indeed close to being a social moron'.[88]

Polanyi argued that social values must be 'embedded' or protected in 'self-regulating' or price-oriented markets to be sustainable. But all too often, market expansion undermines social welfare, and consequently, human suffering. This is where legal interventions and regulations become relevant in Polanyi's theory.[89] He posited that even the *lasseiz-faire* economy, often regarded as a natural product of deregulation, was historically facilitated by the state and did not evolve spontaneously.

The Polanyian metaphor the 'Double Movement' is just one way to understand the effects of s 54. Based on this theory, treating labour as a commodity will lead to problems. The market is facilitated by states and laws. But on the other hand, law can also harness social forces. This teaches us to expect that there will be social problems, which give rise

[86] Alexander Ebner, 'Transnational Markets and the Polanyi Problem' in Christian Joerges and Josef Falke (eds) *Karl Polanyi, Globalisation and the Potential of Law in Transnational Markets* (Hart Publishing 2010).

[87] Polanyi (n 83), Introduction by Joseph E. Stiglitz, xxviii.

[88] Amartya K. Sen, 'Rational Fools: A Critique of the Behavioral Foundations of Economic Theory' (1977) 6 Philosophy & Public Affairs 4, 336.

[89] Ebner (n 87) 23

to social movements that seek to limit the effects. S 54 might be seen as a response to those social movements. How does this paradox play out in practice? To what extent are the criticisms of s 54 a reflection of the tussle between public welfare and commercial interest? My contribution is to demonstrate how complex these interactions are in the context of s 54.

1.2.3 Interplay between domestic law and international norms

Principles of sovereignty and non-interference in public international law limit the enforcement jurisdiction of states over one another[90] and the ability of international organisations to impose rules on private parties.[91] But in recent years, domestic regulations with extraterritorial reach have become more common, sometimes resulting in conflicts of regulatory interests of different states or with international norms. There are two ways to analyse s 54 in this context: (1) as a domestic legislation seeking to impose its standards over other territories, or (2) as domestic legislation giving effect to international norms.

The majority of socio-legal literature focuses on the second phenomenon. As Galligan and Sanders pointed out, human rights standards do not take effect quietly and effortlessly; nor do they apply automatically upon being agreed or enacted. On the contrary, they need the action and commitment of governments, corporations, and organisations and

[90] *See* e.g. Bruno Simma and Andreas Th. Müller, 'Exercise and limits of jurisdiction' in *The Cambridge Companion to International Law* (Cambridge University Press 2012), 150 (referring to '[a] clear-cut master rule according to which enforcement acts may only be carried out by the territorial state, or with its permission [...]'); Cedric Ryngaert, 'Public International Law Approaches to Jurisdiction', *Jurisdiction in International Law* (Oxford University Press 2008) 23 ('A State cannot use coercive power to enforce its rules outside its territory. Stating the contrary would mean shattering the sacrosanct principle of sovereign equality of nations.').

[91] Ryngaert (n 91), 'Introduction', 9.

persistent advocacy and vigilance of the institutions of civil society.[92] But with s 54, the UK has gone further than the prosecution-centric obligations of states to legislate and suppress transnational crime. It is the first legislation to refer to 'modern slavery' but it is not without precedents in international law. How do these tensions and dynamics play out in practice? In this thesis, I look closely at the individuals who operate and cross traditional divides and organisations that transcend them.

In June 2011, the members of the United Nations ('UN') unanimously endorsed the United Nations Guiding Principles on Business and Human Rights ('UNGPs'). The first internationally recognised set of principles that define the corporate responsibility to prevent, protect, and provide remedies in relation to human rights. Specifically, they direct corporations to 'do no harm', and set out the rights of victims to have access to both state and non-state remedies.[93] The author of the UNGPs, John Ruggie, felt that businesses must take positive steps to recognise and mitigate the effects of their business activities on human rights and undertake human rights due diligence of their activities to assess their human rights impacts. In oral evidence to the UK's Joint Committee on Human Rights in 2009, he said:[94]

[92] Simon Halliday and Patrick D. Schmidt, *Human rights Brought Home: Socio-legal Perspectives on Human Rights in the National Context* (Hart Publishing 2004), 25.

[93] John Ruggie, 'Protect, Respect and Remedy: A Framework for Business and Human Rights' (7 April 2008) A/HRC/8/5 ('UNGPs'); United Nations Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (21 March 2011) A/HRC/17/31. United Nations Office of the High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (2011) HR/PUB/11/04 ('UNGP Framework').

[94] House of Lords and House of Commons Joint Committee on Human Rights, *Any of our business? Human rights and the UK private sector: Report and Formal Minutes* (2009-10, HL 5-I, HC 64-I), 37.

> Companies universally will say that they respect human rights. I have never come across a company website that said, "We do not respect human rights". The question that we ask them is "Okay, that is great. We are delighted that you respect human rights, but how do you know that you do? What steps do you go through to demonstrate to yourself that you do, and are those steps adequate? Most of the time there are no systems in place.

The UNGPs marked a significant departure from the basic principles of public international law, which has traditionally been a framework envisioned and designed to govern the activities of nation-states, not individuals or corporate actors. The UNGPs make several specific reference to the global importance of corporations, including that 'Business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties.'[95] But 'at present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction.'[96] However, 'there are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses.'[97] It cautioned that 'States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a

[95] UNGP Framework (n 94) 15.

[96] UNGP Framework (n 94) 10.

[97] UNGP Framework (n 94) 4.

smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights.'[98]

1.3 Light touch regulation: what is s 54 trying to do?

Whatever the antecedents, discussed in the previous sections, s 54 can be regarded as a piece of 'light touch' regulation for its loose reporting requirements and lack of enforcement measures. So, my exploration of its effects raises questions about and contributes to debates on regulation theory, corporate compliance, enforcement and the effects of law in society.

To understand the effects of this light-touch provision, we first need to understand who decides what compliance is and how they comply with the provision. The insights yielded by my empirical data points to the importance of situating s 54 in the broader international context, illuminating the tensions and continuities between contemporary normative developments and historical discourses, for example, about the interrelationship between social movements, organisations and law. Hence, for both strategic and analytical reasons, a focus on the actors working with s 54 is uniquely suited to bring out fundamental ideas and assumptions concerning how s 54 works and its wider effects and implications.

[98] UNGP Framework (n 94) 5.

1.3.1 Regulation theory

A key body of work to which my research contributes is scholarship concerned with regulation. Scholars have described s 54 as 'soft law' because of its lack of enforcement mechanisms and prescriptive legal rules or sanctions for non-compliant businesses.[99] But classifying the law as 'soft' and 'hard' betrays an underlying assumption that some laws are more effective than others. A soft law approach to regulating business conduct is not necessarily problematic at a theoretical level, but many commentators and scholars seem to believe that 'hard' law, also known as 'command-and-control' or prescriptive regulation, has more immediate and concrete effects.

Collins distinguished 'command-and-control' rules imposed by an identifiable, state-based regulator (in this case, parliament)[100] from 'soft' regulations, on the basis that the hard laws are reinforced by deterrent sanctions for breach of regulations. The perceived weakness of s 54 is often attributed to the government's intention that the public would monitor MSA statements. As soft law is open to a level of interpretation, this means corporations have taken some of the responsibility for deciding what compliance entails.[101] It also regards regulatory issues as problems between state and markets.

But this is not the case in the context of transnational problems, such as environmental protection and transnational corporate accountability. Lange and Haines

[99] Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On' (2018) 81 The Modern Law Review 1017, 1038-39.

[100] Hugh Collins, *Regulating Contracts* (Oxford University Press 1999), 65.

[101] Galit Sarfaty, 'Corporate actors as translators in transnational lawmaking' (2021) 115 The Anthropology of International Law 278.

have attributed the distinct shift from state control to soft law in part to the rise of private soft law standards, such as NGO initiatives and self-regulatory standards independently developed by corporate actors, loosely known as CSR and 'transnational risk regulation'.[102] They referred to this mix of private and public regulatory mechanisms as 'ordered pluralism'.[103] And, as McBarnet highlighted, CSR private standards are increasingly adopted by lawmakers as 'indirect regulations', for example, reporting requirements and disclosure obligations, now found in the Companies Act 2006, discussed earlier, which requires companies to publish a 'business review' on their non-financial performance, making what businesses perceived as 'voluntary, or beyond the law, in fact legally enforceable'.[104] Early studies on regulation focused on the delineation between 'public' and 'private' actors, and the view continues to endure in regulatory scholarship.[105] Neo-classical economic analysis has also informed regulation literature, which emphasises state-market, private-public binaries.

1.3.1.1 Rethinking the public-private divide

Some early literature on regulation takes for granted the boundaries between private and public regulatory mechanisms, where in fact there is overlap. More recent scholarship on this issue can be found in Morgan's work, which noted a gap between socio-legal

[102] Bettina Lange, Fiona Haines and Dania Thomas, *Regulatory transformations: rethinking economy-society interactions* (Hart Publishing 2015).

[103] Lange, Haines and Thomas (n 104) 25.

[104] McBarnet, Voiculescu and Campbell (n 57) 31.

[105] Lange, Haines and Thomas (n 104) 3.

studies, regulations and 'rights'.[106] She found that regulations can bring about recognition for new rights by expressly naming them, or by reallocating rights as a way to disrupt the market. She proposed a framework of 'naming, blaming, claiming, rule-making, monitoring and enforcing' as a way of understanding how rights regulation emerges and exists.[107]

Another way to regard s 54 is to think of it as a form of 'responsive regulation'. This is a theory developed by Ayers and Braithwaite in 1992, which suggests that the regulator should adopt very light-touch sanctions when introducing new regulations, to allow private actors to become self-sufficient at solving more problems themselves. If that fails, the regulator can move up the 'pyramid of sanctions', from light-touch strategies such as dialogue and civil society pressure, to more punitive sanctions towards the top of the pyramid, such as fines or prosecution. [108] The idea is that the regulator should be responsive to the regulatee's behaviour and a regulator should have ongoing engagement with the law, so that the law can be amended. Julia Black suggested that regulators must regulate in a way that is responsive to the (1) regulatee's behaviour, attitude and culture, (2) regulation's institutional environments, (3) interactions of regulatory controls, (4) regulatory performance, and (5) change.[109] This approach still requires a regulator to engage closely with implementation and monitor the regulatee's behaviour.

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[106] Browen Morgan, *The Intersection of Rights and Regulation: New Directions in Socio-Legal Scholarship* (Ashgate Publishing 2007).

[107] Morgan (n 108) 8-9.

[108] Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press 1992).

[109] Julia Black and Robert Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law and Policy 181.

Responsive regulation theory has been described as a 'principled way in which to combine the insights from plural theories of compliance and enforcement, including those that propose that people comply only when they calculate it in their self-interest to do so, and those that see people complying for normative and social reasons'.[110] Ayres and Braithwaite suggest that public interests and individual gains do not have to be mutually exclusive. Instead, they can overlap, creating an optimal win-win scenario they refer to as 'efficient capture', whereby the public benefit is achieved at minimal individual cost.[111] Ayers and Braithwaite argue that where a regulator seeks to improve or prevent some public-interest concern, such as environmental protection, consumer safety, or prevention of modern slavery. They argued that regulators should first look to the strengths of the regulatee, such as a corporation, then harness those strengths in ways that may be advantageous to both.

The theory of 'new governance' similarly challenges the assumption that regulations must be implemented and enforced by the state and involve 'top-down command-and-control rules.'[112] As De Búrca and Scott described, the concept of new governance is an 'experimental form of governance', which is marked by a shift away from 'traditional politico-legal institutions'. It also implies either the involvement of actors other than classical government actors, or the absence of any traditional framework, and approaches that are less rigid, less prescriptive, less committed to uniform outcomes, and

[110] Vibeke Lehmann Nielsen and Christine Parker, 'Testing responsive regulation in regulatory enforcement' (2009) 3 Regulation & Governance 376.

[111] Ayres and Braithwaite (n 110).

[112] Orly Lobel, 'New Governance as Regulatory Governance' in David Levi-Faur (ed), *The Oxford Handbook of Governance* (Oxford University Press 2012), 2.

less hierarchical.[113] New governance recognises that with increased participation of non-state actors, regulations and policies benefit from superior knowledge, information and expertise. Without focusing on the public/private divide, the new governance model is considered by some scholars to enhance the 'legitimacy' of regulations, in that they represent the will of many relevant actors.[114]

So far in the academic literature, s 54 has not been labelled as a form of 'new governance' or 'responsive regulation'. But it shares some of the hallmarks of these alternative models of regulation. The lack of mandatory requirements and sanctions leaves the law open-ended in terms of what should be disclosed. Furthermore, the use of disclosure-based mechanisms means the government is not exerting direct oversight, and seems to have outsourced implementation and monitoring to the general public and to corporations themselves.[115] These features effectively allow non-state actors to play an active role in implementation and interpretation. In practice, I found that lawyers, consultants, academics and NGOs all guide corporations on how s 54 should be understood.[116]

[113] Grainne de Búrca and Joanne Scott (eds), *Law and New Governance in the EU and the US* (Hart Publishing 2006) 2.

[114] Lobel (n 114) 6.

[115] HC Deb 4 November 2014, vol 587, col 704.

[116] Sarfaty (n 103) noted that "Corporations have long played an important role in transnational governance, as multinational companies increasingly wield power over state and international politics. Businesses shape transnational lawmaking through multiple mechanisms, including lobbying legislators for policy changes, exerting influence over administrative rulemaking, and using litigation to affect the interpretation and elaboration of laws over time."); Sharon Gilad, 'Beyond Endogeneity: How Firms and Regulators Co-Construct the Meaning of Regulation' 36 Law & Policy 134 (administration bodies also play a role in translation).

Therefore, to understand s 54, it is necessary to go beyond the command-and-control model to theories of regulation that focus on a broader range of factors, including politics, cultural norms, and social concerns.[117] For LeBaron and Rühmkorf, the public/private dichotomy remains problematic. They argue that private standards 'weaken' public law.[118] They specifically criticised s 54 for being 'fully dependant on private governance tools, standards, and enforcement mechanisms to meet its aims, even though it is 'public' regulation.'[119] Nolan and Bott stated that s 54 is the kind of provision that 'largely institutionalise[s] reliance on private regulatory methods...to transform supply chain behaviours.'[120]

But these scholars formed their views on the basis of a desk-based research. LeBaron and Rühmkorf's comparison of the Bribery Act 2010 and the MSA found that the Bribery Act, with its strong criminal sanctions, has resulted in significant changes to corporate policy and practices regarding bribery, and that companies have communicated these higher standards to their suppliers. On the other hand, they considered that the MSA has not resulted in substantive change in multinational enterprises' policy and practices regarding labour standards in their global supply chains. LeBaron and Rühmkorf suggest that 'this pattern is important because it suggests that the public and private interactions at play in home state legislation matter and vary and that some forms of legislation are more

[117] Bronwen Morgan and Karen Yeung, *An Introduction to Law and Regulation: Text and Materials* (Cambridge University Press 2007) 53.

[118] LeBaron and Rühmkorf (n 36) 26.

[119] LeBaron and Rühmkorf (n 36) 17.

[120] Justine Nolan and Gregory Bott, 'Global supply chains and human rights: spotlight on forced labour and modern slavery practices' (2018) 24 Australian Journal of Human Rights 44, 54.

likely to be effective than others.'[121] They suggested that the integration of private governance into public legislation can undermine and weaken the quality and effectiveness of laws.

To the contrary, my research revealed that a non-command-and-control form of regulation, which relies on a mix of state and private governance mechanisms, can reframe and reignite conversations around corporate social responsibility. Taking this grounded approach means that s 54 could be construed as part of a dynamic responsive regulation process or an open-ended new governance approach, subject to and shaped by different actors, influences, movements and activities.

1.3.2 Corporate compliance

Extant studies suggest that light touch regulation can amplify the opportunities for corporations and corporate professionals to identify management problems and to propose new ideas to remedy those problems. Sarfaty described regulations on global supply chains being outsourced to companies, which are responsible for ensuring compliance by the firms within their supply chains.[122] Gilad noted that such forms of regulation 'explicitly shift the responsibility for interpreting what compliance entails onto regulated corporations.'[123]

In practice, compliance can be achieved despite a lack of sanctions. Coglianese found that when environmental movements intensified social concerns for conservation

[121] LeBaron and Rühmkorf (n 36) 22.

[122] Galit Sarfaty, 'Shining Light on Global Supply Chains' (2015) 56 Harvard International Law Journal 419, 421.

[123] Gilad (n 118) 135; Sharon Gilad, 'It Runs in the Family: Meta-Regulation and Its Siblings' (2010) 4 Regulation & Governance 485.

they created a public demand for organisational practices that went beyond the legal requirements.[124] In some cases, this led to 'overcompliance' with environmental regulations.[125] Julia Black noted that 'light-touch regulation' can be a significant cost to industry actors as it requires them to take a more active role in designing internal systems that respond to regulatory concerns.[126] In my conversations, many companies mentioned 'audit fatigue' arising from the burden of taking on regulatory responsibilities.[127] Some company representatives also expressed their frustration over the proliferation of different standards and knowledge, which they said are so dense that businesses are finding it very difficult to navigate their way toward compliance.[128]

In contrast to Coglianese, Edelman developed the concept of 'legal endogeneity' to describe how organisations respond to law by adopting formal structures to symbolically signal their compliance.[129] These structures tend to embody managerial and commercial values (such as efficiency and flexibility), as opposed to social benefits, effectively avoiding or undercutting the intended effects of the law. In a process she calls 'managerialisation', these structures are progressively infused with managerial values,

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[124] Cary Coglianese, 'Social Movements, Law, and Society: The Institutionalization of the Environmental Movement' (2001) 150 University of Pennsylvania Law Review 85.

[125] Seema Arora and Timothy N. Cason, 'Why Do Firms Volunteer to Exceed Environmental Regulations? Understanding Participation in EPA's 33/50 Program' (1996) 72 Land Economics 413

[126] Julia Black, Martyn Hopper and Christa Band, 'Making a Success of Principles-Based Regulation' (2007) 1 Law and Financial Markets Review 191, 193.

[127] Innovation Forum Conference: 'How Business Can Tackle Modern Slavery and Forced Labour' (7-8 March 2018).

[128] Front Group Conference: 'Third Modern Slavery and Human Rights in Supply Chains Conference' (24-25 September 2018).

[129] Kimberly Krawiec, 'Cosmetic Compliance and the Failure of Negotiated Governance, (2003) 81 Washington University Law Quarterly 487 regarding "cosmetic compliance" and Lauren B Edelman and Stephen Petterson, 'Symbols and Substance in Organisational Response to Civil Rights Law (1999) 17 Research in Social Stratification and Mobility 107.

such as profitability and efficiency.[130] Eventually, public institutions, such as the judiciary accept these symbolic gestures as compliance and the law becomes 'endogenous'. [131] Similarly, McBarnet's concept of 'creative compliance' recognises that corporations may attempt to work around laws, rather than comply. McBarnet pointed out that inhouse legal advisors can interpret rules to avoid tax; she grouped these actors into a 'class of avoidance entrepreneurs' to achieve 'creative compliance'.[132] In her earlier work, McBarnet and Whelan discussed the potential of uncertainty in regulation as a 'inevitable and crucial' and as a strength which allows the law to be malleable.[133]

My empirical work draws on these ideas to explain why corporations scrambled to comply with s 54 and how they responded thereafter. Initially confused, they resorted to existing resources and sought training. There was no uniformity in the corporate responses, which varied according to individual background, job description and personal belief. For example, some managers sought to achieve efficiency in ways that would not incur lawsuits or the scrutiny of regulators, but they are not primarily concerned with the principles of law. Others focused on making changes. Those in the business of compliance, such as lawyers and consultants, held the view that change could only occur from within companies, and that for s 54 to be effective, corporate leadership is a necessity. But equally,

[130] Lauren B Edelman, Sally Riggs Fuller and Iona Mara-Drita, 'Diversity Rhetoric and the Managerialization of Law' (2001) 106 American Journal of Sociology 1589, 1589-1599.

[131] Lauren B Edelman, Christopher Uggen and Howard Erlanger, 'The endogeneity of legal regulation: Grievance procedures as rational myth' (1999) 105 The American Journal of Sociology 406.

[132] Doreen McBarnet, 'Transnational Transactions: Legal Work, Cross-Border Commerce and Global Regulation' in Antoine Masson and Mary J. Shariff (eds) *Legal Strategies* (Springer 2009).

[133] Doreen McBarnet and Christopher Whelan, *Creative Accounting and the Cross-eyed Javelin Thrower* (J. Wiley, 1999) 169.

we must not be over impressed by the reactions described by those most affected. After all, I also found plenty of examples of the law becoming 'managerialised' or encouraging third party actors to use the managerial narrative to persuade corporations to act. Nevertheless, the reactions to s 54 cannot be wholly characterised as instances of creative compliance or managerialisation.

1.3.2.1 Beyond corporate compliance

To understand the corporate responses, I chose to look beyond corporate compliance, to focus on the enforcement of s 54 by a supporting cast of consultants, advisors, NGOs, data managers, academics and more, who facilitate corporate compliance with s 54. McBarnet and Schmidt's study of the 'creative enforcement' of the US Alien Tort Act by lawyers, activists and NGOs reinforces the importance of looking beyond corporate entities and regulatory compliance.[134] As Gilad pointed out too, corporations do not act alone: businesses and governmental agencies often work together to construct mutually acceptable meaning of the regulations.[135] Baldwin and Black underscored that regulatory regimes can be complex, with enforcement activities and responsibilities shared by different actors.[136]

Lange's research on environmental waste management regulations suggests that compliance with regulations must be understood in terms of a range of social practices. She rejects the view that formal legal requirements should only be evaluated against what

[134] McBarnet, Voiculescu and Campbell (n 57) 175.

[135] Gilad (n 118).

[136] Black and Baldwin (n 111).

the regulated do in practice.[137] Lange argued that empirical research on a broader range of relevant actors can provide a much more comprehensive understanding of how laws operate through interactive and dynamic processes.

There is increasing recognition of the 'social sphere' in regulation. Drawing on Polanyi's notions of economy-society interactions, Lange and Haines sought to transcend dichotomies between 'state and market, citizens and consumers, social movements and transnational corporations' in their analysis of the effects of regulations. I also found that the situation is rarely so clear-cut. Actors operating in the 'social sphere' encompass a range of actors, often difficult to categorise, but who collectively create a 'complex hybrid regulatory arrangement' that involves private, national and transnational actors.[138]

It is worth noting that 'market' and 'social' are deliberately not defined. Part of the task of this research was to provide an empirical account of these concepts. My thesis describes an array of social actors involved in generating social norms, business practices, and responses to s 54. They include participants in the market, state actors, and critical campaigners. Some operate with a mixture of commercial and altruistic objectives.[139] In sum, the market is infused with social concerns, and society is inextricably linked to market practices. Social actors or indeed, as my thesis suggests, all actors, are crucial to this study as they uniformly promote the notion of going 'beyond the law'; an idea explored by

[137] Bettina Lange, 'Compliance Construction in the Context of Environmental Regulation' (1999) 8(4) Social & Legal Studies 549.

[138] Lange, Haines and Thomas (n 104), 189-199.

[139] Bob Doherty, Helen Haugh and Fergus Lyon, 'Social Enterprises as Hybrid Organizations: A Review and Research Agenda' (2014) 16 International Journal of Management Reviews 417; Djahanchah P. Ghadiri, Jean-Pascal Gond and Luc Brès, 'Identity work of corporate social responsibility consultants: Managing discursively the tensions between profit and social responsibility' (2015) 9 Discourse & Communication 593.

McBarnet, who suggested that 'going "beyond legal compliance" is key to the image of social responsibility'.[140] The requirement to go 'beyond compliance' ironically generates commercial opportunities for some. A range of new actors, with technical and data expertise have become influential in advising corporations on their obligation. These actors with personnel, managerial, and legal professions are 'carriers' of normative insights and 'solutions' to complex regulatory regimes.[141] My thesis describes their involvement, their interactions in conferences, workshops, and the professional personnel literature they produce.

1.3.2.2 Transnational actors

At the transnational level, there is a multitude of institutions and actors that interact with one another in complex ways in the fields of CSR and business and human rights.[142] The UNGPs recognise this reality and expressly refer to the myriad actors involved in transnational governance.[143] This is supported by Abbott and Snidal's work on transnational actors. They suggested that transnational problems cannot be addressed in domestic settings, in which a single agency, such as the UK Home Office, has clear jurisdiction, total regulatory capacity, extensive information, and the ability to deploy

[140] McBarnet, Voiculescu and Campbell (n 57) 49.

[141] Paul J. DiMaggio and Walter W. Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields' (1983) 48 American Sociological Review 147.

[142] Stepan Wood and others, 'The interactive dynamics of transnational business governance: A challenge for transnational legal theory' (2015) 6 Transnational Legal Theory 333.

[143] John Ruggie, 'Global Governance and "New Governance Theory": Lessons from Business and Human Rights' (2014) 20 Global Governance 5.

stringent sanctions against well-defined targets.[144] The truth is, many regulatory problems, such as modern slavery arise in the transnational arena, where multiple regulators, both private and public, operate with limited capacity, authority, and enforcement opportunities.[145]

While states have traditionally dominated transnational law-making, corporations, NGOs and activist networks are increasingly playing a significant role. In 2006, Meidinger observed how private actors could often act independently of states, driven by their unique mix of public concern and private aim.[146] Meidinger found that NGOs had considerable influence over the perceptions of global problems and potential solutions and outcomes. This study revealed that NGOs have a significant influence over norms and practices, which can stimulate competition between businesses. In his study of forest stewardship, Meidinger found that NGO activities stimulate competition between businesses.

Braithwaite and Drahos interviewed over 500 individuals from NGOs, inter-governmental organisations, businesses, and civil society to map their influence on global business regulation. They found that 'no one actor appears as the master of the world' and international standards are shaped by a network of public and private partnerships.[147] My research similarly reveals extensive collaborations between social actors, business and governmental agencies.

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[144] Kenneth Abbott and Duncan Snidal, 'Taking Responsive Regulation Transnational: Strategies for International Organizations' (2013) 7 Regulation & Governance 95.

[145] Abbott and Snidal (n 146) 95-96.

[146] Errol Meidinger, 'The Administrative Law of Global Private-Public Regulation: the Case of Forestry' 17 European Journal of International Law 47.

[147] John Brainthwaite and Peter Drahos, *Global Business Regulation* (Cambridge University Press, 2000) 7.

1.3.2.3 Interactions between actors, fields and spheres

Edelman, Leachman and McAdam wrote that 'fields' such as law, organisations, and social movements can interact and overlap.[148] Events in one 'field' can affect activities in the other fields, or cause changes to occur.[149] For example, laws regulating organisations can cause organisations to turn to their legal environments for ideas about what it means to be in compliance with the law, and 'legal environments become the arena within which organisations collectively construct the meaning of compliance'. Social movements can also shape the legal landscape by lobbying for changes in the law and by influencing how the law is practised.[150] They suggest that examining these overlapping fields together can reveal new insights, including that the law is interpreted according to existing or emerging ideas; commercial organisations can promote or thwart both legal and social movements' goals and social movements can be a powerful stimulant for legal and institutional changes.[151]

An alternative perspective places the 'social sphere' at the centre of the analysis. Lange and Haines sought to transcend dichotomies between 'state and market, citizens and consumers, social movements and transnational corporations' in their analysis of regulations.[152] In particular, they noted that the 'social sphere' encompasses a range of

[148] Lauren B. Edelman, Gwendolyn Leachman and Doug McAdam, *On Law, Organisations, and Social Movements* (2010) 6 Annual Review of Law and Social Science 653, 675.

[149] Edelman, Leachman and McAdam (n 150) 655.

[150] Edelman, Leachman and McAdam (n 150) 656.

[151] Edelman, Leachman and McAdam (n 150) 675.

[152] Bettina Lange and Fiona Haines, *Regulatory Transformations – Rethinking Economy-Society Interactions* (Hart Publishing 2015).

actors, often difficult to categorise, but which collectively create a 'complex hybrid regulatory arrangement' that involves private, national and transnational actors.[153] As with CSR, social actors can exert pressure on corporations to comply with law. Social actors and activists, can introduce new competing ideas within organisations.[154] These 'sites of internal contestations' can cause internal shifts and be effective at achieveing movement objectives.[155] The MSA's relationship to CSR standards and the UNGPs is an example of the capacity of the 'social spheres' to overlap. Even though the MSA does not refer to CSR, business and human rights or the UNGPs, I found that actors in these different fields came together to influence certain changes in behaviour. Their activities and ongoing interactions are fuelled by activists, consultants, lawyers, civil society and academics, who continue to interact, debate and discuss new ideas.

While the literature uses a range of terms: 'spheres', 'fields', and 'systems', collectively, they convey the notion that changes are triggered by events and interactions between range of actors, organisations and movements. Extending the collective idea of interaction in a new direction, I show how these theories work together within corporations, and in the broader national and international contexts.

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[153] Lange, Haines and Thomas (n 104), 189-199.

[154] Robert D. Benford and David A. Snow, 'Framing Processes and Social Movements: An Overview and Assessment' 26 Annual Review of Sociology 611.

[155] Edelman, Leachman and McAdam (n 150), 660-661.

1.3.2.4 Recursive law

My research reveals that s 54, as a piece of domestic legislation, has an influence on standards in other territories, and since 2018, it has undergone several changes. In recent developments, the government has used the provision to influence foreign relations and as an instrument of trade and human rights policy. As recently as January 2021, the government announced that sanctions would be added to s 54 to respond to the human rights abuses in Qatar, Russia and China.[156] A state-run registry is now in place, and the requirement to publish MSA statements will soon cover public authorities, local council and government departments. At the same time, some NGO actors seemed to be losing interest in s 54, having discovered an alternative regulatory approach known as 'human rights due diligence' ('HRDD'). Initially, s 54 was perceived to be ground-breaking, but over time, as more countries adopted UNGP-aligned mandatory due diligence legislation, s 54 fell behind. I found that some regarded s 54 as merely an inferior derivative of the UNGPs and HRDD. The endorsement of HRDD as a self-regulatory process for greater corporate accountability, could be regarded as a 'paradigm shift', which ultimately forced the UK government to amend s 54 and opened the policy agenda to a new proposal: the consideration of a Human Rights and Environment Act, with broader scope and explicit requirements.

[156] In January 2021, the Foreign Secretary announced moves to introduce financial penalties for s 54, in response to the human rights abuses prevalent in the Chinese cotton industry. See HM Government, '*UK Government announces business measures over Xinjiang human rights abuses*' (*gov.uk*, 12 January 2021) <https://www.gov.uk/government/news/uk-government-announces-business-measures-over-xinjiang-human-rights-abuses#:~:text=UK%20Government%20announces%20business%20measures%20over%20Xinjiang%20human%20rights%20abuses,-English&text=Foreign%20Secretary%20announces%20measures%20to,human%20rights%20violations%20in%20Xinjiang> accessed 21 August 2022.

To explain this phenomenon, I adopt the concept of 'recursive law'. Halliday and Carruthers' used the financial crisis in 2009 to explain global convergence of corporate bankruptcy laws. They asked where global norms originated, how a single global standard emerged and how national lawmakers engaged global norms and institutions and vice versa. They argued that legal reform is recursive because it goes through a process of oscillation between formal law and law in practice until a new equilibrium is established.[157] They also suggested that the formal legal processes are iterative. International legal norms influence domestic law through recursive processes of national legal change involving domestic lawmakers and implementing actors, such as companies, industrial associations, and legal experts. At the same time, domestic legal processes are affected by the balance of power between international and domestic actors and the cultural distance between international norms and the domestic legal tradition. Halliday called this the 'global construction project'.[158] Specifically, Halliday and Carruthers argue that formal legal processes are iterative on a global and transnational scale. The iterative process is caused by several characteristics, including the 'indeterminacy of law', 'contradictions between standards', 'diagnostic struggles', and 'actor mismatch'.[159] International legal norms influence domestic law through recursive processes of national legal change involving domestic lawmakers and implementing actors, such as companies, industrial associations, and legal experts. At the same time, domestic legal processes are affected by the balance

[157] Terence C. Halliday and Bruce G. Carruthers, *Bankrupt: Global Lawmaking and Systemic Financial Crisis* (Stanford University Press, 2009) 363.

[158] Terence C. Halliday, 'Crossing Oceans, Spanning Continents: Exporting Edelman to Global Lawmaking and Market-Building' (2004) 38 Law & Society Review 213, 216.

[159] Terence C. Halliday and Bruce G. Carruthers, 'The Recursivity of Law: Global Norm Making and National Lawmaking in the Globalization of Corporate Insolvency Regimes' (January 2007) 112(4) American Journal of Sociology 1135.

of power between international and domestic actors and the cultural distance between international norms and the domestic legal tradition.

Halliday and Carruthers' work on recursive law links back to Edelman's theory of 'endogeneity' discussed earlier. According to them, 'endogeneity', the process by which the law is interpreted in light of corporate norms, could be considered an instance of recursivity within the national lawmaking context. But they point out that with more actors participating in global lawmaking, the transnational institutionalisation of the norms and interests produces even more uncertain outcomes.[160]

My thesis provides empirical evidence of this recursive phenomenon and demonstrates how theoretical concepts relate. I describe the interaction between 'business and human rights' norms and the legal requirements of s 54 drive the momentum for HRDD in different states, which not only adopt but improve upon the standards set by s 54.[161] But the reforms and proposed changes to s 54 reveal that the existing literature fails to get to grips with some of the most puzzling questions raised by s 54: to what can we attribute the changes to s 54? Is s 54 one step in the pyramid of sanctions or an aspect of new governance? Are recursive effects cyclical or progressive? At a macro-level, what does the tension between social concern and market-driven interest tell us about light touch

[160] Halliday (n 161) 216-17.

[161] Ionel Zamfir, 'Towards a mandatory EU system of due diligence for supply chains' (*European Parliament Briefing*, October 2020) < https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI(2020)659299_EN.pdf> accessed 21 August 2022.

regulations? What is the effect of the 'interplay between legal, market and social forces', assuming that they are challenged and fostered by one another?[162]

1.4 Methodology

My thesis is based on fieldwork conducted between March 2018 and January 2021 using a mixture of methods to explore the contextual detail of complex debates, developments, and relationships between actors concerned with modern slavery. These included participant observation, qualitative interviewing, conversation analysis and the analysis of texts and documents.

1.4.1 Identification of relevant actors

I started my research with a document review of parliamentary select committee reports, consultation documents and Hansard debates on the MSA to understand the government's legislative intentions. I gathered that the government relied extensively on the experience and expertise of large corporations and well-known NGOs. It was also clear that the government effectively ceded its oversight function to CSOs and NGOs.

NGOs and CSOs were dominant players from the outset. Not only did they coin the term 'modern slavery', they also featured prominently in the early stages of the legislative process, actively participating in the pre-legislative consultations. To get a sense of the emerging debates, I reviewed 14 reports published by various NGOs and CSOs, including the FTSE 100 reports by the Business and Human Rights Resource Centre from 2016 to

[162] McBarnet, Voiculescu and Campbell (n 57) 43.

2020 which evaluated how the top 100 companies on the London Exchange were responding to s 54. The overall opinion seemed to be negative and critical, but this changed over the years.

Much of the existing literature focuses on compliance, and there are also studies on why companies have not complied. My intention was to look beyond statutory compliance, so, I chose to speak to companies that were already fulfilling the requirements of s 54. To get a sense of the developing norms, I analysed 296 MSA statements (2016 and 2017) from the Modern Slavery Registry, the only repository of MSA statements designed to ensure free and public access to the companies' disclosures. Managed by the Business and Human Rights Resource Centre and supported by a number of NGOs, the registry is an example of CSO monitoring as envisaged by the government. I selected three non-retail industries: financial services, information technology and pharmaceuticals because they were less mature industries when it comes to CSR standards (in contrast to the retail fashion and manufacturing industries). Initially, I reviewed their MSA responses to the six non-mandatory reporting categories but found that it was very difficult to verify the accuracy of their claims. I did find that large multinationals tend to take the requirements more seriously by adhering to the recommended categories in their MSA statements. As a second step, I looked for patterns, frequently used concepts or words and found two key features. The first was that there was a tendency to refer to external sources or delegated authority, such as auditors or technology providers, multistakeholder organisations and industry bodies. There were also references to external standards not mentioned in s 54. Corporations fell back on CSR initiatives they had established before s 54. Later on,

through interviews, I was told that this is the result of a 'scramble to comply' in the early days.

While most NGOs and CSOs were critical of the statements and rate of compliance, it was also clear that they worked with companies and their influence was clearly evidenced in the MSA statements by references to NGOs, trade bodies, and UN organisations, such as the UN Global Compact. This review highlighted the important roles played by consultants and lawyers, who tended to refer to international treaties and instruments, including OECD conventions, international trading standards (ISO). Additionally, statements would often include phrases such as 'our operations are confined to the UK' and 'we expect our suppliers to comply with local law', which indicates an awareness of the transnational impact of MSA statements.

The language of MSA statements also mirrors corporate declarations in response to existing legislation. For example, 'zero tolerance' is frequently used in the bribery context, and MSA statements replicate this phrase. When writing about suppliers and employees, they used different terminology to indicate legal responsibilities, such as 'we require' for employees with direct contractual obligations, and 'we encourage' or 'we expect' when they referred to suppliers that they were indirectly connected to. They also made references to legal standards or regulations in other areas, including labour, health and safety, money laundering, bribery, human rights and the environment. The statements gave the impression that s 54 was 'part of a patchwork of initiatives'.[163] My subsequent interviews with NGOs

[163] Quote from NGO representative at Innovation Forum Conference: How Business Can Tackle Modern Slavery and Forced Labour, 7-8 March 2018.

and CSOs confirmed this, and revealed a spectrum of legal agendas, including many with strong commercial objectives.

The second characteristic I noted related to the language used in the statements, which tended to declare rather than explain. Based on my review, an average of 30% of all statements I looked at were written in declaratory sentences, such as 'we have low risk of modern slavery', or 'we have systems in place', or 'we conduct due diligence to the highest standards' but very little explanation on how they were going about it. I decided that I would try to identify the 'how' in subsequent conferences and interviews.

I attended some conferences early in my fieldwork to identify other actors not mentioned in documentary sources. At conferences, multinational corporations represented most participants. I found several companies taking s 54 seriously and representatives who were willing to talk about what they were doing and why. Some introduced me to other people in their companies. Sometimes, I sought out other representatives from the same companies participating in a different conference. With some exceptions, multinationals were more open to discussing the legislation and their responses to it than smaller to medium sized companies.

It was evident that multinationals had greater resources to recruit specialists whose job descriptions encompass modern slavery, and they tended to refer to specific strategies for combatting modern slavery in their MSA statements. Smaller, non-retail companies had fewer staff with broader sets of responsibilities. They tend to make aspirational declarations in the MSA statements such as, 'we have zero tolerance to slavery in all its forms and are committed to ensuring to the best of our abilities that no slavery exists in any part of our

own business or that of our supply chain', which demonstrated a lack of specialist knowledge and dedication to the issues. So, I decided to focus on multinationals and explore the transnational dimension of s 54.

1.4.2 Data collection: interviews and observations

As my research evolved, a recurring theme was how different actors worked together to advance the legislation and respond to it. The law itself provided a starting point but the MSA statements did not offer comprehensive insight into how companies responded to s 54. Since they were the product of compliance, how little information they revealed was an interesting finding and a motivating factor in my further ethnographic research at conferences and semi-structured, one-on-one interviews. As Argyrou pointed out, the research I have conducted 'is not predicated solely on the concrete body of legal rules' and does not concern a hermeneutical quest for a legal meaning and/or interpretation. Accordingly, the exclusive use of legal and doctrinal research methods would have been too restrictive. It is more important to consider the relevant actors in context to go beyond the superficial criticisms and understand how the law operates in practice.[164]

I decided to supplement my research with observation to identify less visible effects of s 54 through corporate practices. To observe the interactions between actors, I attended ten industry conferences and seminars between 2018 and early 2021 (some online). They can be roughly categorised into three types: the industry/multistakeholder events, the government/inter-governmental events, and academic events. Industry and

[164] Aikaterini Argyrou, 'Making the Case for Case Studies in Empirical Legal Research' (2017) 13 Utrecht Law Review 95.

multistakeholder events such as Innovation Forum's conference on *How business can tackle modern slavery and forced labour* and Front Group's *Third Modern Slavery and Human Rights in Supply Chains Conference* were held at law firms, but the organisers were private companies. These events were attended by consultants, NGOs, lawyers, government and corporate representatives. The atmosphere felt transactional – NGOs, lawyers and consultants were offering their expertise, while corporate employees and government representatives were there to learn (some even treated the event as a way of training new staff). Multistakeholder events like the UN Global Compact's Modern Slavery Working Group meeting on 23 September 2020 was a collaborative space for corporations, with invited speakers from academia sharing information on the latest research. (See Annex II for a list of conferences attended).

Government/inter-governmental events such as the All-Party Parliamentary Group meetings *on Sport, Modern Slavery and Human Rights* were hosted by certain members of the House of Lords to advance the legislative agenda, make improvements to the law and facilitate collaboration between NGOs and MNCs. Consultants and advisors are not usually invited to these meetings. Internationally, I attended the *UN Forum on Business and Human Rights* in 2018, which had an undeniably commercial atmosphere. The Forum takes place annually, and is attended by NGOs, consultants, lawyers, academics, and corporate representatives. Many of the participants describe it as a networking opportunity. Surprisingly, governments from developed nations such as the UK were conspicuously missing. Similar to conferences I attended in the UK, there was a high level of commercial networking activity taking place.

Academic conferences tend to focus on learning from practitioners. For example, King's College's *Workshop on Public Procurement and Modern Slavery*, invited procurement officers from the public sector to share practical experiences with academics – the exchange was aimed to produce collaborations and inform academics about how things really work in practice. Academics and consultants mutually benefit from collaborative projects, Norton Rose and the Bingham Centre for the Rule of Law's report on *Human Rights Due Diligence in Supply Chains Forum* cast both organisations as leaders in the field, creating a scientific and academic basis for Norton Rose, while Bingham enjoyed the increase in exposure and greater research impact. Government-led academic events such as the Modern Slavery Policy and Evidence Centre and the Home Office's recent roundtables were geared towards the academic community, so government can learn from the latest evidence and analysis. There are also events held by the academic community for the public, such as the Oxford Union's *Modern Slavery: Hidden in Plain Sight* panel discussion, which was attended by NGOs and legislators, designed again to offer useful practical knowledge and experience for an academic audience.

Although conferences provided useful insight on the interactions between actors, they are public forums. As such, participants tend to limit the information they share, which results in the same messages being repeated from the same actors: NGOs bemoaned the lack of compliance, the severity of modern slavery, while corporations chose to divulge only the excellent work they were doing. Academics too, tended to fall into critique mode. There was certainly a sense that people were taking sides at public events. Often, I observed more interesting dynamics during the coffee breaks, in private conversations. For instance, when I introduced myself as doctoral researcher looking into s 54, but that my background

is in corporate law and I was a solicitor in litigation and investigations at a London law firm, one NGO representative labelled me a 'reformed lawyer'. Cliquey behaviour was dominant and contradicted what I had observed with MSA statements, which was that corporations were actively working with NGOs. The most vocal participants were the consultants, multistakeholder organisations and advisors.

Despite the shortcomings, conferences offered valuable networking opportunities. Many of the contacts I met at these conferences became interview participants. I decided at this stage to focus on the five institutional actors I identified by attending conferences: (1) multinational corporations, (2) NGO or CSOs conducting work on modern slavery, (3) external advisors, (4) governmental bodies and publicly funded institutions, such as the Commonwealth Parliamentary Association; and (5) interested third parties, such as academics and investors.

I conducted 47 individual interviews (see Annex I for a breakdown of interviewee groups and actors), which were informed by and analysed in the context of the data I had already collected. I spoke to a number of actors in each group, though deliberately obtaining more than one view per organisation. Each interview was recorded, then transcribed. The transcription process was also the first stage of analysis – I highlighted important passages and made notes in the margin of how the passage might relate to another interview or event. While it was clear that many participants wanted to impart a particular narrative, I focused on details which are not obvious from reading the MSA statements or listening to the speeches at conferences. Early on during my fieldwork, I identified lawyers as a key actor but failed to appreciate the finer difference between lawyers and compliance counsels. When I identified this difference, I returned to the field and collected more data

from compliance counsels. The process was iterative. I also compared accounts to identify more widespread or pervasive trends. Through this process of thematic content analysis, I unexpectedly found that the interactions between actors led to changes and movement in the legal sphere beyond the UK as all of the actors involved in or impacted by s 54 were operating internationally or transnationally.

This thesis is primarily based on data collected; however it is important to acknowledge that prior to undertaking this research, I advised corporations on s 54 compliance as a lawyer. My pragmatic views on corporate compliance also drove the direction of this research. As an advisor, I knew that the ways corporations behave depends on a range of factors, such as the purpose of the business, their exposure to reputational harm and a balancing exercise between benefit and risk. During my fieldwork, I was involved in a project funded by the Modern Slavery Policy and Evidence Centre on the effectiveness of s 54, which focused on comparing the provision with other corporate regulations in the UK.[165] Therefore, I was both an observer and a participant in the modern slavery 'world'. As such, the research is not devoid of preconceptions, such as the recognition that s 54 is not as effective as it could be, and that the government has taken a hands-off approach to implementation. But in presenting my findings, I moved away from themes such as 'compliance' and 'transparency'. Instead, I structured my data analysis in a chronological format because it is best suited to demonstrate the changes and effects of law over time.

[165] Lisa K.E. Hsin and others, Accountability, Monitoring and the Effectiveness of S 54 of the Modern Slavery Act: Evidence and Comparative Analysis (2021).

Second, I found that, to justify their roles, multinational employees are generally more invested in their efforts to comply with the MSA and to dispel the impression that they were not doing enough; and third, they wanted to distinguish themselves and the companies they work for from the 'laggards' by actively participating in research, conversations and discussions relating to modern slavery. I took these factors into account when assessing the information they provided and triangulated their accounts with those of more neutral parties.

1.4.3 Data analysis and presentation

The analysis was iterative and organic. I took a leaf out of Braithwaite and Drahos' research approach of thinking and having conversations about my data along the way.[166] After I identified certain actors from documentary sources, I started to categorise the people I interviewed: NGOs, lawyers, CSR professionals and so on. This membership category analysis reduced the data down from how individuals perceived s 54 to how groups thought about it. Among the large group of external actors, I found it difficult to categorise actors; rather I used a work typology to analyse their activities, thereby forming sub-groups within the general category.[167] This highlighted what each group thought and understood about the provision, which also revealed assumptions and pre-judgements and enabled comparisons between groups. For instance, NGOs and academics were similar as critics of s 54, often using terms such as 'weak', 'toothless' and 'ineffective' to describe the provision, which created opportunities for them to act as corporate consultants. There were

[166] Simon Halliday and Patrick D. Schmidt, *Conducting law and society research: reflections on methods and practices* (Cambridge University Press 2009), 240-251.

[167] Nicholas Walliman, *Social research methods* (Sage 2006).

also anomalies, or individuals who did not agree with the group or confirm to the categories. I found many instances of this among the actors I spoke to, especially lawyers and advisors, who were more altruistic than I had expected, while one or two NGO representatives understood the difficulties of compliance for large corporations. Periodic analysis of collected data helped to identify further data for collection. In some instances, this was easy to achieve, as I saw some actors repeatedly, in different settings (conferences, seminars etc.). Over time, some actors, such as Slavery Alliance, or the Home Office would be mentioned by multiple actors, in different interviews. I cross referenced these and collected them to contextualise what I have already seen and heard.

This thesis begins with s 54 and gradually zooms out chapter by chapter, to reflect the analysis from the most immediate effect to the widest ripple. I also found that my data fitted a broadly chronological format. Chapter 2 and Chapter 3 describe the UK origins of s 54 and the international legal and institutional context. For this, I drew on secondary sources. I collated documents (e.g., legal documents, ministerial policy papers, and parliamentary reports) to paint a picture of the leading institutions and actors involved in proposing, lobbying, and designing s 54 of the MSA the relationship between them. I also gathered different documents – such as parliamentary debates and ministerial and parliamentary reports – to describe the provision's conversation and criticism. For these chapters, I also drew on the data collected through interviews and ethnographic observation, mostly with NGOs and CSOs who were involved at the time. For Chapters 4-8, I rely mainly on interviews and ethnographic observations to identify how different actors and institutional processes changed in response to s 54. I describe how key actors viewed, felt about, reacted to, or provided input into its interpretation implementation.

These ground-level accounts broaden the scope of the thesis, organically taking it from a UK concern to a global problem. I analyse how actors engaged with the law and international standards during the first five years of s 54's implementation.

1.4.4 Limitations of research methodology

For this thesis, I have chosen to collect data from the most engaged and active participants in responding to modern slavery. In particular, I have been limited to actors who were enthusiastic about the discussing the provision. Given that s 54 only applies to corporations turning over £36 million a year, I have also confined my research to multinationals and motivated actors, such as the 'experts' described in Chapter 6. Having relied on data from a sharply defined bubble of interested activists, this thesis may present an unbalanced picture of the overall reaction to the legislation across the corporate world, domestically and globally. If this project could be extended or further developed, a closer examination to other jurisdictions, in different industries, smaller corporations and at different stages of the supply chain, for instance, will provide further insights on the impact of s 54.

While this may produce a skewed picture of the effect of s 54, it does not undermine the primary objective of my research, which is to identify empirical evidence that either supports or contradicts the commonly accepted but factually unproven criticism that s 54 is ineffective, weak and produced no response.

1.5 Thesis outline

Chapter 2: Enacting s 54: antecedents and context

This chapter sets the scene and introduces s 54. I begin by exploring the problem of modern slavery in global supply chains and explain how this system of subcontracting had created a 'governance gap' over the activities of transnational corporations. It explains why s 54 was introduced. Against this background, I set out the social, political, commercial and legal contexts, including CSR, the UNGPs and corporate involvement in the legislative process. Drawing on documentary evidence, such as committee reports, Hansard, and interviews, I reveal how the provision was regarded as a 'breakthrough'.

Chapter 3: Uncertainty and opportunity: early compliance

Despite being 'world first', with the likes of the Walk Free Foundation calling on the top economies of the world to enact similar laws, s 54 was heavily criticised for its lack of sanctions and vague requirements. The light-touch provision was assumed to be less effective than command-and-control style regulation. This chapter takes a closer look at published MSA statements as a way of understanding how corporations interpreted the requirements of s 54. Reviewing the statements alone would suggest that many corporations were simply restating existing policies and standards, but in practice, they were confused about what the law required, concerned about doing more, and sought to go 'beyond' compliance to prove 'transparency' in their supply chains. These interesting and immediate effects raise questions about *how* to comply and what 'beyond compliance'

means. This chapter is based on interviews and a documentary review of 294 MSA statements, and analysed by considering the different 'fields', 'systems', 'spheres' involved with s 54 compliance. Through the generalised responses, it is possible to identify two main groups: NGOs and corporations. But as later chapters show, the reality is far more complex.

Chapter 4: Socially embedded businesses?

To explore the meaning and effects of s 54, Chapters 5-7 focus on the actors who engaged with or responded to s 54. This chapter zooms in on corporate employees most affected by s 54: the legal, procurement and CSR professionals, and the dynamics between them. A flurry of activities resulted in response to s 54. Many procurement officers only became aware of exploitation in supply chains because of s 54, but their business priorities conflicted with new practices designed to address 'modern slavery', including new suppliers checks and new industry standards. CSR departments felt s 54 strengthened their cause, but struggled with s 54's legal implications. They felt out of their depths and deferred to legal advisors to avoid potential risk to the reputation and profitability of the corporation. Although some doubt the effectiveness of s 54, this chapter shows that law without teeth can still have wide-ranging effects, shaped by business strategy, corporate structure, personnel dynamics, leadership and corporate purpose.

Chapter 5: Lawyers, risk and the regulatory landscape

This chapter delves into the role of lawyers and the meaning of 'legal risk'. I first introduce the variety of legal advisors involved in a corporations' response to s 54, and outline the kind of concerns they had about revealing information in MSA statements. This chapter looks at the interaction between lawyers and individual responses to s 54, which raises questions about the role of lawyers, legal/client ethics and the profession. In particular, I noted that while s 54 lacked sanctions, existing legal standards, such as the Bribery Act 2010, Companies Act 2006, and the exposure to strategic litigation can be incorporated to creatively enforce the fear of potential 'legal risks', which encouraged corporations to go 'beyond compliance', and to strike a balance between business interests and 'doing the right thing'.

Chapter 6: A lucrative new field of experts

Outside of corporations, s 54 generated a new industry of service providers that offer 'compliance solutions'. These providers rely on s 54 as an income stream. Even NGOs have joined the host of consultants and technical data-driven providers to generate valuable funding. These service providers claim to help corporations with compliance, by offering three types of service: (1) facilitating discussions, (2) conducting investigations, and (3) managing data and information. But none of these activities are strictly required under s 54. In effect, these actors work by reframing s 54 as a problem that needed to be addressed with new techniques. These actors hold themselves out as enforcers by criticising corporate compliance, while they fill in the ambiguous parts of s 54 with their activities, unwittingly generating new norms and expectations.

Chapter 7: Exporting s 54

In the final two Chapters, the focus pivots to the international effects of s 54. Chapter 7 explores how s 54 has influenced international discussions on labour exploitation and reveals the different ways and actors involved in disseminating s 54 around the world. Through a number of transnational actors, such as think-tanks and public authorities, like the Commonwealth Parliamentary Association, the government has also invested money to influence the policy agenda in other countries. In doing so, s 54 can be understood as part of a 'recursive' process, which engenders unforeseen and unexpected results.

Chapter 8: Beyond s 54

This final empirical chapter describes the second part of the 'recursive' process between international business and human rights law, specifically the effect of the UNGPs on s 54. I suggest that the endorsement of human rights due diligence as a self-regulatory process for greater corporate accountability contributed to the UK government's decision to amend s 54 and opened the policy agenda to proposed amendments to s 54 and the introduction of a a legislative proposal: The Human Rights and Environment Act.

2. ENACTING S 54: ANTECEDENTS AND CONTEXT

2.1 Introduction

In April 2013, the collapse of the Rana Plaza factory building in Dhaka, Bangladesh, caused the death of 1,135 garment workers. The extremely poor safety conditions of the overcrowded factory building led to a public outcry and calls for change in the global fashion industry.

Yet, attributing responsibility for the Rana Plaza tragedy was not a straightforward exercise. Did factory operators flout national laws? Were local governments failing to enforce these laws? Did multinational retailers including major brands like Adidas, H&M, Zara, Primark create the conditions that forced workers into such unsafe workplaces? The nature of commercial organisations had expanded from small vertical structures, with products sourced and made in the same or nearby geographical location(s), to multinational corporations with parts of their business activities outsourced beyond the borders of their home countries.[168] Multinational corporations are likened to 'an octopus with far-reaching arms that nation-states with their limited powers are unable to pin down.'[169]

To understand the context for the enactment of s 54, we first have to understand how the law and the practice of outsourcing have allowed corporations to be 'irresponsible' through the emergence of a 'governance gap'[170] allowing exploitative labour practices to

[168] Dorothée Baumann-Pauly, *Managing Corporate Legitimacy: A Toolkit* (Routledge 2013).

[169] Rainer Hellmann, *Transnational Control of Multinational Corporations* (Marianne Grund Freidberg tr, Praeger Publishers 1977).

[170] Diane Bulan Hampton, 'Modern Slavery in Global Supply Chains: Can National Action Plans on Business and Human Rights Close the Governance Gap?' (2019) 4 Business and Human Rights Journal 239, 239-240.

form and flourish. In this chapter, I examine this governance gap and the efforts to close it in recent years through a discussion of three key themes and developments. I focus first on legal, political, and social context for s 54's enactment. In particular, I analyse how debates about how corporate activities have been framed as irresponsible conduct by law and CSR, which shaped and reshaped the expectations, activities and reactions to labour exploitation in transnational supply chains. While my primary focus is the UK, such attitudes have been strongly influenced by movements and initiatives beyond the UK, hence I also engage with relevant legislation in the US.

Against these attitudes and debates, I show how 'modern slavery' is represented as a 'problem' suitable for domestic legislation justified in three ways: (1) consolidation of regulations in the name of deregulation, (2) alignment with international standards to symbolise the UK's stance on human rights, and (3) business efficiency and leverage against overseas suppliers. I show how s 54 was an expedient compromise of these interests, but a tenuous compromise. But by constituting modern slavery in supply chains as a problem that warrants a legal solution, s 54 becomes the interface for existing norms, social and moral expectations, corporate policies, practices, and international law. Edelman, Leachman and McAdam's concept of of 'overlapping fields' encompasses some of Lange and Haine's discussion about the 'social sphere', which suggest that social movements are powerful stimulants for developments in law. Edelman et al do not refer to these influences, but they provide a similar analytical framework based on groupings of actors with common ideology, profession, motivation or identity, such as law, economics, public interest or politics. Then, they identify how the groups behave and respond to

external and internal changes.[171] Events in one 'field' can be an 'exogenous shock' in another 'field'. At the same time, 'incremental endogenous shifts' can result from internal struggles within organisations.[172] This chapter describes the different avenues through which s 54's enactment brought about scrutiny and participation of the 'social sphere' and how s 54 could be regarded as a product of movements in other fields.

2.2 A problem: corporate irresponsibility in supply chains

Soon after Rana Plaza, major players in the fashion industry, mainly from Europe, set up an initiative called the 'Accord on Fire and Building Safety in Bangladesh' in May 2013, often referred to as 'the Bangladesh Accord'.[173] This initiative is an independent agreement between fashion brands and trade unions designed to work towards a safer garment industry in Bangladesh. The current signatories of the Accord pledge to enable a working environment in which basic standards of workplace health and safety measures are implemented and monitored by an independent inspection programme involving retailers, workers, trade unions, local governments, and NGOs. Additionally, signatories make factories publicly available for inspections and devise remedies for breaches of the key health and safety guidelines.[174]

[171] Edelman, Leachman and McAdam (n 150) 675.

[172] Edelman, Leachman and McAdam (n 150) 675.

[173] 'Over 70 fashion companies sign new accord for safer factories' (*YarnsandFibers News Bureau*, 2 September 2021) <https://www.yarnsandfibers.com/news/textile-news/over-70-fashion-companies-signs-new-accord-for-safer-factories/> accessed 21 August 2022.

[174] Christopher Wickert and David Risi, *Corporate social responsibility* (Cambridge University Press 2019) 2-3.

But since the Rana Plaza tragedy, the International Labour Organisation ('ILO') found:

> no fewer than 109 accidents have occurred. Among these, at least 35 were textile factory incidents in which 491 workers were injured and 27 lost their lives. In the absence of a well-functioning labour inspection system and of appropriate enforcement mechanisms, decent work and life in dignity are still far from reality for the vast majority of workers in the garment industry and their families.'[175]

The problem is worsened by the practice of outsourcing. Commercial pressures for faster and cheaper goods are considered by many to be the roots of exploitative labour practices, allowing modern slavery to exist in increasingly complex and fluid global supply chains. Steve New, an expert in supply chain management, attributes forced labour and exploitation to ruthless negotiations that drive down prices, since the pressure on suppliers to cut costs to maximise profits usually result in exploitation of workers. [176] Legal scholars have identified similar issues.[177] In short, the push for cheaper goods creates the conditions for modern slavery to exist and persist. The problem is made worse by the variety and 'distinctive combinations of elements' in supply chains.[178] Rather than being 'chain-like', one informant told me it could be accurate to describe the network of sourcing as a 'web'.

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[175] International Labour Organisation, 'The Rana Plaza Accident and its Aftermath' <https://www.ilo.org/global/topics/geip/WCMS_614394/lang--en/index.htm> accessed 21 August 2022.

[176] New (n 6) 703.

[177] Nolan and Bott (n 122); and Sarfaty (n 124).

[178] Hugh Collins, '*The Weakest Link: Legal Implications of the Network Architecture of Supply Chains*', in Marc Amstutz and Gunther Teubner (eds), *Networks: Legal Issues of Multilateral Co-operation* (Hart Publishing, 2009) 187-210, 193.

Commercial organisations and consumers who purchase these goods and services are (in most cases, unwittingly) allowing exploitative labour practices to form and flourish. Unfortunately, exploitation often occurs in 'states that cannot or will not fulfil their obligations to protect the rights of their own people.'[179] A 'governance gap'[180] formed by the lack of legal protection in some countries and limited jurisdictional scope of traditional state law left space for global supply chains to develop organically, unguided by law.[181] Supply chains are formed by a complex web of legal and non-legal instruments; from carefully negotiated contracts, partnership agreements to oral contracts and customary dealing. In practice, sub-contracted work is often further sub-contracted to smaller companies, to the extent that large multinational corporations can end up not knowing where their products originated. For large companies, it can take up to three months to trace the provenance of one product and over a year to map out its supply chains. This phenomenon has been described by anthropologists as an 'ethic of detachment'[182] where companies are constantly engaged in establishing limits and endpoints to relationships in their supply chain, ensuring that contracts are time-bound and spatially defined, resisting proximity and intimacy, and framing relationships around difference and distance. Alan

[179] Dorothee Baumann-Pauly and others, 'Setting and Enforcing Industry-Specific Standards for Human Rights: The Role of Multi-Stakeholder Initiatives in Regulating Corporate Conduct', *Business and Human Rights: From Principles to Practice* (Routledge 2016) 108.

[180] Penelope Simons and Audrey Macklin, *The governance gap : extractive industries, human rights, and the home state advantage* (Routledge 2014).

[181] Andreas Georg Scherer and Guido Palazzo, 'The New Political Role of Business in a Globalized World – A Review of a New Perspective on CSR and Its Implications for the Firm, Governance, and Democracy' (2011) 48 Journal of Management Studies 899, 900.

[182] Cross (n 4) 36.

Schwartz, a prominent contract law scholar remarked on the lack of legal solutions or understanding of supply chains. He said in a keynote address in 2019,

> People are worried about, legitimately worried about human rights violations…down the supply chain…to firms that use slave labour or child labour…Today, the major issue is not so much, in at least a lot of industries, what does the finished product look like, and did people deliver on time?...Today the issue is how was it made? Did people do everything they were supposed to do in the factory?...The question is how can we create a twenty-first century contract law that would be relevant to what people actually do, and from the point of view of law professors and lawyers, the question is how can we teach potential lawyers to function in the modern supply and management chain?[183]

From this perspective, s 54 could be regarded as an attempt to foster a corporate environment that encourages greater attachment. Simpson et al described this phenomenon as 'psychological distance', which enables individuals to perceive modern slavery in abstract terms. They found that increased awareness of how modern slavery risk can arise in their environment, and increased understanding of risk can shift organisational knowledge.[184]

[183] Alan Schwartz, Keynote Address: Modern Supply Chains and Outmoded Contract Law, (2019) 68 American University Law Review 1503.

[184] Dayna Simpson and others, 'The role of psychological distance in organizational responses to modern slavery risk in supply chains' (2021) 67 Journal of Operations Management 989, 994.

Industry experts have told me that pharmaceutical companies have problems at both ends of the supply chain with a lot of their products being used for unintended purposes, the apparel sector has untraceable problems, and agriculture and technology industries have long and complex supply chains that are much more difficult to monitor than expected.[185] As Kevin Bales observed in his anthropological work on modern forms of slavery, slavery in supply chains is as 'inconveniently sloppy, dynamic, changeable, and confusing as any other kind of relation between humans.'[186]

2.2.1 Public international law

Within public international law, the prohibition of slavery has been established as an obligation on states. Relevant legal instruments include the ILO Convention Concerning Forced or Compulsory Labour which was adopted to prohibit slavery and forced labour in 1930 ('Forced Labour Convention'), Article 4 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 8 of the 1966 International Covenant on Civil and Political Rights which covers freedom from slavery.

On forced labour, the ILO Convention on the Abolition of Forced Labour 1957 prohibits forced and compulsory labour as a means of political punishment against those with opposing conscientious views, on the basis of race and ethnicity, and as a means of economic advancement by the state (Article 1).

[185] Based on personal discussions at the Innovation Forum Conference: How Business Can Tackle Modern Slavery and Forced Labour on 7-8 March 2018 and the Third Modern Slavery and Human Rights in Supply Chain Conference: Delivering Impact Through Collaboration on 19-20 April 2018.

[186] Kevin Bales, *Disposal People: New Slavery in the Global Economy* (3rd edn, University of California Press 2012) 37.

More recent international legal instruments on forced and child labour, include the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, the 1999 Worst Forms of Child Labour Convention and 2014 Protocol to the Forced Labour Convention.

As Brad Blitz and Agnes Simic noted in their critical evaluation of the MSA, the 'emergence of new instruments in the late 1990s laid the ground for the legal regime we associate with the modern slavery challenge known today' [187] Yet, none of these instruments specifically referred to 'modern slavery'. 'Modern slavery' was a term of advocacy. As Michael Dottridge, a prominent human rights campaigner explains,[188]

> 'Modern slavery' was first proposed back in the 1970s, when it was considered and rejected for a minor UN working group that ended up with the more lugubrious title of 'Working Group on Contemporary Forms of Slavery'. The term was put to use elsewhere, as in the title of the NGO Committee for the Eradication of Modern Slavery (CCEM), which was set up in France in the mid-1990s to work for the release of migrant domestic workers held in virtual captivity in Paris.

Kevin Bales, an academic specialising in Politics & International Relations, is often credited with coining the terms 'contemporary slavery' and 'modern day slavery' to

[187] Agnes Simic and Brad K. Blitz, 'The modern slavery regime: a critical evaluation' 7 (s1) Journal of the British Academy 1.

[188] Michael Dottridge, 'Eight reasons why we shouldn't use the term "modern slavery"' (*openDemocracy*, 2017) <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/eight-reasons-why-we-shouldn-t-use-term-modern-slavery/> accessed 21 August 2022.

describe pervasive exploitation in the global economy.[189] Many campaigning organisations, such as Free the Slaves and Walk Free Foundation, based their activities on Bales' work. They have lobbied in the media and pressed governments, such as those in the UK and Australia, to adopt the term in legislation.[190] But 'modern slavery', as a standalone phrase, has no precedent in public international law, and it lacks recognition among legal practitioners and academics. In 2017, the UN Special Rapporteur on contemporary forms of slavery, Urmila Bhoola described it as effectively an umbrella term:[191]

> a hierarchy in international law exists among slavery and other forms of exploitation, with slavery being the most severe type of exploitation… [P]ractices encompassed by the term 'contemporary forms of slavery' cover traditional slavery; the institutions and practices similar to slavery, such as debt bondage, serfdom and forced marriage; and forced labour.

As Dottridge explains, 'it is not a term used in international law.'[192] Some of the practitioners I spoke to were concerned that the term glosses over the rich jurisprudence that already exists in relation to forced labour, human trafficking and other legally defined crimes. Dottridge even suggests that there are political motivations for abandoning the traditional legal categories, stating that 'the governments that have decided to use the term

[189] Bales (n 189)

[190] See Free the Slaves Global Strategic Plan, <https://www.freetheslaves.net/our-work/strategic-plan/> accessed 21 August 2022.

[191] UNGA, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences (*UNGA*, 2017) UN Doc A/HRC/36/43.

[192] Dottridge (n 191).

"modern slavery" (Australia, the UK and the USA) are ones which appear keen to abandon conventional approaches to development.'[193]

But these obligations bind nation-states internationally. Unless they are incorporated into domestic law, these established treaties and conventions have little effect on corporations or suppliers scattered around the world. This began to change in 2011 with the endorsement of the UNGPs.

2.2.2 United Nations Guiding Principles on Business and Human Rights

In June 2011, the members of the United Nations unanimously endorsed the UNGPs. The significance of the UNGPs is its explicit reference to the corporate responsibility to prevent, protect, and provide remedies in relation to human rights. Specifically, it directed corporations to 'do no harm', and set out the rights of victims to have access to both state and non-state remedies.[194]

The author of the UNGPs, John Ruggie, felt that businesses must take positive steps to recognise and mitigate the effects of their business activities on human rights and undertake human rights due diligence of their activities to assess their human rights impacts. In oral evidence to the UK's Joint Committee on Human Rights in 2009, he said:[195]

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[193] Dottridge (n 191).

[194] Joint Committee on Human Rights, *Any of our business? Human rights and the UK private sector: Report and Formal Minutes* (n 95) 37.

[195] Joint Committee on Human Rights, *Any of our business? Human rights and the UK private sector: Report and Formal Minutes* (n 95) 37.

> Companies universally will say that they respect human rights. I have never come across a company website that said, "We do not respect human rights". The question that we ask them is "Okay, that is great. We are delighted that you respect human rights, but how do you know that you do? What steps do you go through to demonstrate to yourself that you do, and are those steps adequate? Most of the time there are no systems in place.

The UNGPs marked a significant departure from the basic principles of public international law, which has traditionally been a framework envisioned and designed to govern the activities of nation-states, not individuals or corporate actors. The UNGPs make several specific reference to the global importance of corporations, including that 'Business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties.'[196] But 'at present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction.'[197] However, 'there are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses.'[198] It cautioned that 'States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a

[196] UNGP Framework (n 94) 15.

[197] UNGP Framework (n 94) 10.

[198] UNGP Framework (n 94) 4.

smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights.'[199]

The UNGPs recognised the myriad actors involved in transnational governance.[200] Even though they consist of a set of non-binding norms and standards, there is a growing sense of a business and human rights regime, which includes 'human rights due diligence'.[201] Commentators refer to the UNGPs as a 'high watermark of business and human rights'[202] and a 'global authoritative standard'. Building on from the UNGPs obligation on states to impose legislation requiring businesses to disclose information about its supply chains.[203]

2.2.3 'Embedded liberalism' and Ruggie's vision for corporate social responsibility

In 1982, John Ruggie used the phrase 'embedded liberalism' to describe the post WWII international economic order.[204] He referred to Karl Polanyi's, *The Great Transformation*, which characterised the 19th Century economic order as 'disembedded'

[199] UNGP Framework (n 94) 5.

[200] UNGPs (n 94).

[201] UNGP Framework (n 94), Principles 17-22, including States obligation to implement due diligence in Principle 3.

[202] Alex Newton, *The Business of Human Rights: Best Practice and the UN Guiding Principles* (1st edn, Routledge 2019).

[203] International Organisation of Employers, '*K*ey developments in mandatory human rights due diligence and supply chain law: Considerations for employers' (September 2021) <https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=156042&token=ee1bad43bfa8dbf9756245780a572ff4877a86d5> accessed 27 August 2022.

[204] John Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order' (1982) 36 International Organisation 379, 382-382.

from social bonds that 'bind individuals within social collectivities'.[205] Polanyi described the tension between *laissez-faire* and 'social' concerns as the 'double movement'. Ruggie reformulated this idea for the 20th Century and termed it 'embedded liberalism' to describe the international consensus that emerged post-World War II regarding the need to 'reimpose broader and more direct social control over market forces';[206] to embed markets, commerce and trade, within 'social community'.[207] In short, the international community struck upon a middle-ground between the extremes of the *laissez-faire* liberalism and the quest for national self-sufficiency economic policies of the 1930s.[208]

The embedded liberal approach suggests that markets, trade and the pursuit of profits, can only promote the 'social good' so long as they are embedded within an *institutional framework* that both moderates and directs their outcomes. Ruggie argues that the global public domain is an institutionalised arena of discourse, contestation, and action organised around the production of global public goods. 'It is constituted by interactions among non-state actors as well as states… It 'exists' in transnational non-territorial spatial formations, and is anchored in norms and expectations as well as institutional networks and circuits within, across, and beyond states …'[209]

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[205] John Ruggie, 'What Makes the World Hang together? Neo-utilitarianism and social constructivist challenge' (1998) 52 International Organisation 855, 861.

[206] Ruggie 1982 (n 207) 387.

[207] John Ruggie, 'Taking Embedded Liberalism Global: The Corporate Connection' (2003) International Law and Justice Working Papers 2003/2.

[208] Ruggie 1982 (n 207) 385–393.

[209] John Ruggie, 'Reconstituting the Global Public Domain – Issues, Actors, and Practices' (2004) 10 European Journal of International Relations 499, 519.

Amongst the various non-state actors that populate this arena of 'discourse' and 'contestation', transnational corporations and NGOs stand out as being particularly important. Ruggie argued that unlike states who are motivated by certain 'national interests', corporations are motivated by generating shareholder returns, while NGOs such as Greenpeace, People for the Ethical Treatment of Animals, or Amnesty International, tend to be primarily motivated towards resolving or contributing to specific issues that will often be framed as a 'social good' or 'moral' concern, e.g. sustainable development, animal rights or human rights.[210]

In summary, what Ruggie terms the 'global public domain' is characterised by a multitude of actors, a multitude of interests, and a variety of 'hard' (involuntary) and 'soft' (voluntary) governance mechanisms. If any sort of institutionalised stability is to emerge within this domain on a given issue, it is fundamentally important that a minimal level of consensus amongst these diverse actors be reached. Ruggie argues that normative factors can originate at both the national and international level. Much like the notion of 'recursive law' explained by Halliday and Carruthers, Ruggie noted that norms can diffuse both 'up' (national to international) and 'down' (international to national). Furthermore, he recognises that normative factors can emerge outside of the specific world of international relations within the global public domain more generally, including in the social sphere.

This embedded liberal belief underpins Ruggie's UNGPs. Ruggie recognised that transnational corporations are far from 'good' and state institutions have the capacity and duty to 'protect' human rights, and to 'remedy' those instances where such protection fails.

[210] Ruggie 2004 (n 212) 510.

Ruggie also suggested that businesses have a (voluntary) 'responsibility', as opposed to an (obligatory) 'duty', to 'respect' human rights. Given Ruggie's confidence in the 'embedded liberalism' approach to the international economic order, a finely balanced multistakeholder approach was the objective of the UNGPs. This is evidenced in Principle 19, which encouraged corporations to adopt strategies and ensure 'effective horizontal integration' of remedial and risk assessment mechanisms.

But the idea of 'institutional embeddedness' has been questioned by scholars such as Methven O'Brien, who challenged Ruggie's account of an 'embedded liberalism compromise' as true social embeddedness. She argued that Ruggie overlooked the fact that institutions cannot speak for individuals. She pointed out that supranational institutions depend upon on political agency. On this basis, she argued that the UNGPs depend too heavily on institutions for the exercise social re-embedding, and the UNGPs fail to reflect genuine social values. In other words, social embeddedness also relies on socially embedded individuals.

I will revisit this debate in Chapter 7 and 8, where my findings contribute to this debate by showing that there is a temporal element to the exercise of embedding social values, I suggest that it is a negotiation, and a process, which has no designated end point, as such, s 54 and the UNGPs represent incremental socio-economic interventions, which represents movement and perhaps, progress.

2.2.4 California Transparency in Supply Chains Act

The California Transparency in Supply Chains Act 2010 ('CA-TISC'), entered into effect in 2012 as the first legal enactment to require disclosure of activities in the supply

chain. It requires any company doing business in California that has annual worldwide gross receipts of more than $100 million and that identifies itself as a retail seller or manufacturer on its California tax return to publish a one-off disclosure statement on their websites related to five specific areas: verification, audits, certification, internal accountability, and training.[211] The enforcement of the CA-TISC lies with the Attorney General of California, who has exclusive authority to file a civil action for an injunction forcing companies to publish a statement.[212] The CA-TISC does not authorise the Attorney General to name and shame. The list of 'warning letter' recipients are not made available to the public.

The CA-TISC was used in a claim against Nestlé alleging that its cat food product 'Fancy Feast' was made using forced labour. The company admitted to having forced labour in its fishing supply chain.[213] However, the court held that the CA-TISC offered companies a 'Safe Harbour', because it 'merely requires the specified large business entities to make available to consumers information about whatever these business' voluntary efforts are…[and] leaves it to customer to decide whether and how, if at all, they wish to use such information in their purchasing decisions.'[214] Critics of the Act felt the

[211] California Department of Justice, 'The California Transparency in Supply Chains Act: A Resource Guide' (2015) <https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf> accessed 21 August 2022.

[212] Annalisa V. Enrile, *Ending Human Trafficking and Modern Day Slavery: Freedom's Journey* (1st edn, Sage 2017), 215-216.

[213] Annie Kelly, 'Nestlé admits slavery in Thailand while fighting child labour lawsuit in Ivory Coast' (*The Guardian*, 1 February 2016) <https://www.theguardian.com/sustainable-business/2016/feb/01/nestle-slavery-thailand-fighting-child-labour-lawsuit-ivory-coast > accessed 21 August 2022.

[214] *Barber v Nestlé,* 154 F. Supp. 3d 954 (2015) (United States District Court), 5.

law was weak as it did not require corporation to do more than describe their efforts.[215] In 2016, the NGO 'KnowtheChain' found only 31% of corporations had a disclosure statement available that complied with all the requirements of the CA-TISC.[216]

Following the widespread and negative publicity of the court case, Nestlé commissioned an independent investigation by US corporate accountability consultancy, Verité, which works with organisations trying to help improve their supply chain transparency.[217] Nestlé also sponsored a child labour prevention programme designed to stamp out modern slavery practices.[218] The 'Child Labor Monitoring and Remediation System' claims to collect data on children working on cocoa farms and assesses whether the work was hazardous or interfered with schooling. The CA-TISC demonstrated that national laws can 'assist companies to develop processes that comply with both the letter of the law and legislative intent'[219] and help to educate the public about exploitation in supply chains.[220]

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[215] Jeff Vogt, 'Efforts to clean up global supply chains so far come up short' (*Open Democracy*, 22 March 2017) <https://www.opendemocracy.net/beyondslavery/jeffrey-vogt/efforts-to-clean-up-global-supply-chains-so-far-come-up-short> accessed 27 August 2022.

[216] Know the Chain, 'Insights Brief: Five Years of the California Transparency in Supply Chains Act' (30 September 2015) <https://knowthechain.org/wp-content/uploads/2015/10/KnowTheChain_InsightsBrief_093015.pdf> accessed, 27 August 2022.

[217] Verite, 'A Verité Assessment of Recruitment Practices and Migrant Labor Conditions in Nestlé's Thai Shrimp Supply Chain' (2016) <https://www.verite.org/wp-content/uploads/2016/11/NestleReport-ThaiShrimp_prepared-by-Verite.pdf> accessed 27 August 2022.

[218] Nestlé, 'Cocoa Plan: Tackling Child Labour 2019 Report' (2019) <https://www.nestle.com/sites/default/files/2019-12/nestle-tackling-child-labor-report-2019-en.pdf> accessed 27 August 2022.

[219] See California Department of Justice (n 214).

[220] Lindsay Rae, Anna Kirkpatrick and Jo En Low, 'Hardly Soft Law: The Modern Slavery Act 2015 and the Trend Towards Mandatory Reporting on Human Rights' (2017) 18 Business Law International 29, 40.

2.2.5 Voluntary CSR

CSR is an umbrella term that describes how businesses, small and large, integrate social, environmental, and ethical responsibilities into their business strategies, structures and procedures within and across divisions and value chains. Best practice suggests that this should be done in collaboration with relevant stakeholders, including global trading partners, suppliers, third party logistics providers, and intermediaries over which they have no ownership.[221] There is no consensus as to what exactly these responsibilities are, how to best address them, and more generally what the role of business in society is and should be. Despite the lack of consensus, CSR has moved from the margins to the mainstream. It now takes centre stage in managerial and scholarly discourses and has entered the boardroom of most corporations.

The focus on CSR has been described by Christopher Wickert and David Risi as a shift from 'how the money is spent' to 'how the money is made'.[222] As a countermovement to corporate shareholder primacy and profit-generation, CSR takes into account the broader interests of employees, shareholders and suppliers.[223]

Voluntary CSR initiatives are extremely diverse, and they are operated by a wide range of entities and through various arrangements, including (1) international initiatives

[221] Mette Andersen and Tage Skjoett-Larsen, 'Corporate social responsibility in global supply chains' (2009) 14 Supply Chain Management: An International Journal 75.

[222] Wickert and Risi (n 177), 2-3.

[223] Cydney Posner, 'So Long to Shareholder Primacy' (*Harvard Law School Forum on Corporate Governance*, 22 August 2019) <https://corpgov.law.harvard.edu/2019/08/22/so-long-to-shareholder-primacy/> accessed 27 August 2022.

like the United Nations Global Compact ('UNGC')[224], (2) regional arrangements, such as the EU biofuel feedstock certification[225], (3) national standards, such as the Scandinavian 'Nordic Swan' eco-labels; [226] and (4) private industry-based agreements, like the 'Bangladesh Accord' mentioned above.

In terms of substance, voluntary CSR standards can be principles-based, certification-based, reporting-based, or a combination of one or more of these standards. What they have in common is that the standards are voluntary.[227] They are predominantly technical, as opposed to legal, in character. They also lack the formality of state sanction and enforcement.[228] But they embody 'doing the right thing' and represent a social response to the dominance of markets.

Anna Aseeva concluded in her book that CSR had fallen short of making corporations responsible for social harms because they are 'voluntary schemes with no enforcement mechanisms.'[229] Even though some avenues exist for enforcing them through domestic law, such as evoking contract law on the basis of publicised CSR statements or

[224] UNGC, 'The Ten Principles of the United Nations Global Compact' <https://www.unglobalcompact.org/what-is-gc/mission/principles> accessed 27 August 2022. The Ten Principles of the UNGC are derived from: the Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III), International Labour Organisation's Declaration on Fundamental Principles and Rights at Work (86th Session, Geneva 18 June 1998), the Rio Declaration on Environment and Development (adopted 14 June 1992, UN Doc A/CONF.151.5/Rev.1); United Nations Convention against Corruption (adopted 31 October 2003 UNGA Res 58/4)

[225] European Court of Auditors, 'The EU System for certification of sustainable biofuels' <https://www.eca.europa.eu/Lists/ECADocuments/SR16_18/SR_BIOFUELS_EN.pdf> accessed 27 August 2022.

[226] Nordic Ecolabelling, <https://www.nordic-ecolabel.org/> accessed 27 August 2022.

[227] Michael Cardwell and Fiona Smith, 'Contemporary Problems of Climate Change and the TBT Agreement: Moving Beyond Eco-labelling' in Tracy Epps, Chapman Tripp and Michael J Trebilcock (eds), *Research Handbook on the WTO and Technical Barriers to Trade* (Edward Edgar 2013) 391, 397–400, 414–15.

[228] Aseeva (n 68) 49-50.

[229] Aseeva (n 68) 212.

corporate pledges of self-regulation, legal principles such as the separation of legal personality and limited liability make enforcement against corporations extremely difficult.[230]

2.3 UK moves towards corporate accountability

In the UK, three main developments had the effect of preparing the ground for s 54: (1) deregulation and consolidation, (2) alignment with international standards, and (3) business needs. In this section, I cover each of these in turn. In so doing, I note the Friedman doctrine, because two out of three of the justifications for s 54 stem from this normative, shareholder-centric concept. It holds that the social responsibility of business is to shareholders, and therefore to increase its profits. It takes a narrow view to whom the firm is socially responsible.[231] Friedman argues that the shareholders can then decide for themselves what social initiatives to take part in. The Friedman doctrine has been very influential in the corporate world from the 1980s to the 2000s, which provides the backdrop to various neoliberal deregulation initiatives during those decades, including the UK government's, described below. In contrast, Polanyi takes a much broader view. He contends that the omission to regulate, whether deliberate or not, can be just as powerful as positive acts of legislation. From this perspective, deregulation constitutes meaningful and consequential action in the 'double movement'.

[230] See, Doreen McBarnet, Corporate Social Responsibility Beyond Law, Through Law, for Law, U. of Edinburgh School of Law Working Paper No. 2009/03 and *Vedanta Resources Plc and Konkola Copper Mines Plc. v Lungowe and others* [2019] UKSC 20, in which a Zambian subsidiary and its parent company were liable for a breaching a tortious duty of care based on its public policies and statements.

[231] Milton Friedman, 'A Friedman Doctrine: The Social Responsibility of Business is to Increase Its Profits' (*The New York Times Magazine*, 13 September 1970).

2.3.1 Deregulation and consolidation

As mentioned in s 2.2.1, from 2010 and throughout the Coalition Government's time in office, there was an emphasis on reducing the total number of regulations. In May 2010, the 'one-in, two-out' measure, whereby no regulation is brought in without cutting regulation out.[232] The policy also outlined that for any direct annual net cost on either business or civil society, government departments must identify and remove existing regulations with an equivalent value.[233] This was followed in April 2011 by the 'Red Tape Challenge' which claimed that 'for years red tape and bureaucracy have been allowed to spiral out of control. Excessive regulation is burdening businesses, hurting our economy and damaging our society.' [234] Prime Minister David Cameron wrote a letter to all government ministers stressing that he wanted to 'tackle regulation with vigour'. He stated:[235]

> There are over 21,000 statutory rules and regulations in force, and I want us to bring that number, and the burden it represents, down. Indeed, I want us to be the first government in modern history to leave office having reduced the overall burden of regulation, rather than increasing it.

[232] Eren Waitsman, '*Deregulation: Government Policy since 1997*' (*House of Lords Library Briefing*, 2017) < https://researchbriefings.files.parliament.uk/documents/LLN-2017-0041/LLN-2017-0041.pdf> accessed 27 August 2022. Also see, Jennifer A Dlouhy, 'Trump Gives Businesses Deregulation Whether They Want It or Not' (*Bloomberg*, 30 August 2019) <https://www.bloomberg.com/news/articles/2019-08-30/trump-gives-businesses-deregulation-whether-they-want-it-or-not#xj4y7vzkg> accessed 27 August 2022.

[233] HM Government, 'One-In, One-Out (OIOO) Methodology (2011) <https://www.regulation.org.uk/library/2011_oioo_methodology.pdf> accessed 27 August 2022.

[234] Cabinet Office, 'Red Tape Challenge' (*gov.uk*, 7 April 2011) <https://www.gov.uk/government/news/red-tape-challenge>

[235] Cabinet Office (n 237).

This initiative included the introduction of the Deregulation Bill, which sought to remove or reduce regulatory burdens on businesses and society. The Bill received royal assent in March 2015, becoming the Deregulation Act 2015. Notably, around the same time the MSA was enacted, which was a consolidation of anti-slavery and anti-trafficking provisions in several existing statutes, including the Sexual Offences Act 2003,[236] the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004,[237] and the Coroners and Justice Act 2009;[238] s 54 was the only innovative element of the MSA. It is also worth noting that in the context of deregulation, voluntary CSR was favoured and supported by the UK government.

The UK government, under both Thatcher and Blair, lent support to CSR initiatives. Under Thatcher, employment/ training related CSR benefitted from government subsidies and grants. Michael Heseltine, then Secretary of State for the Environment stated: 'we (government) do not have the money. We do not have the expertise. We need the private sector again to play a role which, in Britain, it placed more conspicuously a century ago than it does now'. The Government offered subsidies for job creation projects for community improvements which business could sponsor. Under Blair, the scope widened and public-private partnerships expanded to a wider set of social issues such as education and questions of social responsibility within mainstream business operations e.g. international supply chain issues, accountability and reporting. The Department of International Development funded the Ethical Trade Initiative, which is a multi-

[236] Ss 57, 58, 58A, or 59 on criminalized trafficking for sexual exploitation.

[237] S 4 on criminalised trafficking for exploitation.

[238] S 71 on criminalized slavery, servitude, and forced or compulsory labour.

stakeholder initiative formed by businesses, non-governmental organisations and trade unions to improve labour standards in multinational corporations' supply chains.[239]

2.3.2 Alignment with international standards

In 2009, the UK Parliament's Joint Committee on Human Rights ('JCHR') examined the human rights impact of UK businesses overseas. It referred explicitly to the UNGP framework, which compelled states to put measures in place requiring companies to respect human rights and 'do no harm' to the rights of others guaranteed by international human rights law.[240] UNGPs are not legally binding on States or companies, but the UK Home Office's Transparency in Supply Chains: A Practical Guide refers directly to the UNGPs and human rights due diligence.[241]

The UNGPs were first mentioned by the JCHR, which made several recommendations in its 2013 report.[242] It suggested that the Government should (1) integrate a human rights-based approach into all aspects of its activities relating to business, (2) include clearer guidance and support for businesses on human rights issues, (3) develop a strategy on human rights in public procurement and public investment, (4) introduce reforms to the Government's approach to Export Credit Guarantees, (5) revisit the Companies Act 2006, and (6) change its approach to investment.

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[239] Jeremy Moon, 'Government as a Driver of Corporate Social Responsibility', (2004) 20 ICCSR Research Paper Series ISSN 1479-5124.

[240] Joint Committee on Human Rights, *Any of our business? Human rights and the UK private sector* (n 94).

[241] Home Office (n 10).

[242] Joint Committee on Human Rights, *Good Business Implementing the UN Guiding Principles on Business and Human Rights* (September 2013) Cm 8695.

In reaching these recommendations, the JCHR consulted business representatives from the likes of Tesco and Marks & Spencer. It found that businesses were willing to support regulation to change supplier practice on the ground. Sir Geoffrey Chandler, a former Director of Shell International and Chair of the Amnesty International Business and Human Rights Group, said in evidence to the Committee, [243]

> The globalisation of the world economy has made the corporate sector a more important influence on human rights for good or ill than almost any other constituency. Through its spreading supply chains, it touches directly the lives of millions.

The JCHR saw merit in business-led initiatives but pointed out that voluntary CSR initiatives do not provide a legally binding framework that aligned with the international human rights regime.

In response, the UK Government produced its 2013 National Action Plan ('NAP'). [244] According to my Home Office informant, the NAP was critical to the development of s 54. 414A-C to the UK Companies Act was inserted in 2013 'to ensure that directors of quoted companies consider human rights issues when making their annual strategic reports'.[245]

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[243] Joint Committee on Human Rights, *Any of our business? Human rights and the UK private sector: Report and Formal Minutes* (n 95) 22.

[244] HM Government, 'Good Business: Implementing the UN Guiding Principles on Business and Human Rights' (September 2013) <https://media.business-humanrights.org/media/documents/files/media/documents/uk-national-action-plan-sep-2013.pdf> accessed 27 August 2022.

[245] HM Government, 'Good Business: Implementing the UN Guiding Principles on Business and Human Rights' (Updated May 2016) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522868/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_print_version.PDF>, 7.

The NAP set out the Government's intention to implement various obligations to protect human rights and to support, motivate and incentivise UK businesses to meet their responsibility to respect human rights throughout their operations both at home and abroad. The NAP encouraged international adherence to the UNGPs, including for other states to assume their duties to protect human rights and assure remedy within their jurisdiction. In relation to supply chains, the Government emphasised the importance of behaviour in line with the UNGPs to their supply chains in the UK and overseas and encouraged companies to review their existing grievance procedures to ensure they are fair, transparent, understandable, and accessible. The NAP noted that it was important for UK businesses to require similar good practice of their supply chains, especially in areas where abuses of rights have been identified.[246] These sentiments are later reflected in s 54.

2.3.3 'Levelling the playing field' business support

In 2013, the Centre for Social Justice ('CSJ'), an independent centre-right think tank co-founded in 2004, called on the government to take decisive action against modern slavery and human trafficking.[247] Its report detailed the persistence of underground slavery including within the supply chains of UK companies. The CSJ report included a draft bill. The CSJ promoted the bill as 'legislation [which] encourages self-regulation of businesses and would not demand any direct government involvement.'[248]

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[246] HM Government (n 247)

[247] Centre for Social Justice, *It Happens Here: Equipping the United Kingdom to fight modern slavery* (*Slavery Working Group*, 2013) <https://www.antislaverycommissioner.co.uk/media/1070/csj_slavery_full_report_web-5.pdf> accessed 27 August 2022.

[248] Centre for Social Justice (n 250) 26.

> engage the business sector in the fight against modern slavery and human trafficking; enable the public to hold businesses to account for the efforts they make to ensure supply chains are free of slavery and trafficking; and provide a framework through which businesses can offer support and remediation to victims of slavery and human trafficking'.[249]

But according to several informants involved in the legislative lobbying process, the Government was not interested in legislation. One informant explained: 'the Government was in the middle of cutting red tape for businesses, and we realised they were never going to put [s 54] in.' The informant added:

> the argument had to come from both business saying actually we want legislation because it is helpful, it had to come from the investment community because it was about due diligence, and then it came from the NGO community, the moral arguments around that, and the public as well in terms of increasing engagement with the issue and consumer spend.

One informant, who was involved in the CSJ report, told me that even in 2012,[250] there were 'corporates who were already on board and in favour of regulation, so when the time came to reintroduce a similar initiative, NGOs went back to the businesses that were already engaged with it.' My informant explained that some of these businesses were prepared to show their support publicly. While other businesses that were nervous about

[249] Centre for Social Justice (n 249) 14.

[250] An initial attempt to introduce legislation on supply chains was proposed in the UK on 20 June 2012. A 'Transparency in UK Company Supply Chains (Eradication of Slavery) Bill' was first tabled in the House of Commons by Michael Connarty MP. But the bill did not progress beyond a second reading and was abandoned after 19 October 2012.

the publicity around it because of the 'traditional, aggressive stance of some NGOs', many were 'actually privately writing to the Prime Minister and Home Office.' My informant became a conduit for the different parties. He recalled that 'I would say, "Home Office, you need to talk to these businesses because they will give you a favourable response around that."'

The CSJ's draft bill on supply chains was not immediately adopted by the Government. But one NGO representative involved in the legislative process said in hindsight, it is the only reason that the Government could claim that the MSA is world-leading. He said 'the optics on this, if you take s 54 out, in effect what you have a bunch of other Acts pulled together. So, this is the bit that enables politicians to say it is world leading. Take out [s] 54 and it is not world leading anymore!'

Another informant, who is an NGO lobbyist, said he and others met with an advisor to the Prime Minister (David Cameron) to make an economic case for the legislation. He had to reiterate the argument that actually the provision would make businesses more sustainable and profitable. He explained, 'I had to make them understand that [s 54] is not just a big stick with which to beat up businesses. It's what I call an enabling legislation that gives the good companies a chance to show off what they have done and encourage other companies to catch up.'

Certain members of the House of Lords and the House of Commons were also actively working behind the scenes to support s 54. One such informant told me that having the Californian legislation as precedent helped, but no government likes to be offered a piece of legislation. She said:

> They like to write their own but they took a lot from our draft. The Prime Minister, David Cameron was not at all keen, so Theresa May had to persuade him that it wouldn't hurt the Conservative agenda. But he wasn't prepared to make it anything other than politics and so we had to set it up as a voluntary arrangement with a sting in the tail which is so mild that it's not really useful. But, we have at least, on the statute books a piece of legislation that requires big companies to look at whether slavery was part of their supply chains.

Many businesses used the Modern Slavery Bill's consultation process in 2014 to argue in favour of the proposed s 54. They told the Joint Committee on Modern Slavery ('JCMS'), a group of MPs convened in 2014 to gather evidence about the proposed modern slavery legislation, that legislation was necessary to 'level the playing field' and raise the standards of businesses that are unwilling or unable to tackle modern slavery voluntarily.[251] Marks & Spencer, a recognised pioneer in ethical trading, told the JCMS that 'legislation could have a valuable role to play in encouraging more companies to take these issues more seriously.'[252] David Arkless, a British businessman and former president of two large businesses (CDI Corporation and Manpower Group), suggested that 'a little stimulus' through legislation was all that was needed to generate momentum for change.[253] Others argued that large, publicly listed companies already have an economic incentive to

[251] Joint Committee on the Draft Modern Slavery Bill (n 21) 86.

[252] Joint Committee on the Draft Modern Slavery Bill (n 21) 86.

[253] Joint Committee on the Draft Modern Slavery Bill (n 21) 86-87.

maintain and demonstrate ethical supply chains. Matt Crossman, of Rathbone Greenbank Investments, told the JCMS:

> As an investor, I still want a company to think strategically about its supply chain and to think how it might be reducing its vulnerability to supply chain shocks and increasing the strength of its supply chain to respond to those shocks, ultimately adding to the bottom line.

The business case was reinforced by large multinationals that, as one informant put it, 'already had skin in the game'. IKEA explained that ethical supply chains were 'absolutely' more profitable, Tesco said that a good reputation 'more than pays for itself' in the long run, and Marks & Spencer told [the Committee] that trust was "a key part of [their] competitive advantage"'. Andrew Forrest, founder and CEO of Walk Free, added that he did not think that eliminating slave labour necessarily equated to more expensive goods.[254] Multinational businesses emphasised that legislation would 'level the playing field' and raise the standards of companies that failed to tackle modern slavery in their supply chains. By requiring their suppliers to be more transparent, businesses such as Amazon, IKEA, Marks & Spencer, Primark, Sainsbury's and Tesco would have less work to do. But they wanted 'legislation that was not unduly burdensome.'[255]

The question, therefore, was not whether the Government should regulate. There was clear mood and appetite for change. The question was how far should the new legislation go, and what form it should take.

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[254] Joint Committee on the Draft Modern Slavery Bill (n 21) 86.

[255] Joint Committee on the Draft Modern Slavery Bill (n 21) 87.

2.3.4 Formulating s 54

The JCMS thus considered three formulations. The first was the 'Bribery Act model', which would require companies to carry out risk-based due diligence across their own supply chains. The Bribery Act 2010 was lauded for creating a positive shift in corporate culture and compliance processes. But some businesses thought the Bribery Act approach would be 'very burdensome' because carrying out actual due diligence on supply chains would be 'an extensive process'.[256] It was argued that for a company like Manpower, a multinational recruitment agency, the task would involve '17.8 million potential suppliers'. Marks & Spencer added that the Bribery Act approach would 'result in an increased reporting burden without delivering any additional results.'[257]

The second option was to adopt stand-alone legislation, like California's CA-TISC, which would require companies to disclose their efforts to eradicate modern slavery. Based on feedback to the JCMS, the proposal proved to be more popular than the 'Bribery Act model'. Moreover, as standalone legislation, the CA-TISC had greater impact, and awareness of modern slavery issues among consumers, investors and companies had increased as a result of the legislation. Many corporations, including large retailers like Tesco and Primark, welcomed this suggestion.

The third option and the least draconian approach was to amend s 414C(7) of the Companies Act 2006 to include modern slavery. Under this section, companies are required to report on 'social, community and human rights issues' in a strategic report every

[256] Joint Committee on the Draft Modern Slavery Bill (n 21) 87.

[257] Joint Committee on the Draft Modern Slavery Bill (n 21) 87.

financial year, or explain why they are not doing so. The JCMS said this approach was consistent with the Government's desire not to impose 'additional burdens on companies who are already tackling modern slavery in their supply chains effectively'. The JCMS ultimately recommended an amendment to s 414C (7) as a 'proportionate and industry-supported initial step.'

However, when the Modern Slavery Bill was presented in the House of Commons on 10 June 2014 for its first reading and again on 8 July 2014 for its second reading, many were surprised that it did not include a 'transparency in supply chains' provision; nor was the proposal to amend s 414 (7) tabled in accordance with the JCMS's recommendations. It is surprising that the Government rejected the JCMS's findings, especially when its recommendation was for the least onerous out of the three options provided. But at the bill's second reading, a number of MPs noted the absence of the clause; Theresa May, who was the Home Secretary at the time, revealed that the Government had returned to discussions with businesses and responded:[258]

> The issue of supply chains has been raised by many people. We have not ignored the issue. I and other Ministers, including my hon. Friend the Under-Secretary of State have had a round table meeting with businesses…[The] increasing length and complexity of supply chains…is one of the precise difficulties faced by companies today when it comes to any responsibility they have for looking at every aspect of their supply chain and ensuring that it is not involved in modern slavery. That is why

[258] HC Deb 8 July 2014, Second reading of the Modern Slavery Bill, Col 169-170.

> we are sitting down with business to talk about the issue and how we can best address it. There is not a blanket approach of saying, "The only way to do this is X." We are saying, "Let's sit down with companies and talk to them about the issues that they are facing."

May subsequently said, 'In taking any further action in this area the Government is…mindful of existing requirements on business and possible future changes to the business reporting regime.'[259]

Following the second reading on 21 July 2014, the government re-engaged in discussions with businesses. The Public Bills Committee, a sub-group of MPs, was formed to address this issue. Many Committee members considered the decision not to include a transparency in supply chains provision in the Modern Slavery Bill to be a 'glaring omission' and called on the Government to be more ambitious. Initially, the Government maintained that s 414(C) of the Companies Act 2006 was sufficient for this purpose. But on 14 October 2014, Under-Secretary of State for Preventing Abuse, Exploitation and Crime, Karen Bradley MP relented, stating that:[260]

> one of the key reasons that we have decided to introduce a stand-alone measure is that the Companies Act applies only to publicly listed companies, Our measure will require all companies over a certain size to

[259] HM Government, 'The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 HL Paper 166 / HC 1019: Draft Modern Slavery Bill (June 2014) < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/318771/CM8889DraftModernSlaveryBill.pdf> accessed 27 August 2022.

[260] PBC Deb, 11th sitting 14 October 2014, col 494.

disclose what they are doing to ensure that there is no slavery in their supply chain.

Eventually, the 'Transparency in Supply Chain etc.' provision, which became s 54, was introduced to the House of Commons on 4 November 2014. The Modern Slavery Bill proceeded to the House of Lords on 5 November 2014 and achieved royal assent on 26 March 2015.

2.3.5 The expedient choice; a compromise provision

To counteract the market's tendencies, civil society worked to persuade corporations that s 54 would benefit them in the long run by 'levelling the playing field' and produce a low-cost 'race to the top'. NGOs found a powerful ally in their cause to increase corporate accountability. Legislators hailed s 54 as a new type of law for global governance and called it a breakthrough.[261] The provision promised to transcend national boundaries to hold multinationals accountable. The 1930 ILO standards on Forced Labour even used the MSA as an example of outstanding national practice.[262]

But s 54 did not satisfy everyone. Sarah Champion, Labour MP for Rotherham, was concerned about s 54's 'lack of teeth' and specificity. She said this could allow 'businesses to pick and choose what to include, which prevents direct comparison between business

[261] First Delegated Legislation Committee, *Draft Modern Slavery Act 2015 (Transparency in Supply Chains Regulations 2015)* (*House of Commons*, 19 October 2015), Karen Bradley, debated Monday 19 October 2015 at 4:30pm.

[262] ILO, 'ILO Standards on Forced Labour: The New Protocol and Recommendation at a Glance' (2016) < https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_508317.pdf> accessed 27 August 2022.

reports, and…ultimately, that takes away the teeth from the Act.'[263] In the House of Lords, Baroness Kennedy of Cradley expressed disappointment that 'the Government …have no intention of launching an online external repository for the annual slavery and human trafficking statements.'[264] The Government responded that its priority was to ensure that 'businesses take appropriate and proportionate action to tackle modern slavery' and '[u]ltimately, it is for businesses to ensure that the consumers know what they are doing…so we feel it is right to leave a degree of flexibility. Consumers, NGOs and others will push to ensure that…actually happens'.[265]

NGOs agreed that s 54 was, at least, a starting point. The CORE Coalition, a group of NGOs founded in 1998 as a network when the then Labour Government announced its plan to review company law, now renamed as Corporate Justice Coalition,[266] stated in March 2017 that s 54 represented 'just the beginning of a long journey; we are campaigning for sanctions similar to the Bribery Act'.[267] They were one of the groups that wanted stronger penalties and more specific mandatory requirements.

Peter Carter QC, special adviser to the Joint Parliamentary Pre-Legislative Scrutiny Committee on the Modern Slavery Bill, said 'the present reporting obligations for supply chains may not be the final statutory scheme. If this process does not demonstrably improve

[263] First Delegated Legislation Committee (n 263), Sarah Champion, debated Monday 19 October 2015 at 4:34pm.

[264] HL Deb 26 October 2015 vol 765, Monday 26 October 2015 at 3:16pm.

[265] First Delegated Legislation Committee (n 263), Karen Bradley, debated Monday 19 October 2015 at 4:36pm.

[266] Corporate Justice Coalition, 'We used to be the CORE Coalition' (*Corporate Justice Coalition*, 7 April 2021) <https://corporatejusticecoalition.org/news/we-used-to-be-the-core-coalition/> accessed 27 August 2022.

[267] Marilyn Croser, 'The State of Play in Business and Modern Slavery: Who's Leading and Who's Lagging?' (Innovation Forum Conference: How Business Can Tackle Modern Slavery and Forced Labour, 7 March 2018).

the lot of workers producing goods and services for UK businesses, then a future government may look to the Bribery Act as a potential model.'[268]

Even a member of the Ethical Trading Initiative, a well-known multi-stakeholder group of corporations, trade unions and NGOs, which participated in the legislative process and represented the interests of over 80 companies, stated that s 54 is merely an 'entry point' and the low threshold on enforcement in s 54 was about '…being politically expedient about where we were likely to get some traction as opposed to not…'

2.4 Conclusion

In this Chapter, I set out to introduce s 54, the supply chain 'governance gap' problem, which social activists have long considered to be the symptoms of corporate irresponsibility. By highlighting disasters like the Rana Plaza collapse, NGOs have shaped public expectations and social norms, effectively stereotyping corporations as evil-doers. S 54 is, to them, a new weapon in the arsenal through which they can hold corporations to account. It conveys their view that CSR had reached its potential, only the law can change things now. This chapter has shown that s 54 emerged after years of social activism and developments in CSR, international and domestic law. Its adoption was the result of regulatory consolidation, alignment with international standards, and business support.

In particular, the introduction of the UNGPs and the CA-TISC were major influences. For the first time ever, the UNGPs imposed human rights obligations on non-state, corporate actors directly, and the CA-TISC gave domestic force to these international

[268] Peter Carter, 'G3 Briefing with Peter Carter QC: The Modern Slavery Act 2015' (2017).

principles, supported by the Californian Attorney General's power to enforce the provision on non-compliant corporations (despite the fact that those powers have never been used). The CA-TISC also opened the door to civil society strategic litigation, which allowed activists to sue Nestlé for using forced labour to make cat food on the basis of misrepresentation. The two-tiered approach of using international standards and domestic legislation together is theoretically sound, but practically difficult. It did, however demonstrate a major step forward in the social movements for greater corporate accountability. From the perspectives of NGOs, the key was to ensure that every jurisdiction had a similar law. That way, the UNGPs would no longer be 'soft law'.

Most of the MSA, except for s 54, was a consolidation of existing statutes, which suited the Government's deregulation policy from 2010 and beyond. Throughout the legislative process it was evident that the UK government was the least enthusiastic about introducing new regulation. The Government's reticence to control corporate activity could only be dissuaded with strong reassurance from businesses. Businesses were motivated (at least initially) by the competitive edge they would gain by supporting the lobbying efforts to introduce s 54 and they collaborated with NGOs to advocate for light-touch requirements that would make use of existing CSR initiatives and a reporting requirement that did not need state monitoring. NGOs regarded s 54 as an expedient step in the right direction, but it was clear that they wanted so much more. In the end, after extensive consultation with businesses, the Government was persuaded and s 54 was introduced at the final stages of the Modern Slavery Bill.

The history and development of corporate regulation is marked by the interaction between law, social actors and business organisations. Their activities illustrated that the

most prominent pattern of development towards corporate accountability was driven by the social sphere: a countermovement against corporate dominance.

In the next chapter, I describe how s 54 became an entry point for social actors and their continuing push for corporate accountability for human rights. I also show that even though businesses were pleased with the low-bar requirements, in practice, the social expectations underpinning s 54 went beyond the limited requirements of the law, which led to a flurry of activity among commercial organisations.

3. UNCERTAINTY AND OPPORUNITY: EARLY COMPLIANCE

3.1 Introduction

Delving deeper into the analytical themes discussed in Chapter 2, this chapter considers the immediate reception and effects of s 54. The UK government's proposal to introduce the MSA received widespread support.[269] NGOs said it was a big step in the right direction. Many UK businesses believed that a law requiring transparency and reporting of supply chains activities would bring about positive changes by 'levelling the playing field'.[270] Many agreed that having good ethical supply chains would 'more than pay for itself'. [271] The Walk Free Foundation's 2016 Global Slavery Index even called on 'governments of the top ten economies of the world to enact laws, at least as strong as the UK MSA, with a budget and capability to ensure organisations are held to account for modern slavery in their supply chains and to empower independent oversight.'[272]

But soon after the law was adopted, an NGO evaluation found that almost half of the FTSE 100's MSA statements failed to comply with s 54's legal requirements and hardly any demonstrated serious engagement with modern slavery issues.[273] The disappointing results were blamed on the Home Office's 'hands-off' approach towards implementing,

[269] Joint Committee on the Draft Modern Slavery Bill (n 21).

[270] Klara Skrivankova, 'Analysis of Modern Slavery Act' (*Anti-slavery International Blog*, 27 March 2015) <https://www.antislavery.org/analysis-modern-slavery-act> accessed 27 August 2022.

[271] Joint Committee on the Draft Modern Slavery Bill (n 21) 86.

[272] Walk Free Foundation, 'The Global Slavery Index 2016' < https://downloads.globalslaveryindex.org/ephemeral/GSI-2016-Full-Report-1661637060.pdf>, 2.

[273] Dunn (n 27).

monitoring, and enforcing s 54.[274] Specifically, some scholars suggested that s 54 is too vague and weak on monitoring and enforcement, which has fostered a practice of 'empty, airy statements that mean nothing.' [275] Yet, many larger businesses responded enthusiastically to s 54, and many took steps to comply with the provision, even without the threat of sanctions. There was even an effort to step up because the government seemed so out of touch.[276] There are two aspects to this issue, which I will explore: (1) There is the fact that many companies stepped up despite apparently little to compel them to do so, and (2) Even more interesting, to criticise s 54 as vague and weak is to ignore that it has generated a wave of activities, in which those same critics (NGOs, academics, etc) all actively participate. This chapter highlights the power and trouble with the open-ended requirements in s 54, which results in discrepancies I found between NGO expectations and the activities of corporations.

This chapter draws on a mixture of empirical data, including interviews, conference speeches, reports and written documents, including 294 MSA statements, to piece together a build a picture of 'compliance', which is then used to justify the claim that s 54 is toothless. While NGO criticisms seem straightforward, they are part of broader debates about what is at stake in compliance with s 54, in which a range of actors including CSR professionals, lawyers are actively negotiating the terms of the debate, such as what exactly 'transparency' means, 'transparent' for whom, who gains and who loses from compliance.

[274] House of Commons Committee of Public Accounts (n 30), 10.

[275] Steve New (n 6), 701.

[276] See, 'Q&A - If the Government won't enforce the law, what's the role of business associations and groups to persuade them to do so more effectively and with more resources' Modern Slavery Forum, the Business Case Beyond Compliance, 18-19 October 2018 <https://www.innovationforum.co.uk/conferences/modern-slavery-human-rights/agenda/112>.

This Chapter points to subtle ways in which debates about 'going beyond the law' may be constitutive of unspoken morals, norms, and public interest values.

3.2 Compliance is not enough

3.2.1 What does a modern slavery statement look like?

S 54 requires commercial organisations registered in the UK with £36 million or more annual turnover to publish a slavery and human trafficking statement every financial year. The MSA statements should set out the steps that the organisation has taken during the year to ensure that slavery and human trafficking is not taking place in its supply chains or its own business (or setting out that it has taken no such steps). The statement must be signed and published on its website.[277] There are six suggested reporting categories: organisational structure and supply chains, organisational policies, due diligence, assessing and managing risk, performance indicators, and training.

According to the Government's guidance, the statement should be written as a public-facing document and 'to aid transparency, the statement should be written in simple language that is easily understood.'[278] But the guidance does not prescribe the layout or content of slavery and human trafficking statements. So, it is up to organisations how they present information in the statement and how much detail they provide. The guidance also allows for variation between sectors and businesses. It states that 'information presented in the statement will be determined by the organisation's sector, the complexity of its structure and supply chains, or the particular sectors and nations its suppliers are working

[277] MSA, ss 54(11) and (12).

[278] Home Office (n 10).

in.' [279] The government guidance recognises that an 'organisation may already be undertaking procedures or have specific policies (such as CSR or ethical trade activities) that go some way to addressing the issue of modern slavery and may already be disclosing this in some form' (for example, to prepare a strategic report in accordance with ss 414A to 414D of the Companies Act 2006). It also states that 'any relevant material used in other related reports may be used in an organisation's slavery and human trafficking statement', although statements must be accurate and refer to actual steps undertaken or begun.[280]

Based on my review of 294 statements, there are various ways that companies chose to present the relevant information. They ranged from highly sophisticated statements with charts and maps to short paragraphs with little detail. The retail industry has some of the most complex and detailed MSA statements, alongside charitable organisations such as Oxfam, which produced 50+ page annual reports. Statements from businesses in the same industry are often strikingly similar. For example, most MSA statements published by pharmaceutical companies in 2016 were roughly 3-4 pages long. Most of the statements roughly corresponded to the six suggested reporting categories. For instance, AstraZeneca[281] starts with 'Our Commitment' and refers to its global 'Code of Conduct', which states that they are committed to delivering 'sustainable benefit for our stakeholders, our business and society….' Similarly, AbbVie Ltd[282] also commits to 'ensuring that slavery and human trafficking do not enter our product supply chains or any part of our

[279] Home Office (n 10).

[280] Home Office (n 10).

[281] AstraZeneca, modern slavery statement (2016).

[282] AbbVie Ltd, modern slavery statement (2016).

business.' Both companies then refer to the Pharmaceutical Supply Chain Initiative ('PSCI'), a non-profit business membership organisation established in 2006. Members of this voluntary group agree to abide by the Pharmaceutical Industry Principles for Responsible Supply Chain Management. These principles are a wide-ranging set of standards agreed upon by the members on how to manage human rights and labour, health and safety, environment, and other industry-specific concerns.[283] In each area, the principles set out the relevant practices any business operating within the pharmaceutical supply chain is expected to uphold and they 'articulate what the industry expects from the supply chain'.

In AstraZeneca's statement as presented on its website, I found a maze of links to external policies and websites. For example, they said, 'we *require* our contracting partners and those companies within our supply chain to do the same, as set out in our Global Standard on Expectations of Third Parties [policy with link]' [emphasis added]. Following that link, I found the policy, which states, 'We *expect* you to uphold internationally recognised human and employment rights of workers and treat them with dignity and respect' [emphasis added]. The policy also states that AstraZeneca is a member of the PSCI and supports the PSCI Principles for Responsible Supply Chain Management. Another link goes to the PSCI website. The PCSI website then refers to an 'Implementation Guidance', which provides further clarification of the principles in each of the five areas, providing a framework for improvement and examples for how to meet expectations. The guidance

[283] PSCI <https://pscinitiative.org/about> accessed 27 August 2022.

itself is downloadable with a separate link for different languages.[284] Finally, a 20-page document sets out 'sample program elements.' It is a checklist of things that a company should include in their programme for suppliers, for example,

> Relevant legal, customer-driven, local and voluntary performance obligations are identified, interpreted and communicated in such a manner as to be thoroughly understood and acknowledged by those individuals having responsibility, [and] identify and track emerging legislation, regulations, laws, and other commitments applicable to the Principles' impact on business operations.

The AstraZeneca statement revealed that they had 'reviewed our third-party due diligence process…which resulted in specific questions related to forced and bonded labour in our risk assessment questionnaires.'[285] But it does not say what questions they asked.

Another company, Strathclyde Pharmaceutical, also produced a statement that looked substantially like AstraZeneca's statement. It is less detailed and instead of taking the reader from link to link, it states,

> We believe that the risk of modern slavery in third parties with which we have a direct relationship is relatively low as they have to have a Wholesale Dealers License and are based within Europe. This is supported by findings of a risk assessment conducted for the Pharmaceutical Supply Chain Initiative…

[284] PSCI, 'What we do: the principles' <https://pscinitiative.org/principles> accessed 27 August 2022.

[285] AstraZeneca statement (2016).

A reference to the PCSI standard is found in nearly all the MSA statements of pharmaceutical companies, as if it is a condition of trade within the sector. The fact that these standards existed before s 54 is evidence that existing CSR norms have been rolled into the compliance with s 54.

I also compared MSA Statements to other forms of disclosure, such as annual reports and prospectuses for potential investors. This enabled me to evaluate similarities and differences and the level of detail in MSA statements. I found that most MSA statements strove to convey competence. Words are carefully selected to disguise areas of uncertainty and suggest that they have systems to detect forced labour, and the information they produce is reliable. For example, AbbVie Ltd stated that 'For the year ending 31 December 2016 there were no human rights issues reported. AbbVie Ltd also *verified and ensured* all UK-based employees and contractors have the right to work in the UK' [emphasis added].[286] For an average reader, it would be reasonable to assume that the company had conducted reasonable checks and taken action where required. But shy of holding themselves out to have perfect knowledge or perfect control. To make sense of or verify the information in the MSA statement, NGOs would have to conduct independent assessments of industries the company in question and their supply networks.

Overall, I found that many MSA statements look very similar, but the lack of a uniform structure makes them challenging to compare. Importantly, compliance with s 54 depended on existing industry norms and standards, because the provision was ambiguous

[286] AbbVie Lted, modern slavery statement (2016).

on exactly what companies are required to do to prevent modern slavery in supply chains. The criticisms expectedly fuelled a rise for expertise, tool kits, new or revised standards, created mostly by private actors, including the NGOs and consultants that criticised the corporate MSA statements. In return, they were sought out for advice. I discuss this new industry of experts in Chapter 6.

3.2.2 Toothless and ineffective

Since the MSA came into force, civil society actors have repeatedly attacked the effectiveness of s 54, citing poor quality MSA statements and patchy compliance. The Modern Slavery Statement Registry, a civil society monitoring platform set up and managed by the Business and Human Rights Resource Centre ('BHRRC'), enabled NGOs, academics, lawyers and consultants to examine and produce evaluations of modern slavery statements. The BHRRC is an active global information hub for resources and guidance on business and human rights. Elizabeth, a manager at BHRRC, estimated that 18,000 companies are required to produce an MSA statement annually. But over the past three years, she discovered that very few companies were 'transparent' enough to disclose instances of forced labour or slave labour.

Reports and analyses such as *Modern Slavery Reporting: Weak and Notable Practice* published by the CORE Coalition, stated in June 2017 that only 12 of 86 statements analysed had complied with the legal requirements, while most provided little information on the six suggested areas of information.[287] Another report, *Modern Slavery Statements: One Year On* by private consultancy firm Ergon Associates, published in April

[287] AbbVie Lted, modern slavery statement (2016).

2017, 'show[s] that superficial and broad descriptions of processes and actions remain the norm for the bulk of reporters…' 21 per cent of the examined statements were not signed off by a director or equivalent, and 25 per cent were not available directly from the company's homepage.[288] The BHRRC's analysis of the FTSE 100 companies' first year of MSA statements in 2016, *First Year of FTSE 100 Reports under the UK Modern Slavery Act: Towards Elimination?* [289] found that half of the companies surveyed provided no meaningful information on whether their actions effectively addressed modern slavery risks, and 42 per cent of the companies failed to meet all three of s 54's legal requirements. Adidas was one of the few companies that delved down to the second tier of suppliers.[290] These initial results were disappointing, and they drove many to believe that s 54 was ineffective, and that corporations were not taking it seriously. NGOs perceived that most businesses treat the law as a 'tick box' exercise or a 'cut and paste job.' They noted that MSA statements over time look increasingly similar and impenetrable. According to the BHRRC's 2018 assessment, most statements are vague or generic, and omitted crucial details on how the company was working to stop cases of forced labour within its UK or international supply chains.[291]

Elizabeth commented that there was a sense of frustration among NGO representatives about the lack of transparency in MSA statements. She explained, '[most

[288] Ergon Associates (n 33)

[289] BHRRC (n 33)

[290] 'Second-Tier Supplier Definition from Financial Times Lexicon' <http://lexicon.ft.com/Term?term=second_tier-supplier> accessed 22 September 2018.

[291] BHRRC, *FTSE 100 & the UK Modern Slavery Act: From Disclosure to Action* (2018) <https://media.business-humanrights.org/media/documents/files/FTSE_100_Briefing_2018.pdf> accessed 27 August 2022.

companies] are not naming or disclosing risks we know they have because we know the sector they operate in or the region that they operate in, but they choose only examples where these issues have already been resolved and they don't provide any information about how it was resolved or who that supplier is…' She added, 'even with the companies that you think are sticking their necks out, we cannot figure out what their company structure is, why they include some subsidiaries and exclude others. Very few companies are willing to provide more information than their peers, so it's still highly selective and not quite at the point that would lead to industry-wide change or initiatives. Change can happen, but the level of transparency is not there yet.' Other NGO representatives I spoke to wanted to see a warts-and-all version of transparency. One informant exasperated:

> we know there is child labour in cocoa supply chains, so if they didn't include anything related to those risks in any of their disclosure then they should be held accountable. We know those risks exist. Companies themselves are being dishonest and blatantly avoiding disclosure of what we know to be known risks so I would just encourage companies to live up to the spirit of s 54. When you read the reports, or most of them, companies are just not putting in the effort.

I asked the informant what companies need to do to 'live up to the spirit of s 54', and she explained that it meant companies need to be 'honest'. My informant admitted that there was no guidance on what the 'spirit of s 54' means, but she referred me to numerous 'tool kits' by civil society organisations, such as the CORE Coalition's civil society guide for commercial organisations on the transparency in supply chains clause: *Beyond*

Compliance: Effective Reporting under the Modern Slavery Act.[292] It appeared that criticisms of 'transparency' are bound up with a set of normative debates about what exactly 'transparency' should look like, which can be approached in different ways. In the following section, I highlight one prominent intervention in these debates in the form of NGO reports on corporate MSA statements.

Having reviewed 14 reports in order to explore how these NGOs understand what counts as compliance with s 54, I found overall that due to limited resources, NGOs had difficulties in comparing statements across different sectors. Six of the 14 reports have a specific industry focus, while the rest are cross-sectoral. In particular, the garment, diamond, public procurement, agricultural industries, and FTSE 100 were selected for evaluation, as they were prominent and publicly listed companies. Only two organisations produced annual reports tracking progress and improvements on MSA statements published by the same companies. Most sample sizes were small; the highest number of statements reviewed for an evaluation was 239. The reports also range in length and specificity, with the shortest reports being four pages long, while the longest was 76 pages.[293]

Overall, I found that the criticisms were largely the same and painted an overwhelmingly negative picture of s 54 compliance. A joint report by the CORE Coalition and private consultancy, Ardea International, found that 'out of the eight jewellery

[292] CORE Coalition, 'Beyond Compliance: Effective Reporting under the Modern Slavery Act' (2016) < https://corporatejusticecoalition.org/wp-content/uploads/2016/03/CSO_TISC_guidance_final_digitalversion_16.03.16.pdf> accessed 27 August 2022.

[293] The numbers are: 18 pages, 30 pages, 30 pages, 20 pages, 26 pages, 7 pages, 28 pages, 13 pages, 4 pages, 72 pages, 64 pages, 30 pages, 59 pages, 12 pages, 16 pages, 4 pages, and 36 pages.

companies investigated, four have failed to publish a Modern Slavery Statement on their website's homepage.'[294] Another report, the *Sancroft-Tussel Report,* found in 2017 that 'a statement alone is not commensurate with a company taking effective steps to eliminate modern slavery in its operations and supply chains.'[295] In an analysis of the FTSE 100 companies' first year of MSA statements the BHHRC said 'there is also a low level of compliance with the reporting requirement. An estimated 9,000 to 11,000 companies are required to report under the Act, yet there are only 3,000 statements.'[296] The same report also found that half of the companies surveyed provided no meaningful information on whether their actions effectively addressed modern slavery risks. According to Ergon Associates, MSA statements in 2017 'show that superficial and broad descriptions of processes and actions remain the norm for the bulk of reporters….' They went on to say,

> While larger companies continue to update their reports and innovate in their activities, our findings suggest that the essentially voluntary approach to reporting encapsulated in the MSA, with recommended rather than mandated content and with monitoring and scrutiny left to civil society and shareholders, may have reached its limit for many companies.

Although it is a consultancy firm, Ergon Associates' critique is similar to many NGOs, demonstrating that commercial actors are similarly invested in improving corporate

[294] Emily Foale and Colleen Theron, 'All that glitters is not gold: Shining a light on supply chain disclosure in the jewellery sector' (Ardea International 2017)

[295] Sancroft, 'The Sancroft-Tussell Report: Eliminating Modern Slavery in Public Procurement' (2018) <https://sancroft.com/2018/03/22/the-sancroft-tussell-report-eliminating-modern-slavery-in-public-procurement-2/> accessed 27 August 2022.

[296] BHRRC (n 33).

reporting (even though it might be for business reasons). The NGO reports I reviewed had one common theme: 'transparency', which in practice meant providing information that may reveal corporate attitudes and strategies. This in turn suggests that many NGOs do not know how corporations operate.

In addition to the reports on MSA statements, I also observed NGO activists at conferences and through interviews to learn what they expected from corporations under s 54. One NGO representative explained in interview, 'although transparency was a goal of the law, the term was never defined, and that's left NGOs and businesses coming up with their own versions of the concept and trying to convince each other that their interpretation is the better standard.' According to Edelman and others that when statutory ambiguity enhances the potential for 'managerialised constructions of the law to enter legal fields' but it also provides scope for interest-based organisations to innovate and develop their own interpretations and approaches that favour their interests.[297] Therefore, ambiguity has also allowed NGOs and social actors to enter the conversation. One legal informant referred to s 54 'regulation by public opinion'. They wanted corporations to be accountable, provide accurate and certifiable information, and admit problems and mistakes, but became frustrated that it did not.

3.2.3 Who is reading MSA statements?

The Government had hoped that public pressure would be sufficient to hold commercial organisations to account. This approach was confirmed in the Home Office's guidance, which states that '[i]t will be for consumers, investors and non-governmental

[297] Edelman (n 40) 29.

organisations to engage and/or apply pressure where they believe a business has not taken sufficient steps.'[298] However, most NGO informants do not perceive this to be the case. One informant told me,

> I would be very surprised if consumers are reading MSA statements, but they are probably bumping into them because they are on the homepage of the company website, which is a really smart part of the law. I am not sure which MP got that in, but congrats. There will be some consumers who are, and they will be hugely disappointed when they get the statement itself, because understanding them requires a lot of knowledge and sophistication.

Others felt that consumers want a quick fix. One informant explained, 'the danger is that consumers will expect one paragraph that says we have no risk of modern slavery in our supply chain, and that's reassuring enough for them. Consumers are apprehensive when they see a long technical document suggesting modern slavery. They are waiting for the stamp of approval, like a FairTrade logo, so it's so difficult with consumers.'

In reality, most companies are writing for a range of audiences, including investors, shareholders, and civil society. The CEO of the Corporate Responsibility Coalition (CORE) Coalition, a group of NGOs that lobbied for s 54 and generally advocates for increased corporate accountability, told me in interview that when the legislation was being negotiated, 'no one really thought about the range of audiences, but since then it has become clear that businesses are writing for people in the industry, they are writing for the

[298] Home Office (n 10).

rest of the sector, they are writing for people like us, they are writing for shareholders, to a degree, they are aware that people in government are looking at it, customers perhaps, if you are thinking about it in the fullest sense, then that's who they are preparing it for.' Another NGO informant, who speaks to companies regularly about their MSA statements, said businesses find it hard to write a statement because there are so many different audiences. She explained, 'they have to think, is it civil society we want to please, investors, legal compliance, government? Because they all want to see something different.' Elizabeth also said many statements are written in such a way that means she is 'none the wiser' about what they are doing about modern slavery, or even basic company structure, and 'what makes them opaque for me is…they don't explain, they just declare!'

The audience for these statements relates to corporate perceptions of risk and their exposure to risks. Consumers bring reputational risks, but there are also risks associated with compliance, such as legal liability. The fact that there are different audiences for these statements points to the existence of different perspectives on what is at stake in compliance with s 54. By attempting to serve multiple audiences, MSA statements are more opaque than transparent.

3.2.4 What is at stake in complying?

I asked NGOs to explain what 'transparency' means in this context. For NGOs, what is at stake in compliance with s 54 is framed in terms of the risk of fostering modern slavery or exploitation. Consultants on the other hand, framed it as corporate risk to reputation or legal liability. Most want to see admissions of wrongdoing to some degree. Another participant from an NGO explained that from his perspective, transparency should

'actually to provide reassurance and comfort'. He added that from their perspective, 'it isn't just about transparency in supply chains, but increasingly, businesses have to recognise the concept of "businesses for the social good" and part of that is about being transparent.' Elizabeth, a manager of the Modern Slavery Registry, agreed and suggested that transparency could be 'two things: first, are they honest and transparent about the risks your company faces and second, about what you're doing to address that. It's all about more detailed disclosure and better disclosure.'

A Home Office official told me that corporations could be challenging to understand through disclosure alone. He said, 'I think there is a bit of disparity between what companies say in their statements and what they are actually doing and sometimes what they are doing is more than what they say in their statements…because there is a kind of reluctance to reveal details and I think it could be for a number of reasons, it could be the legal risks of doing so.' Elizabeth accepted that businesses regard risk very differently from how NGOs view risk. She explained 'by risk we mean, risks to workers, what the impacts on humans that businesses, operations and supply chains have. So, that's one part of it.' But she added 'we now realise companies don't see risk in the same way, when they talk about risk, it's the fear reputation harm or some legal consequences.' She explained that, if companies disclose negative information, 'their version of risk is a really bad headline in the paper the next day, for example.' Another NGO informant admitted that when the law was introduced, NGO representatives were 'ignorant about how businesses would behave in response and surprised that the corporate approach was so different.'

This has led to NGOs actively working with businesses to understand the barriers to disclosure. One informant said, 'the good thing is by calling out these companies, our

work has led to a lot of engagement with companies, which is good, in that it just helps to share real perspectives.' As manager of the Registry, Elizabeth wanted to understand the challenges corporations face and uncover the obstacles to good supply chain practice; something that she admitted was 'not obvious from the statements.' She tried to engage with companies directly to disseminate helpful information and enable the purpose of s54 to 'trickle-down.' She said, 'it is important if we want to keep that dialogue open.' As she explained:

> We do try to be fair; for example, when there's a serious allegation of human rights abuse against a company before we publish it on the website, we do go to that company first to seek a response, and that's not just to be fair but to try and open the dialogue with the company and have them address the issue. We have a 16-year history of doing that and for that reason, we have some pretty strong relationship with businesses.

For instance, as she also explained, NGOs are trying to persuade companies that disclosure does not always cause reputational risk:

> For example, companies like Marks & Spencer that perform the highest in our annual ranking this year where we assessed their MSA statement it was more because they were more transparent about the problems in their supply chains…We don't disregard the fact that companies might get named and shamed if they shares some of these things, but we have to continue to push for that if we want this type of legislation to have any sort of impact.

These insights demonstrate not only they also show that for most NGOs, the law was only ever a point of entry. By taking a more friendly and constructive approach, they felt that it enabled them to go 'beyond the law' and persuade corporations to incorporate notions of corporate accountability into their practice, industry and the market as a whole.[299] I observed that NGOs and corporates have different perspectives on what is at stake in compliance with s 54.

In s 3.3 below I examine the notion of 'going beyond compliance' as a key theme of debates about what counts as compliance with s 54. However, before considering these debates in detail it is important to note that the notion also has to do with the (lack of) public enforcement of s 54.

3.2.5 Enforcement and transparency

Disclosure regulations, designed to enhance 'transparency' are not new for corporations. Financial market regulations, such as the UK's Financial Services and Markets Act 2000, Part V of the Criminal Justice Act 1993 and various listing rules have been around to prevent market abuse and provide investors with protection for a long time as a way to maintain confidence in the market. Theoretically, these rules can have positive effects on improving corporate behaviour, by increasing the risk of litigation, reputational loss, and criminal sanction.[300] This approach works because the market itself is interested. Allowing regulators to sit back because transparency facilitates the market's survival;

[299] Lange, Haines and Thomas (n 104).

[300] Luca Enriques and Sergio Gilotta, 'Disclosure and Financial Market Regulation' in Niamh Moloney, Eilis Ferran and Jennifer Payne (eds), *The Oxford Handbook on Financial Regulation* (Oxford University Press 2015).

whereas the market incentives for compliance with s 54 seem more tenuous, which is why many activists argue that government oversight is essential.

But in practice, it was found to have elicited the 'whatever' response, which is just one of several obstacles to achieving transparency.[301] Another is information overload. In the context of CSR, Coombs and Holladay found that while transparency is an important and useful process that allows critical voices to be heard, the 'reality is that a minority of activist stakeholders bear the burden of ensuring true transparency by questioning disclosure'.[302] This means that for such regimes to work, a 'pseudo-panopticon' is needed to deceive the apathetic into action.

It was, therefore, surprising to observe that NGOs struggled to review and make sense of MSA statements. The frustration seemed initially directed at corporations but gradually at the Government as well, for its hands-off implementation of s 54. Some of the evidence from NGOs painted a bleak picture of the MSA's performance. In a House of Commons report entitled *Reducing Modern Slavery*, the Committee of Public Accounts acknowledged that the UK MSA is a landmark piece of legislation for big business around the world but noted that NGOs and some companies have also pointed out the limitations of the Act. Written evidence pointing to the ineffective implementation of s 54 was submitted by, among others, the CORE Coalition and the Co-op Group.[303] Reflecting NGO

[301] Omri Ben-Shahar and Carl E. Schneider, '"Whatever": the Psychology of Mandated Disclosure' in *More than you want to know: the Failure of Mandated Disclosure* (Princeton University Press, 2014).

[302] W. Timothy Coombs and Sherry J. Holladay, 'The pseudo-panopticon: the illusion created by CSR-related transparency and the internet' (2013) 18 Corporate Communications: An International Journal 212.

[303] House of Commons Committee of Public Accounts (n 30) 10.

statements, the report criticised the Home Office for not maintaining a list of the businesses that s 54 applies to, not knowing how many have produced statements to date, and not monitoring whether statements comply with the legislation. The report also suggested that the Home Office has been operating with a 'hands-off' approach and said it '…relies on NGOs, investors and consumers to monitor compliance, including two NGO-managed registries of statements.'[304] The Committee did not think this was an effective approach, as compliance with the legislation was low: they referred to the CORE Coalition's submissions and accepted that only an estimated 30 per cent of businesses required to publish a statement had done so. For those companies that had produced a statement, the report stated that the results appeared to be no more than a tick-box exercise.

According to NGOs, the lack of government engagement and the risk-centric corporate attitude are to blame for the poor MSA statements. An informant from the Independent Anti-Slavery Commissioner's Office told me that the Home Office was in a difficult position because of the way in which the legislation was set up:

> NGOs expected too much too quickly but the reality was the law was set up to fail. I would say if you look at the monitoring and enforcement approach that was adopted with the gender pay gap requirement where it's mandated that you upload the statement to a government-run registry website, and you get a fine if you don't do it. They've got 100% compliance in year one. We are not 100% compliant, on year four. They said, 'let's give it a chance, let's not go in with a stick in the beginning.'

[304] House of Commons Committee of Public Accounts (n 30) 10.

> Okay, but now, quite a long way down the road, they are still not doing it, so you kind of need a stick from the government.

Businesses have also criticised the lack of government involvement. In November 2016, the ETI and the Hult International Business School published a joint report on *Corporate Leadership on Modern Slavery*,[305] which detailed significant progress made by companies on modern slavery and noted the desire of many companies to engage more effectively with the government on this issue. They attributed the problems in addressing the underlying challenges of modern slavery to a lack of government policy and enforcement. Anecdotally, business representatives have told me that CEOs are sometimes called to meet with the Home Office to discuss MSA activities, which causes senior managers to re-engage with modern slavery issues. But they also noted that the Home Office rarely attends conferences to engage directly with businesses.[306]

At both the Innovation Forum Conference: *How Business Can Tackle Modern Slavery and Forced Labour,* held on 7-8 March 2018, and The Third Modern Slavery and Human Rights in Supply Chain Conference: *Delivering Impact Through Collaboration*, held on 19-20 April 2018, I observed NGO dissatisfaction with the lack of Government follow-through. Many of their representatives described the Government's approach to date as 'dismal' and argued that benchmarking of corporate responses 'would be better done by the British government'. However, according to legal advisors I spoke to at the

[305] Lake and others (n 31).

[306] Based on personal discussions at the Innovation Forum Conference: How Business Can Tackle Modern Slavery and Forced Labour on 7-8 March 2018 and the Third Modern Slavery and Human Rights in Supply Chain Conference: Delivering Impact Through Collaboration on 19-20 April 2018.

Innovation Forum Conference, who had insight into the Home Office's priorities, the UK government was focusing more on the crime of modern slavery. In terms of s 54, the UK government appeared to be relying primarily on 'social enforcement' instead; that is the private action of detecting and reporting illegality.[307] The dominant view at these industry conferences seemed to be that the Government needed to do more and must actively participate in the implementation, monitoring and enforcement of s 54. Such criticisms assume that regulations are only effective if they are implemented, monitored and enforced by public bodies.

It also demonstrates how NGOs were pursuing greater enforcement immediately after s 54 was enacted. Their evaluations were incorporated into the Joint Committee of Public Account's report, which demonstrated their influence towards greater sanctions and standards which exceeded the letter of the law. An interesting observation is that NGOs seem to have succeeded in creating the impression that 'beyond compliance' and 'beyond the law' are interchangeable. To me, they represent rather different ideas. Going 'beyond compliance' is more appropriate for s 54, as it suggests that there is a clear legal minimum, but going 'beyond the law' was originally used to persuade corporations to adopt voluntary CSR measures, when no formal law existed. Now, 'beyond compliance' means exceeding publication of a MSA statement, so why was this approach required? What does it mean in practice?

[307] Lobel (n 114) 10.

3.3 'Beyond' the MSA statement

Given that 'beyond compliance' entails actually taking steps to do more than publish MSA statements, it seemed important to me that I should understand how MSA statements were compiled, and what corporations were doing behind the scene. Two years after the first MSA statements were published, I attended a conference: Innovation Forum, 'How business can tackle modern slavery and forced labour' on 7th-8th March 2018 in London. During the panel sessions, an inhouse legal representative of a multinational pharmaceutical company speculated that the MSA might require companies and its suppliers to think 'beyond their legal framework and policies'. He spoke about the confusion they felt in response to s 54. According to many participants in that room, the provision looked 'odd'. The requirements on reporting categories seemed too loose, the failure to comply did not appear to lead to financial consequences. There was no (governmental) body to hold businesses to account, unlike other types of corporate regulations. Many of the conference participants agreed that the provision was confusing. They asked, 'why is the compliance bar so low?' 'Why are the requirements so vague?' One participant said, 'it was like being handed a blank piece of paper,' and wondering 'where should we start?' Even NGO representatives referred to the provision as offering a piece of 'blank paper' to companies. As Edelman, Leachman and McAdam explain, new laws, especially laws with ambiguous requirements are a form of 'legal exogenous shock' that can mobilise certain actors and encourage innovation and action.[308] One informant, who worked as a company's sustainability policy and global human rights lead described

[308] Edelman, Leachman and McAdam (n 150) 671.

her company's initial response to s 54, 'comply first, figure it out later', as 'fairly typical of many organisations at the time'. In other words, companies were feeling 'at sea' due to a lack of guidance.

3.3.1 'Comply first…figure it out later!'

My corporate informants explained that compliance with s 54 should have been a relatively straightforward exercise: write a statement, have it signed by a company director, and publish it on its website. It did not matter what the statement said, nor did it need to contain information relevant to modern slavery. But in practice, my informants told me, there was a difference between complying with the legal requirements and 'figuring out' how to respond, which some practitioners referred to as the difference between taking a 'tick-box' approach and going 'beyond compliance'. These popular phrases were frequently used in the modern slavery conference circuit, and they suggested there was a divergence of views on the implementation of s 54. S 54 gave corporations a shock, as some put it. It also provided an opportunity for CSR professionals to promote awareness of modern slavery within the organisations they work for.

Michael, a CSR employee of a large engineering firm told me that he recognised that s 54 encouraged companies to do more than its mandatory baseline requirements, but his company initially took a 'functionalist approach to the MSA' by doing the bare basics of putting together an MSA statement and publishing it on their website. But Michael came to realise that there was more to compliance with s 54 after attending a few conferences, which were attended by representatives of a range of NGOs, businesses and consultancies. He started to recognise that s 54 reporting was designed to address the underlying issue of

human rights. He also understood that on his own, he had no 'sway over other people's morals and standards, and one person cannot change behaviour'. He told me, 'We need legislation to tell us what we have to do, which means modern slavery has to be legal compliance.' As a compliance specialist, he said that since s 54 did not make for a demanding set of legal requirements, it was tricky to get his organisation to agree to a strategy that also made sense for the company's existing priorities, including efficiency. He meant that he was caught between wanting to go 'beyond compliance' and the need to minimise cost, resources and expenditure. Because of these conflicting priorities, he found responding to s 54 more complex than he first thought:

> To get the job done correctly is all about the organisation and its strategy, which is more complicated in reality with most business trying to increase efficiency and profit, so it is understandable that some businesses are functional about the MSA.

Michael could not immediately resolve the tensions he perceived and sought senior support. Since then, his company's CEO has proactively encouraged and empowered employees to do more in this area. As Michael explained, the company's subsequent statements have improved by including more detail on company structure, exploitation risks by region and company operation, and a five-year plan which sets out concrete steps to prevent modern slavery and exploitation, such as a promise to carry out due diligence and audits incrementally. Their most recent 2020 MSA statement describes areas for further improvement and adopts a more open stance, acknowledging that the processes they use to check on their suppliers in the US to ensure that exploitation may not be replicated further down the supply chain.

Another of my interviewees, Rachel, who worked at the same company as Michael, is the head of the company's UK responsibility and sustainability policy. This department was designated with responsibility for compliance with s 54. As a department, they 'own' the work, but they rely on the legal department for advice on potential legal liability. Rachel explained that she felt pressure to 'comply with the law, then figure out what to do later'. She wrote the company's first MSA statement, based on information that she could readily identify as relevant to modern slavery. In doing so, she considered issues relating to human rights, employment relations and policies connected with supplier conduct.

> We are a global organisation, we have 133,000 employees all over the world. About 95% of those people are based in OECD countries, about 5% are outside of that. That is just a snapshot, and just in the UK, we have 15,000 employees. I just wanted to put that into context a little bit because we need to do a lot, and it has taken three years to get to this stage. That is how long it takes for a large and complex organisation like ours.

However, Rachel was also frustrated by the internal processes that she was required to follow. She did not hesitate to criticise the company's first MSA statement. She said the legal team did not want the statement to include any information that was not already publicly accessible, and the General Counsel ('GC') of the Legal Department steered Rachel away from discussing modern slavery in explicit terms. The GC emphasised that it was essential to comply and be accurate or risk potential litigation. The company's profile as a publicly listed multinational within a highly regulated and technical industry also meant it had a reputation to maintain. As a result, the Legal Department ended up amending a large portion of Rachel's first draft. It replaced her words with those used in the annual

financial disclosures (published pursuant to the Companies Act 2006). It also removed the phrase 'zero tolerance of modern slavery' to avoid the implication that the company conducted audits and inserted hyperlinks to existing policies (controlled by the legal department) instead. Rachel accepted the amendments because they expedited the process and ensured compliance with the statutory deadline. She also knew that her initial version of the statement was aspirational and exposed the company to future commitments. But she was disappointed that the company's first MSA statements adopted such a 'risk-centric tone'.

In another British company with international supply chains, Rayne, a senior compliance officer, understood that s 54 encouraged the company to go beyond strict compliance. She said:

> I took it on as an additional project as something that needs to be done, highlighting that at the time, it was not just about the policy and statement. It needed to go into strategy; we needed to decide as a business how we were going to approach this.

But, like Rachel, she also found her company's early MSA statements lacked substance:

> I can't speak for any other businesses, but certainly on our side of things, I think you end up feeling quite vague, which is the absolute opposite of what the statement is meant to be. The statement is supposed to be a commitment; this is what we are going to do, warts and all, this is everything we've done so far, this is our progress, and these are our plans. Certainly, from our business side of things, it makes people very nervous

> about being warts and all because it feels like we are saying, 'hey, Mr Regulator, we are not doing enough here.' They really don't like doing that type of thing, so you end up sort of glossing over things. What was clear, though, when I was doing it, is everything we have to do has to go through our legal team. They don't like putting anything in writing that might get us into sticky water later on.

According to Michael, Rachel and Rayne, their companies' first MSA statements failed to meet their personal expectations. But at the same time, they were gathering information about modern slavery, working out internal responsibilities and trying to develop collaborations with people who might help them develop better strategies. From their perspectives, the statements revealed internal tensions, which emphasised to me that they were not meant to be deliberately evasive, although my informants recognised that is how they could have appeared. As they explained, 'ticking the box' was a temporary placeholder while their companies spent time figuring out how to go 'beyond compliance'. These actors saw themselves as champions of an unpopular but necessary agenda, but rather than challenging the status quo, they worked within the confines of the corporate structure. As a result of this more moderate approach to change, the statements they produced barely represented the extent to which they took s 54 seriously. There was tension between what the CSR professionals thought was needed and what the lawyers were prepared to allow. In practice, as my conversations with corporate representatives revealed, contrary to the NGOs' critical accounts of minimal compliance, businesses were trying to figure out how to respond.

3.3.2 Legal advisors to the rescue

The introduction of s 54 set off a flurry of legal advisory activity from as early as June 2014. Concerns about the regulation reverberated through law firms and inhouse legal departments of multinational companies while the Modern Slavery Bill was still progressing through Parliament. From many companies' perspectives, modern slavery and supply chain transparency were alien concepts, and s 54's light-touch formulation roused suspicion and confusion among my informants. They explained how modern slavery dominated legal updates on recent case law and legislation, for months before the law came into effect. Law firms around the UK published more than 250 articles on the provision even before the law was passed, outlining its potential impact and requirements. Lexology, one of the many legal resource websites used by lawyers in the UK, for example, tracked the progress of the Modern Slavery Bill [309] and published articles that encouraged businesses to participate in the government's consultation process.[310] Through newsletters and email updates, lawyers kept business clients closely informed of the Bill's movements through the legislative process. These initial news alerts generated interest and queries from corporate clients about the law and laid the foundation for further discussions and information sessions.

Although s 54 entered into force on 29 October 2015, the new measures applied from the financial year ending on or after 31 March 2016. This gave businesses at least five

[309] Robert Renfree, 'New legislation announced in Queen's Speech' (*Mills & Reeve LLP*, June 2014) <https://www.lexology.com/library/detail.aspx?g=2a71fb0e-d78d-4045-92a0-a69159d7ae85> accessed 27 August 2022.

[310] Jehan-Philippe Wood and Hari Jon, 'Update on the Modern Slavery Bill - consultation on the transparency in supply chains clause' (*Norton Rose Fulbright*, 27 February 2015) < https://www.lexology.com/library/detail.aspx?g=1d9fc7c9-28b9-4405-8280-6b6aa860f46a> accessed 27 August 2022.

months to publish their first MSA statements and some time for lawyers to educate their clients. During these first five months, legal advisors told me, enquiries about s 54 were at an all-time high. My lawyer informants noted that many of their corporate clients did not know they had to comply with s 54. A lawyer in a large city law firm stated that most businesses were unfamiliar with the concept of 'modern slavery' (as expressed in the Act), and they did not know what they needed to do. He added, 'most lawyers looking at this for the first time were not necessarily familiar with the concepts [of modern slavery], so it stands out'.

Other lawyers also noted that the law was unusual compared with other types of corporate regulations. The head of global government affairs of a large retailer described s 54 in the following way:

> This is a piece of compliance legislation that isn't like any other compliance legislation…This is legal compliance legislation which has no real definitions of what exactly you need to do nor penalties if you didn't do it, so it became more of a reputational thing...When the legislation was getting written, that was the intention…for it to be vague as to the bar rather than getting everyone to a bare minimum, and that sort of panic, or confusion, was the intended effect because the output was not a minimum requirement…sort of compliance, sort of not… We looked at this quite closely and decided that it was not a paper exercise.

One senior associate of a city law firm said that a pure reporting requirement focusing on one particular issue 'does not have many analogues elsewhere in the law'. By this, he means that it was unusual for a domestic provision like s 54 to have potential

'exterritorial effects', since national regulations do not tend to directly affect offshore activities. According to another lawyer, his clients wanted to know 'what is modern slavery, the technicalities of publishing and approving, signing off on the statements, what to do year by year'. He said initially he helped companies understand those aspects and what modern slavery was about, and what they might do about it. Gradually, the questions matured, and he was asked to provide advice on how s 54 could attract potential liability, such as civil lawsuits for the company and how it fitted within the broader regulatory landscape.

William's statement suggests not only that the MSA is an unusual and 'open textured' piece of legislation, but the statute is also not 'complete' in the sense that it has to be supplemented by the international law, sectorial best practice guides, NGO guidance and expertise.

Subsequently, legal advice became more sophisticated. S 54 was compared with a wider body of corporate regulations, such as the Bribery Act 2010 (which uses the same broad definition of 'commercial organisation' as s 54) and the Companies Act 2006, which requires directors to promote the success of the company for the benefit of its shareholders with reasonable care, skill and diligence. One lawyer told me:

> [We] were quite worried about it at the outset, that if they start publishing statements on behalf of the group, there would be a risk to the parent company of increased liability for their subsidiaries, and that wasn't just about the Modern Slavery Act. It was also about the Bribery Act because the definition of a commercial organisation under the MSA is the same definition as a commercial organisation under the Bribery Act. So, you

> either assess yourself as a commercial organisation for the purposes of the MSA and therefore you are a commercial organisation under the Bribery Act, or you are not! Back in 2015, we had a number of European and American companies which were of the view that they didn't come within the jurisdiction of the Bribery Act wanting to check whether, if they published an MSA statement at the parent company level would potentially risk undermining that legal analysis.

Lawyers also drew on s 54's antecedents, the CA-TISC and the EU Non-Financial Directive 2014/95/EU, to help interpret and explain the requirements. They also used the UNGPs. This type of legal advice shaped perceptions of s 54 and contributed to the diffusion of existing legal and quasi-legal norms. I will explore the role of legal advisors further in Chapter 5.

3.4 Conclusion

In this Chapter, I challenged the commonplace but insufficiently nuanced narrative that s 54 is weak and ineffective. I found that s 54 was heavily criticised for its lack of an enforcement mechanism and vague requirements, and yet, many companies stepped up despite apparently little to compel them to do so. Corporate executives like Rachel rushed to comply; they felt forced to respond before they understood the legislation in full. Moreover, I found a moral streak in some corporate responses. I highlighted that NGO criticisms, often framed as going 'beyond the law' or 'beyond compliance' are part of a wider set of debates about what is at stake in compliance with s 54, in which a range of actors including CSR professionals, lawyers are actively negotiating the terms of these

debates, such as to cast s 54 as part of the emerging business and human rights movement. Because of its ambiguity, s 54 provided an important platform to discuss 'beyond compliance' measures, which meant doing more than publishing a statement, as the law clearly requires. This paved the way for a competition in how s 54 should be framed and what compliance must entail.

Discussions about 'beyond compliance' revealed, yet again, the overarching influence of CSR, as the notion of going 'beyond the law' was a key theme of that social movement. 'Beyond compliance' exceeded the intention of the Cameron government's anti-regulation agenda. It was designed to encourage discussion by evoking concepts such as 'transparency', 'risk' and 'audience', which would be recurring themes throughout. For example, 'risk' is understood differently by lawyers and NGOs, 'transparency' through disclosure created an unexpected burden on NGOs to scrutinise and evaluate MSA statements, when, in fact, most of the activity was not disclosed in print. But, NGOs gain more from 'beyond compliance' than they might be willing to admit. Jointly, their activities are constitutive of the legal standards not expressly spelled out in s 54. These actors are co-constructing legal norms and social norms beyond s 54.

With this chapter, I offer a nuanced, empirically rich picture in response to the first question: what are the effects of s 54? In answering this question, I observed that there can be no clear distinction between moral and commercial interests, and although publicly, NGOs and corporations are pitted against one another, pointing their fingers at each other, there are two facets to the problem, a 'public' position, represented by MSA statements and NGO reports criticising those statements, and a 'private' stance, which is more collaborative, with corporations more morally or socially concerned and NGOs being more

commercially motivated. This duality, I suggest, contributes to a new, public/private dimension to the conception of social actors, law, organisations. The interactions between these groups as 'fields' are not constituted by a single, uniform ideal and of the Polanyian 'double movement', it seems that within the economic and social dichotomies, there may be an unstable interaction between what 'should' be and 'what' is.

4. BEYOND COMPLIANCE, GOOD FOR BUSINESS

4.1 Introduction

This chapter takes a deeper dive into how corporations and corporate employees have responded to s 54 beyond drafting and publishing MSA statements. The chapter is structured in two main parts. The first consists of an overview of the roles and professionals most commonly to be in contact with s 54. This includes CSR professionals, lawyers, procurement specialists and senior executives. Picking up the themes of the previous chapter, the contribution of this chapter to the overall plan of the thesis is to: (1) identify if, and how corporations and professionals interpret the law in light of existing corporate priorities, and (2) explore the reasons for their conduct. In doing so, we can begin to understand not only what effects s 54 has had, but also the unforeseen or unexpected interactions brought about by its implementation.

The £36 million turnover threshold in s 54 limits the scope of the provision to larger corporations, usually with extensive transnational supply chains. But as the previous Chapters pointed out, the requirements are vague, the enforcement is light-touch, which means the responsibility for interpretation and implementation shifts on to the regulated entities and the people in them, who interpret what compliance entails onto regulated corporations.[311] The implication is that corporations need to adopt certain internal measures in order to compete in a 'race to the top'. Such a proposition aligns with the key 'internalisation' rationale, intended in part to 'embed' modern slavery awareness 'further

[311] Gilad (n 125)

into company culture'[312] and correspond with the UNGPs' effective horizontal integration, mentioned also Chapter 2 as evidence of the influence of UNGPs, and in this case, acted upon as a 'beyond compliance' measure.[313] In effect, 'beyond compliance' becomes a short hand for alignment with existing law, including soft law standards, like the UNGPs.

Additionally shaped by other business concerns, such as reducing legal and reputational risk and improving attractiveness as an employer.

4.2 S 54: a management problem?

At first blush, the corporations I encountered appeared to have similar, basic organisational structures, designed to maximise efficiency, with some variations in naming conventions. In management circles, this is known as 'functional' organisation.[314] Employees are organised along operational lines or by specialisations to maximise efficiency. Departments such as 'legal', 'compliance', 'responsible business', and 'procurement' are formed to support functions. From the outset, these four functions revealed themselves to be involved in corporate responses to s 54.

There is an extensive body of management literature on internal organisational dynamics, including how actors vie for power, form interest-based coalitions, and bargain

[312] HM Government, *Independent Review of the Modern Slavery Act 2015: Final Report* (May 2019) CP100 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf> accessed 28 August 2022, vol 2 para. 2.3.

[313] Principle 19, UNGPs (n 94); National Action Plans on Business and Human Rights 'Guiding Principle 19' <https://globalnaps.org/ungp/guiding-principle-19/> accessed 18 November 2022.

[314] Henry Ogden Armour and David J Teece, 'Organizational Structure and Economic Performance: A Test of the Multidivisional Hypothesis' (1978) 9 The Bell Journal of Economics 106.

with one another to achieve specific goals and obtain resources.[315] Some of the literature resonates with my interviews with corporate employees, which revealed that a company's structure and the motivations of individuals in a company can shape its response to law. Simpson et al found that personal responses are the foundation of the corporate response to s 54.[316] Compliance literature offers deeper insights into the broader effects. In this regard, Edelman's concept of 'managerialisation' of law suggests that corporate actors interpret the law in light of business priorities, distorting or minimising the full effects of the regulation. But moral and ethical values are present in corporate decision-making, insofar as they also make sense for the business. As Hutter and Power described the 'convergence between regulatory ambitions and organisational priorities', which reflect the challenges and coalitions formed by corporate employees to respond to s 54 and address modern slavery.[317]

Gilad also pointed out that traditional research overlooks the role that regulators and business professionals play in interactively framing what is entailed in compliance with ambiguous laws. Gilad explains how professional actors influence the meaning of open-ended regulatory terms. She considers the role that regulators and firms play within this process – which is considered in greater depth in Chapters 7 and 8. The extant sociolegal scholarship has given little explicit attention to these important questions. Most studies are written as if there is a bright line that divides compliance, non-compliance, and so called

[315] Samuel B. Bacharach and Edward J. Lawler, *Power and Politics in Organizations* (JosseyBass Inc 1980), 2

[316] Simpson and others (n 187).

[317] Bridget Hutter and Michael Power, *Risk management and Business Regulation* (*Financial Times Mastering Risk Series*, 2000), 4.

beyond-compliance with regulation. Consequently, the primary focus of this chapter is on the substance of corporate compliance and on the process by which the meanings of regulation and of compliance with regulation are constructed.

4.2.1 CSR responsibilities

According to my CSR informants, they do not typically 'make money for businesses', but despite this, CSR jobs have been on a steady rise as companies respond to new regulations on environment impact, labour conditions and supply chains practices.[318] Between 2017 and 2020, vacancies of these posts doubled, partly due to international pressures such as the MSA, UNGPs on Business and Human Rights and the EU's Non-Financial Reporting Directive.[319] While CSR has been around for a long time, it is the emergence of the professional cadre and specific organisational specialists that is new and interesting.

The CSR department is a relatively new addition to businesses, but this is not the same as the emergence of CSR, which existed long before.[320] This is about the emergence of the relatively new professional cadre. While many large multinationals have undertaken CSR work, most of the activity to date has been voluntary and designed to enhance

[318] Diane Peters, 'Dream job 2.0: As companies get serious about the environment, sustainability consultants are in demand' (*The Globe and Mail*, 3 May 2021), <https://www.theglobeandmail.com/business/careers/article-dream-job-20-as-companies-get-serious-about-the-environment/> accessed 27 August 2022.

[319] Attracta Mooney, 'Jobs bonanza in stewardship and sustainable investing teams' <https://www.ft.com/content/2714da14-c12d-46b2-8ecf-9aba3f665fdf> (*The Financial Times*, 8 March 2020) accessed 27 August 2022.

[320] Thomas Maak and Nicola M. Pless *Corporate Social Responsibility (CSR): Bringing Society Back In, The Routledge Companion to Corporate Social Responsibility* (1st edn Routledge 2021), 1-14: "…CSR has been used as an umbrella term since the 1960s…"

corporate reputation.[321] As such, these departments are often small and not well funded. Companies give this department a range of names, including 'responsible business', 'ethical trade', and 'sustainability and governance'. But in essence, they exist to prevent reputational and wider social harm, improve business systems and practices to mitigate risks within multinational corporate structures. These CSR professionals are often known as the 'internal critic' with a difficult job of going against traditional corporate values of profit maximisation and efficiency.

As a profession, they have to managing discursively the tensions between profit and social responsibility, which has been referred to as the 'commodification of CSR', and believed to be a source of tension.[322] Little is known about how organisational actors practically manage the tensions resulting from the concomitant search for profit and social responsibility. Some research has critiqued the commodification of CSR, noting that CSR professionals live with contradictions by alternating between asserting and negating paradoxes, and they invoke culturally shared values by distancing and drawing on motives to argue for a certain result.[323] Brès and Mosonyi found that CSR is not a well-delineated professional because of its multidisciplinary nature. This means that CSR professionals act as knowledge brokers for traditional professions, networking and connecting various internal stakeholders (e.g. inhouse professionals, consultants and NGOs).[324] The case of

[321] Javier Aguilera-Caracuel, Jaime Guerrero-Villegas and Encarnación García-Sánchez, 'Reputation of multinational companies: Corporate social responsibility and internationalization' (2017) 26 European Journal of Management and Business Economics 329.

[322] Ghadiri, Gond, Brès (n 141).

[323] Ronen Shamir, 'The age of responsiblization: on market-embedded morality' (2008) 37 Economy and Society 1.

[324] See Szilvia Mosonyi and others, 'Rethinking professionalization: A generative dialogue on CSR practitioners' (2019) 6 Journal of Professions and Organization 246.

CSR as a profession shows how a common normative goal can serve as a sufficient uniting force for emerging professions and in this sense be described as a 'collaborative occupation' for its reliance on solidarity, collegiality and cooperation. Unlike other professionals and traditional view of professions as 'self-interested cartels' in the sociology of professions.[325]

One of the UK's leading business associations, Business in the Community, categorises a company's CSR practices into four spheres: 'community', 'workplace', 'marketplace' and 'environment'. 'Community' refers to how companies relate to society, traditionally manifested through philanthropy, charity and long-term partnerships with educational institutions. Nowadays, with the introduction of the UNGPs and the OECD's Guidelines for Multinational Businesses, the expectations of corporate responsibility have become internalised through corporate codes of conduct and policies that govern the corporation's relationship with the public, suppliers, potential investors, shareholders, and civil society. One view of CSR is as a cost/constraint that works in a different direction to the commercial success of the firm. But another view is that it is part of marketing/pr or general risk management, in which case it is a commercially-rational part of business. HR' through the same lens; are they there to produce productivity enhancing personnel policies, or to keep the firm on the right side of employment law?[326]

[325] Terence J. Johnson, *Professions and Power* (1st edn, Macmillan 1972)

[326] Christian Voegtlin and Michelle Greenwood, 'Corporate social responsibility and human resource management: A systematic review and conceptual analysis' (2016) 26 Human Resource Management Review 181; Harsha Sarvaiya, Jim Arrowsmith and Gabriel Eweje, 'Exploring HRM involvement in CSR: variation of Ulrich's HR roles by organisational context' (2021) 32 The International Journal of Human Resource Management 4429.

CSR in the workplace concerns employee policies, including areas mandated by law, such as minimum pay, labour rights and apprenticeships, areas loosely prescribed by law, such as diversity, gender balance, maternity leave, and issues not yet regulated, such as work-life balance and remote working. CSR has entered the marketplace as concerns about corporate supply chains and environmental sustainability has become more mainstream. These issues are increasingly subject to regulation, and because of this trend, CSR professionals are becoming drawn into the legal world and vice versa.[327]

4.2.2 Deference to lawyers and legal form

Many of my CSR informants believed that s 54 was just an extension of CSR, with some formalised requirements, which they could use to generate more internal support. For most CSR professionals, s 54 was helpful. It supported the work they were already doing and attracted focus and attention from management. Michael, Head of Procurement Responsibility and Sustainability of a large multinational, said, 'because it is legislation, that means we have to do it. Even if [buyers] don't like me for it, they understand that if it's a law, we have to do this.' Terry, Director of Global Governance and Social Affairs at one of the largest supermarkets in the US and UK, told me that the MSA brought together 'work that we are already doing. It was more about packaging it up in a way that complied with the vague guidelines. It was not like, hey, we are looking at modern slavery for the first time.' He added:

[327] See Mosonyi and others (n 327); Pratima Bansal and Hee-Chan Song, 'Similar but not the same: Differentiating Corporate Sustainability from Corporate Responsibility' (2017) 11 Academy of Management Annals 105.

> MSA brought together lots of different topics and pushed CSR into something much more high profile. We have always been very open in saying to procurement teams, "hey, this is law; there's a piece of legislation." Inevitably, the doors will open quicker for that. There's no doubt that having a CEO sign off on the website makes an impact because you then get conversations about how we comply with it and discussions about how it's a little bit more complicated than just complying. The fact that you make something into legislation is quite powerful. If it's done well, it can and did have a positive impact.

Another sustainability advisor for a large firm seemed to agree. He said, 'it wasn't like it was new; we were looking at passport retention, recruitment, and working hours. All these topics had been looked at already, so [s 54] was more about ensuring the packaging and narrative consistently with the existing theme was emphasised.' Insofar as these individuals were concerned, the work was already underway. As one CSR employee put it, s 54 'grease[d] the wheels of getting stuff done, getting budgets signed off, senior buy-in etc., we could build off existing work that's taking place.'

But despite the belief that work was already underway, s 54 generated a flurry of new activities within many companies, including figuring out which department should be 'taking the lead' (which does not mean 'having the final say') on s 54 and determining the scope of the company's response. Elena, the Business & Human Rights Director of a major raw materials firm, explained that the law was about not just about complying with the requirements and because it 'requires more than compliance', 'that's why it's a bit of work to navigate it internally. We did not know which department should be in charge. But that's

part of the benefit of it: you bring a lot of people on the journey. So, it is a compliance piece of legislation, but people working on it will be part of responsible sourcing looking at a much wider in terms of reputational branding and narrative.'

Many CSR employees felt that the law opened up new communication channels, but collaborations depended heavily on who was leading. As one lawyer explained to me, when lawyers are leading on a company's s 54 response, he noticed that they tend to be 'less ambitious'. But he perceived CSR actors to be more open, more transparent and active about improving supply chain practices.

Among CSR employees I spoke to, reliance on legal colleagues varied but most displayed some deference for legal professionals.[328] Even if the content of what they were doing was effectively CSR, CSR employees were worried that the law had changed how government, civil society, investors and other stakeholders perceived these activities and their MSA statements. Since the MSA statement constituted legal disclosure, it warranted the advice and consideration of legal advisors. Large, complex multinationals often have strong legal departments that are seen as protectors who safeguard the company against external threats. Terry, a CSR professional resigned himself to that position and said, 'if the lawyers are happy, then we'll be fine. So it's just about following their lead.' Having had to fight for the company even to recognise 'modern slavery', he felt exhausted.

But this was not the case for all CSR employees. There were plenty of strong personalities who wanted to lead their companies' response to s 54 and chose to do so by

[328] The organizational deference may also align with the relative pay, and also career trajectory. In my experience, CSR professionals rarely progress up the corporate hierarchy towards senior management, whereas legal counsels do or can secure a place on the board.

using the law as a set of minimum requirements. One of these sustainability managers told me:

> Yes, of course we speak to the legal side and we strongly rely on their expertise, sometimes yes, discussion with legal people can be complicated and they have lots of concerns. It's also good that they ask these question and force us to think about the risks. You have the departments internally in the company to make sure things go well. We used to think supply chains are not our problem, and suppliers should take care of themselves, now we see it is the legal obligations that forces us to do a proper due diligence on the supply base. It's laws that give us an obligation to make sure things don't happen. But it's beyond the law if something goes wrong in the supply chain, it is a reputation risk also, not just a supply chain risk. Lawyers help us see that these things pose a risk.

Elena, who is very confident in her role, explained that she was in charge, with the legal function performing only a small part in the company's response to s 54. She said:

> In the first year, we ran it by our legal. Actually, the lawyer mainly did the i-dotting and t-crossing, like you'd expect. but, you know, I gave push-back…when they were like, 'don't say this'. To be fair to them, they never pushed for a perfunctory statement. But if I am a lazy business, I will go to a law firm and get a statement, and that's as much as I am going to do. The other extreme is what I do: you have to know the business, travel overseas, the company has to be invested in that. We invest in that process

> and build capacity within the business. So long as I have the evidence, the lawyers are happy.

In some of the companies I talked to, s 54 compelled them to collaborate more across internal departments. In other words, the law not only shapes business practice, but also internal business dynamics. While lawyers dealt with 'the legal perspective' CSR professionals took care of going 'beyond compliance'. But most of the time, the division of labour is less straightforward. Michael explained:

> People tend to do the minimum required by the law, but that means you are trying to meet the obligation, and it's a burden and only done under pressure. To introduce this topic only because the law requires does not make anybody enthusiastic about it. We try to show also the additional value so suppliers will engage better, do better in terms of human rights, treat their employees better. In the end, they will perform better, more reliably because they have less turnover in their personnel, better-educated personnel and the like. It's much better to show buyers a benefit if you want them to do something. When they have already worked 10 hours a day, they have to believe in it and be enthusiastic about it.

For a multinational, s 54 was an impetus to reconsider established practices. One multinational CSR advisor explained that s 54 gave them mandate to think about the broader supply network, subcontractors, recruitment agencies, and other labour service providers. He said:

> We've got different laws in different countries…I have that on my radar, and we've just worked to the highest agreed international standard on that.

> But, you know, most of them are not eclipsed by ILO recognised standards. They just make it more specific in relation to supply chain transparency. So, I think it actually makes the job easier. I can't put pressure on the supplier to rectify everything. What I can do is deal with the context in which that business is done and put a spotlight on international standards and seek to raise those international standards, and then hand over the baton. If I hold one end of the baton, they hold the other and be seen to do that, then you hopefully get some sort of traction and movement in that regional or national level.

Elena's approach is to use the company's own MSA statement to educate 'externally and internally for my colleagues because they are the ones who were actioning and implementing.' S 54 prompted a moment of self-reflection and assessment among CSR professionals. It also increased their profile within the companies they worked for. An interesting and surprising development, given that the provision was meant to require no more than what some large multinationals were already doing.

But, while these activities are important, and take enormous effort to execute, they also seem like convenient window dressing, since they do very little about the fundamental power dynamics within and between companies. The problem, from the CSR professionals' perspectives, is that so much is outside of their control, and they can only work within the structural parameters they are given, curbed by deference to the legal form, limited by their knowledge but driven by the need to prove their worth in organisations that place profit and efficiency above social concerns.

4.2.3 Procurement

CSR professionals have to work with the procurement function, also known as 'sourcing' or 'purchasing' to produce MSA statements. Procurement specialists are often known as 'buyers' and they hold the data on suppliers. They have traditionally focused on profit-making and cost-cutting. One informant told me 'where procurement is concerned, money is the focus'. But increasingly, supply chains and supply management have come under the spotlight as a vital component for the growth and survival of companies worldwide.[329] Buyers work closely with suppliers as they play a key role in negotiating prices, setting contractual terms, deadlines and imposing conditions such as health and safety standards. CSR professionals and NGOs explained that buyers can be a contributing factor in modern slavery if they turn a blind eye to these issues or impose demanding deadlines to achieve profitability targets; as such, buyers are increasingly acting as de facto ethical gatekeepers. I note that my discussion does not deal explicitly with the question of power, but this is relevant, and exploitation and brutal bargaining are unfortunately part of the design features of contemporary business relationships.[330] A buyer's 'key performance indicators' ('KPIs') determine salaries, bonuses and promotions, which can encourage hard bargaining, with few ethical considerations. Michael stated:

> [Buyers] are trained to look at price, quality, and time of delivery. That's the magic triangle for the procurement people and their performance is measured against that. But I (representing CSR) have now come in, and I

[329] Josie Cox, 'Reshaping and empowering the procurement role' (*Reconteur: content for decision-makers*, 29 April 2020) < https://www.raconteur.net/supply-chain/role-procurement-function/> accessed 27 August 2022

[330] Justine Nolan and Martijn Boersma, *Addressing Modern Slavery* (UNSW Press, September 2019).

> say it is not a triangle; we also have to look at how a supplier works, so we have to add responsibility and sustainability performance and the maturity of the supplier as additional criteria, so we are introducing additional work and effort for buyers.

Michael's role is a new position within his company – he was hired only 6 months before our interview took place in August 2019. The new position was explicitly designed to bridge the gap between CSR and procurement, to help the functions communicate better. Michael thought that s 54 might be responsible for the existence of his role. He said the job was not needed before but now there is a task of persuading buyers to care about modern slavery and the environment: 'we have to show them how to change their old ways.' Michael agreed that procurement departments and buyers are mainly driven by commercial concerns. However, his company have established the new KPIs, and buyers have started to reconsider their responsibilities. In the past, buyers regarded their first obligation to be the company and maximising profit by reducing expenditure, but 'now we have an obligation as a customer in relation to what happens in our supply base as well…'

Many CSR employees are responsible for training and educating the other employees in their companies. Michael said it is about changing their minds and ways of working without too much disruption to their existing workload.

In many organisations or sectors (e.g. engineering), procurement is often a career-deadening, low-status bureaucratic job. But in others, such as retail, procurement reigns supreme. So, there are industry-specific (maybe firm-specific) differences, but regardless of industry, subjectively, the procurement is seen as 'the business end' of and considered

more vital than functions like CSR or legal because it generates revenue. A sustainability manager in a multinational explained that her work depends on the budget provided to her by the company. The procurement function makes the money, so it immediately creates an unbalanced power dynamic. She said, 'because [procurement] have the money, where this often breaks down I think is that I am an ethical person sitting in the corner talking to suppliers, they are a bit like…you need to have the person holding the purse strings saying this is an important part of the service that you are providing in order for them to do anything.' She added that:

> our budget is effectively nothing. It's enough for going to a meeting in London and that kind of thing but we don't have budget for programmes. That would all come from the relevant teams who would generally try to get it through the suppliers, which would be negotiated as part of the contract. And to sell that idea we have to go and find a problem then try and solve it. It is obviously a hard sell for people who are dealing with the problems that they already know about and there are plenty, so potentially that can be where we need more resource. But it's generally about helping people understand what they need to do.

The need for additional support and leverage is a common point of discussion among CSR professionals. At conferences, I noticed that NGOs would speak directly to them and offer assistance and support. Many CSR employees appreciate the expertise and support and interact with IGOs, NGOs and multi-stakeholder initiatives ('MSIs') regularly to bolster their agenda within the company. But by doing this, the conversations become disengaged from the buyers and procurement officers. One informant observed that

procurement departments are often the last to hear about the changes that affect them, because CSR employees are too busy telling the world what they want to do, rather than communicating those messages internally. One procurement informant told me that she did not know that her company had a modern slavery statement. She added, 'regulatory affairs department are all about making sure the stuff on the back of our packs is correct, making sure that allergens is correct…quite a different focus…I would be interested now to speak to someone in our reg team to be like…what is our position on modern slavery and are we looking at this regulation? I mean…I am going to look at the website now, because I am in purchasing and I don't even know that…that is worrying.'

4.2.4 Tone from the top

Relations between internal functions such as procurement, CSR and legal lies at the heart of corporate responses to s 54. One sustainability manager I spoke to stated:

> [S 54] brought together compliance, quality, technical. Health and safety could potentially do part of it, but they cannot understand the supply chain. They have visibility on-site, but it's a combination of things in a business…ethical audit conduct interviews, and you have to have certain skills to do them. You need the Human Resources teams to do the surveys, ask smart questions, and know the workforce. I've sat under legal teams, where we were compliance focused. But we are talking about people here. So, we have to go 'beyond compliance'. But the law doesn't say what 'beyond compliance' is. It's irrelevant in a courtroom.

Most of my informants talked with genuine concern about the challenges of working across departments and their efforts to overcome them. Lawyers who had to branch out and either seek support and assistance from other functions or develop new skills did so despite being out of their comfort zones. Marie, who is a Partner of an international law firm observed through her clients 'a lot of to-ing and fro-ing between say, the chief sustainability officer saying "we've done a lot and we want to disclose it" and the board saying, 'no, no, no, we don't want you to say all that.' She added, 'it may well be that one department is doing something and not telling other departments about it. So, the company ends up disclosing less than what they are actually doing.'

To overcome the divide in corporate structures and change corporate behaviour to comply with and go beyond s 54, many of my informants noted the importance of company leadership. Elena explained that s 54 helped her get senior support. 'Senior support', also known as setting the right 'tone from the top' or strategic 'buy-in', became a popular phrase when the Bribery Act 2010 was introduced. That Act imposed an obligation on senior managers to set standards that would trickle down through the organisation by attributing vicarious liability to senior managers for the actions of their subordinates.

Borrowing an economic metaphor of 'trickle down', Parliament intended s 54 to encourage best practices to 'trickle down' the supply chain, from the largest companies to its smallest suppliers. The requirement that MSA statements must include the signature of directors captured the attention of senior managers. One lawyer said s 54 is the kind of thing that 'you need to socialise companies to' and 'this is a relatively new concept. For many companies, this is the first time they are thinking about these issues at the upper management level.'

The word ‘strategy’ appeared repeatedly in my interview transcripts with corporate employees, especially more senior executives. ‘Strategy’ can represent a qualifying threshold for the business (e.g. if something does not fit with the company’s strategy, then it must be excluded) or a unifying approach that brings a company together. Despite disparate internal agendas, ‘strategy’ suggests there is a common objective and a way to reach it. To develop a strategy, one executive said, he has to consider the benefits that s 54 can bring against the company’s exposure to a range of risks, including financial, reputational, and legal. Having considered these factors, this senior executive had to decide how much the company wanted to invest. The decisions made can also depend upon how CSR employees frame their objectives.

According to Wowak et al, their study found that when CEOs take a stance and if the stance resonates with employees, they respond positively, strengthening their commitment to the firm and support for the CEO’s promoted ideology. When the stance runs counter to employees’ values, they pull away, experiencing diminished organizational commitment and support for the CEO’s expressed ideology. Moreover, these responses are shaped—in complex ways—by the degree to which the CEO is seen as a credible leader. CEO activism can be a net positive for firms, but only when employees are on the CEO’s side in the first place.[331]

[331] Adam J Wowak, John R Busenbark and Donald C Hambrick, ‘How Do Employees React When Their CEO Speaks Out? Intra-and Extra-Firm Implications of CEO Sociopolitical Activism’ (2022) 67 Administrative Science Quarterly 553.

Elena, for example, strategically pitches so as to frame her ideas as a benefit to the company. Elena carefully constructs a narrative to demonstrate how CSR could provide long-term benefits for the company. Elena told me that her work with the International Organisation on Migration ('IOM') has elevated her company to be a leader in the field of ethical sourcing in Vietnam. The IOM collaboration was financially and personally costly. She said, 'I really try to be careful but the company knows what I am doing is worth the risk. As a company, we will never get pulled up for trying too hard or working with the IOM.' Elena managed to find a way to support workers in Vietnam while making the costly initiative attractive to her senior managers by being clear about the company's long-term strategy and tailoring her projects to align with those goals. This highlights how little it is about s 54 for her, and much more important that the company aligns with external international standards.

In contrast, Mary's experience was very different. Mary is a specialist senior buyer of office services and equipment for a large cosmetics conglomerate. She joined the company in 2017, two years after the MSA was enacted. Mary worked in a small procurement team of eight people: four senior buyers, three junior buyers and one procurement director. Mary was unaware of the MSA when I asked her about it. She could not tell me how her company complied with the provision. She also could not recall whether anyone asking her to change internal systems or processes to meet expectations of s 54. But when I showed her the company's MSA statements, published in 2016, 2017 and 2018, Mary was very surprised. She accepted that maybe the procurement department or indirect procurement was not part of the compliance process. She suggested that the

statement may have applied to the retail products sold to customers, rather than office equipment.[332]

During our interview, Mary revealed that she used to work for another multinational company specialising in food. She repeatedly used her experience at this company as comparison with her current employer. She felt that they were more invested in 'the planet and the people in the supply chain,…like rice growers, they had long term strategies, with whole communities involved…to make sure they are getting it at the right price by supporting them long term.' Mary attributed the difference between the two approaches to the business models. She said that the previous company she worked in is a family-owned company with very few dividend pay-outs, whereas her current employer is a highly profitable publicly listed company. Suppliers know that they are an important buyer, so they do whatever it takes to maintain this commercial relationship, 'even if that means cutting the cost of products, at the expense of their workers.'

Another procurement informant told me that 'businesses are very flexible and they can evolve with the right kind of pressure.' She said 'if you look at Philip Morris, they are trying to leave tobacco behind even though that's what they do. Businesses can change, they transform themselves to stay relevant…' My informant implied that businesses can change quickly to accommodate s 54 because there were clear benefits for incorporating it. According to nearly all of my corporate informants, legal advancements such as the

[332] There is a crucial difference between these types of procurement; eg at Tesco the buyers who deal with the food are not the same people at all as those who buy the photocopying paper and window-cleaning. They wouldn't even think of themselves as the same professional group.

UNGPs, s 54 and civil society pressure have certainly contributed to this broader vision of corporate purpose.

4.3 Internal negotiations and 'coalitions'

In an organisation, a 'coalition' is said to consist of individuals who, despite their persistent differences, work together to pursue a mutually beneficial goal.[333] Coalitions are especially prominent when organisational actors are met with unsanctioned goals and undetermined rules.[334] For instance, the light touch s 54. The formation of a coalition can be an attempt to affect organisational decision-making, to make them favourable to its members' interests.[335] This is done in part to gain or maintain influence over goals as well as to ensure the effective functioning of the organization.[336] Some of these findings can be found in the following case studies of two companies, who are at very different stages of their compliance 'journey' – another term, which is frequently used by CSR professionals to convey the long term outlook they have adopted to ensure 'beyond compliance' with s 54. A key point in this section, is that despite the powerful structural, professional and value-based boundaries in place, the social concern is often interlaced, at least on a personal level. Of course, this can be regarded as part of the story that professionals tell themselves, but the narrative is nevertheless present, and my suggestion is that they should not be

[333] Murad A. Mithani and Jonathan P.O'Brien, 'So What Exactly Is a "Coalition" Within an Organisation? A Review and Organising Framework' (2021) 47 Journal of Management 171.

[334] Bronston T. Mayes and Robert W. Allen, 'Towards a Definition of Organisational Polities' (1977) 2 The Academy of Management Review 672.

[335] Marjorie A Lyles and Howard Thomas, 'Strategic Problem Formulation: Biases And Assumptions Embedded In Alternative Decision-Making Models' (1988) 25 Journal of Management Studies 131.

[336] A.P. Ammeter and others, 'Toward a Political Theory of Leadership' (2002) 13 The Leadership Quarterly 751.

empirically overlooked as an effect of s 54 – regardless of their subsequent impact on or success at preventing or eliminating 'modern slavery'.

4.3.1 Engineering company: Pegasus

Pegasus is a Europe-based multinational corporation. It designs, manufactures and sells products worldwide. Parts of the products are manufactured separately but assembled within Europe. The company's main business is in France, with production and manufacturing facilities mostly in the European Union (France, Germany, and Spain) but also in China, the UK, US and Canada. It has suppliers in 70 countries and operates in 170 locations worldwide. There are approximately 12,000 tier one suppliers who produce parts and service to Pegasus in 'general' and 'product' procurement. That is, suppliers with a direct contract with the company paying for its goods and services, rather than a sub-contractor, which would be considered tier two, three and so on.

Pegasus reacted to the introduction of s 54 by 'complying with the law, then figure out what to do', according to the Rachel, who works on issues relating to sustainability and human rights.

The initial step for Pegasus was to look internally for existing knowledge on modern slavery and what had already been done within the company. Rachel and her colleagues decided to us term as an 'umbrella' phrase, encompassing different exploitative practices. They started by pulling things together from current practices and looking for places where human rights was mentioned in documents that set out the company's expectations of its suppliers conduct and standards of business conduct. Rachel said, 'it made us look internally at our organisation, and how seriously we take human rights as an organisation,

I found that we definitely take human rights seriously, but we also found a real lack of understanding about what human rights is in our organisation'.

After a year of grappling with the requirements, trying to get different functions to speak constructively with one another, the company established a steering group to 'monitor all the legislative developments on a global level, so we can have a common understanding' and coordinate the modern slavery response with key people from throughout the business, including procurement, ethics and compliance, legal, human resources, and facilities. The steering group enables direct communication between functions and so far, it has mapped out areas of 'high risk in all our functions', which extended across a network of more than 12,000 tier-one suppliers in more than countries 150 countries. The total value of goods and services purchased by procurement was around €52 billion annually. But this was only the first step. As Rachel explained:

> There are 12,000 tier-one suppliers, but then you get down to tier two. That number, at a minimum, doubles - it's huge. What I am describing to you took a long time in large companies. Still, we've gone deeper because we started engaging with some NGOs on human rights, so that's the heatmap. We started to look at high-risk countries and what we do with those. When we first onboard the supplier, we have to go through a filtering process and that filtering process. It's primarily for bribery and corruption first and foremost, because that's been the focus of the company for the last few years.

Even before s 54 was implemented, Pegasus was already subject to a lot of technical regulations, because of the industry it belongs to. Human rights were part of its 'code of

conduct' and governance policies, which set out the company's stance on harassment at work. But Rachel found that most policies only applied to Pegasus' direct employees, not its suppliers. S 54 helped Rachel come to terms with the company's broader obligations to its supply chain. Rachel and Michael, who is a new recruit at Pegasus, told me that the legislation brought about a real change in mind-set. According to them, before the law came into force, the company would make sure things went well within its own operations but excluded the supply chain because it was not strictly part of the company. Michael said, 'where once it was felt this is not our job, and that suppliers should take care of themselves, now we see it is a legal obligation and that forces us to do a proper due diligence on the supply base. It's laws that give us an obligation'. Michael now thinks that if something goes wrong in the supply chain, it is Pegasus's problem: 'a reputation risk for the company as a whole, not just a supply chain risk'.

The legislation caused senior management to request confirmation from suppliers that they do not use forced labour (alternatively, passing the buck to the suppliers). Rachel and Michael are also working in collaboration to source auditors for on-site supplier assessments. Although they are aware of the drawbacks of auditing, such as that social audits tend to be undertaken at a particular point in time, generally over a few days at intervals of one to two years. The underlying issues and causes are often ignored, with results at best only reflecting a snapshot in time.[337] These problems may be exacerbated

[337] Jolyon Ford and Justine Nolan, 'Regulating transparency on human rights and modern slavery in corporate supply chains: the discrepancy between human rights due diligence and the social audit' (2020) 26 Australian Journal of human rights 27.

when audits are used to identify modern slavery. But there are no realistic alternatives, and my informants say they must work to industry expectations.

This is a common theme in my discussion with corporate employees: while there are plenty of instances of activity, they rarely question the proposed solutions, instead, they simply adopt what industry, sector or society expects. According to Edelman, such symbolic forms of compliance can help to reconcile contradictory legal and organisational logics, which can spread quickly as optimal forms of meeting legal obligations and gains legitimacy through professional influence and copy-cat behaviour between corporations.[338]

Rachel also mentioned that she was working in collaboration with other organisations in the same industry or sector to implement standard changes in contract, policies and procedure. Michael said he had to train close to 1000 buyers and embed new ways of thinking about suppliers, while also ensuring they were supported by new tools and software. He explained:

> We have been looking at our suppliers more closely but we have to do it in batches, because there are just too many of them. We are starting with the most 'risky' suppliers. We prioritise new suppliers too, which means they go through a more rigorous check when we sign with them. With existing suppliers, we use a consultancy service. We pay them to look at a range of public records and give our suppliers a grade or a score, and we go from there. There are so many providers like this now, including 'EcoVadis' and 'Intertek'. Some of our buyers also visit suppliers and they

[338] Edelman (n 40) 33.

> have been trained to identify symptoms of modern slavery. If they see something that is not right, we go in with an audit, but this is not yet implemented. We are working on that.

Michael's description above is commonly known as 'mapping' or 'risk assessment' of supply chains. In most cases, Southeast Asian countries are top priorities for audits because the consultants judge them to have weak rule of law, high corruption and poor human trafficking records. To assess the risks, a number of objective measures are used, including the US Department human trafficking report, transparency index. The complexity of supply chains and limitation of company resources, in expertise and personnel capacity, led Pegasus to seek external consultants. The practice is not unique to Pegasus. Based on my conversations and observations at conferences, consultants are now widely used by multinationals to automate checks, increase efficiency and reduce human error. Some NGOs argue that risk assessments can reduce accountability for corporations, as they are seen to be doing things without making any effort to resolve the socio-economic issues that drive modern slavery. Pegasus' CSR representatives told me that they are just happy to have a plan a way to 'triage' the work. Their lawyers thought this is a good development too because it provides solid defence that Pegasus has undertaken 'due diligence' steps to identify modern slavery risks.

Traditionally, due diligence assessments are the financial pre-checks conducted on suppliers. Now, the criteria is based on information from the public domain. The compilation of public information is known as 'landscape information'. Most companies supplement these desk-based checks with on-site inspections, sometimes unannounced, to maximise the chance of getting an accurate picture of how the supplier operates.

One of the toughest challenges, according to Michael is to get buyers interested in these issues, which involves sharing the scores that they are given. The cheapest suppliers used to be the most popular, but now, they are increasingly regarded as the ones that create the most paperwork for buyers. Michael said, 'the idea is that an educated buyer will review a supplier score and balance the riskiness of the supplier with the commercial benefit, which is a really difficult task and always subjective, so we as CSR have to be there to support buyers, we can't just leave them or they will just go back to their old ways.'

It has taken Pegasus three years to reach this first stage. Rachel confirmed that the enormous structure and complexity of a multinational like Pegasus can be a huge obstacle to getting priorities agreed and implemented. Rachel is happy to undertake these activities, but she does not want Pegasus to invent company-specific solutions. She said her senior managers do not believe they have to be the forerunner in this field, since there are other companies that are much more advanced. So, they want to wait for a possible industry or cross-industry standard. That way, the company will have a better chance at convincing suppliers to comply with it. Michael added that this is why Pegasus chose to work with an external expert because that enables a supplier to be graded, which they can rely on and share with their other customers.

Pegasus reacted to s 54 with a host of internal reorganisation: they altered their code of conduct and policies, formed a steering group, hired new staff and looked to external standards and consultants to identify where labour exploitation might be taking place. But none of this was obvious from their MSA statements. Rachel told me that Pegasus has published three MSA statements so far. In the company's statement for 2016, Rachel was

told to limit the statement to generic comments on the six recommended disclosure areas.[339] The statement did not provide details on where the company operates or where its suppliers are based. It does, however set out the company's goals to provide quality products that are reliable and economically efficiency. Rachel revealed that most of the content was copied from the company's annual report. It also contains aspirational passages, including 'the company is committed to ensure that as far as possible, slavery and trafficking does not occur within its value chain'.

In the 2017 statement, more details were provided on organisational structure, including the amount spent on suppliers and explained that in the last few years, the supply chain has become more concentrated (despite the fact that there was an increase in suppliers – from 79 countries in 2016 to more than 100 countries in 2017). The statement does not specify where these suppliers are based. In this second reporting year, Pegasus acquired better information and with new programme Rachel and Michael established, and there was a bigger team working on this. The new infrastructure meant better support for the procurement teams and better communication between compliance teams and other departments.

But regulatory oversight could still happen. According to Rachel, every MSA statement should be published on the company's homepage. She was therefore very surprised and annoyed when Dame Sara Thornton, the Independent Anti-Slavery

[339] The Home Office's practical guide (n 10) recommends that MSA statements should include information about: a. the organisation's structure, its business and its supply chains; b. its policies in relation to slavery and human trafficking; c. its due diligence processes in relation to slavery and human trafficking in its business and supply chains; d. the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk; e. its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; f. the training and capacity building about slavery and human trafficking available to its staff.

Commissioner asked her to meet with her and explain why a civil society report listed her company as 'non-compliant'. Rachel had to explain that the marketing department thought the MSA statements looked better on a different webpage, not realising that legally, the statements had to be on the main homepage. This prompted the Commissioner to ask how the company was organised, since everything was controlled at a global level. Rachel was embarrassed and frustrated over this administrative mistake. The Commissioner also told her to demonstrate that work is being done in the UK to comply with s 54. Following this meeting, an intern has been tasked to go through an enormous list of general procurement suppliers, and visited their websites to see who has a modern slavery statement. Rachel also sent questionnaires to each supplier, so that Pegasus have a record of how their suppliers are responding to s 54 as well.

4.3.2 Homeware retailer: Furnish

Furnish is a homeware retailer based in the UK. The company operates on a franchise model, loosely monitored and controlled by its Europe-based headquarters ('HQ'). All products are commissioned and sourced by HQ, and the retail sources are responsible for sales only. Therefore Unlike Pegasus, Furnish HQ has a very clear idea of its supply network and the risks involved in each jurisdiction. Anita explained:

> We work with a relatively small number of suppliers compared to other multinationals. We only have around 1,000 direct suppliers that produce for Furnish and we have 10 or 11,000 products in our range. We have also around 70 factories of our own, so a lot of furniture come from our own factories. But the smaller things, it's with suppliers and we have around 1,000 of them. We have a long history of them working with our code of

> conduct, so that has been our main tool through this year. Our code of conduct has been in place for 20 years, with several updated versions through that time and because we have quite a long relationship with our suppliers, on average 11 years, that makes our job a bit easier when it comes to sustainability. We don't change and jump between suppliers, because we are in it for the long term. So there's a lot more development.

Furnish HQ directly intervenes in the operations of its suppliers to ensure that they comply with Furnish's code of conduct, which they claimed sets a higher standard than any law.

As a franchise, each Furnish store is an independent business, and none of the stores turnover exceed £36 million. For this reason, they do not publish individual MSA statements. According to my informants, 'HQ produces one statement for the entire group. To ensure uniformity in the group statement, HQ has taken steps to consolidate and issue global policies in line with international standards.' Anita, the head of human rights at headquarter level told me that adhering to international standards is important because all the domestic regimes are 'all driving at the same thing anyway.' As Anita put it, 'we have a very harsh, strict system. Our code is part of our contract with the supplier and it says that there must be an immediate stop delivery if forced labour, child labour, falsifying documents, or great environmental damage are discovered. Suppliers are given time to mitigate under HQ's supervision. The system is quite harsh because it is a big deal, and our business teams get very nervous about it because it's their suppliers that they work with. There are personal relationships at stake.'

S 54 is almost an afterthought for Furnish HQ. The outlook is very global and much of the work that Anita has done aligned the company with the UNGPs and ILO standards. She explained that she had learned that potentially all recruitment companies in Asian countries deduct recruitment fees from workers' salaries. Nothing in s 54 requires Anita examine working conditions in Asia, but to her,

> this money flow is travelling in the wrong direction, if workers are paying all the actors. If the employer cannot recruit in their own country and has to recruit elsewhere then it should be their cost. So we have since then been on the journey of building capacity when we talk to our suppliers. It's building capacity and how their recruitment process. It's about how they operate in countries of origin. We did a couple of rounds of mapping with the International Organisation for Migration (IOM).

Anita and her team tracked the entire recruitment process:

> We first interviewed teams of workers at our selected suppliers. Then we interviewed the recruitment agencies in Taiwan and then we travelled back to the four countries of origin and we visited recruitment agencies there and medical centres and government offices that migrants visit before they set off – basically, following the footsteps of migrant workers through the entire recruitment process. We also tried to do a full mapping of all the costs, official and unofficial ones that migrant workers are being charged in these countries.

Anita has presented these insights in different forums, including state and regional governmental agencies such as the European Chamber of Commerce. She recalled, 'there

were a lot of surprised faces there. They were all experts but they were surprised. They thought migrant workers were moving around with freedom, which is just not true.' By taking the initiative to partner with the IOM and digging deep at the local levels, civil society regards Furnish as one of the leaders in this field. Anita will continue to share these findings, because it is good for her job security, for the company's reputation and for the exploited workers too. It is a winning formula, she told me. Additionally, s 54 has been a useful tool push for change. Internally, it has added to the existing momentum and externally, they can speak to suppliers knowing that factory owners cannot refuse to comply.

Anita also recognises that she is fortunate to have senior management that believe in the work she is doing: surveys, on-site audits, risk assessments, and difficult interviews require coordination across jurisdictions, all conducted in house at great expense but considered a worthwhile service to the franchisee stores. Furnish does not utilise external auditors even for local onsite visits, which raises questions about the independence and transparency of their assessments, but they are often held up to as the 'gold standard' at conferences, and rarely criticised, even though their MSA statements can also appear vague and opaque.

Anita noted that Furnish HQ has large and well-resourced CSR team. She is legally trained, and so are many of her CSR colleagues. Anita explained that most lawyers in the company are commercial lawyers without the necessary expertise to manage the company's human rights impact. In other words, Anita does not need to speak to the legal department about these issues and focuses on working very closely with procurement instead, to monitor supplier relationships. She regards herself as an internal auditor and

every time she makes a decision, she is compelled to think about how the decision would affect CSR concerns, whether there are legal risks involved and how these objectives might work for the business. Anita explained that the decision is almost always: 'do more' because 'even though these things might look like they go beyond the law, they are not beyond our business interests.'

4.4 Conclusion

S 54 cannot force companies to take action, but it was an exogenous shock, which caused an extensive ripple effect. In this chapter, I demonstrated that in practice, implementation and integration of s 54 was taken seriously by CSR professionals, but the process of collaboration across functions and embedding CSR ideas and s 54 requirements was messy and challenging for the multinational corporations I spoke to. The highly specialised and fragmented nature of corporations compelled unfamiliar collaborations between corporate departments, resulting in minor clashes of departmental agendas and misunderstandings. To remedy this, businesses changed. They established cross-functional committees, created new roles, invested in technology, sought external expertise and educated its employees. These initiatives highlight the seriousness with which some companies responded to s 54.

S 54 turned out to be a tool for change. CSR employees used it to justify their work and some companies used s 54 to secure cooperation from their suppliers. The power of the law to open channels of communication and support collaborations was clear within companies. Apparently a law without 'teeth' can have profound effects if it is linked to a strong social momentum, including changes in consumer awareness. I observed that while

business interests remain high as a priority, executives have found ways to justify going 'beyond' s 54 as a benefit to the long-term health of their companies. It seemed that whatever a company did to respond to s 54, these strategies must align with the business' interests, priorities and risk appetite. Edelman suggested that organisations respond to legal uncertainty by adopting formal structures to symbolically signal their compliance. These structures tend to embody managerial and commercial values, as opposed to regulatory goals, effectively avoiding or undercutting the intended effects of the law. Thus, the implementation becomes superficial and fails to make a difference for those that the legislation seeks to protect.[340]

My research showed that corporate actors, especially CSR professionals are keenly aware of and concerned with normative values, including international trends in business and human rights, public expectation, and moral values. This resonates with Edelman's 'managerialisation' process and with the Edelman, Leachman and McAdam's framework of actors with common ideology, profession, motivation or identity, such as law, economics, public interest or politics, [341] which leads to what Hutter and Power described as the 'convergence between regulatory ambitions and organisational priorities'.[342]

But, as Edelman pointed out, window-dressing or virtue signalling are a real concern. In some cases, they can help establish organisational cultures in which legal ideals are routinely minimised. Over time, organisational structures, such as grievance and

[340] Edelman (n 344).

[341] Edelman, Leachman and McAdam (n 150), 675.

[342] Hutter and Power (n 320) 4.

evaluation procedures and anti-harassment policies become mere symbolic indicators of responsible governance and compliance with anti-discrimination laws. Outside the organisation, judges, lawyers and other professionals more broadly accept symbolic 'diversity rhetoric' features at face value. This Chapter does not negate such a possibility, but an important factor is the reflexive element of these activities, supported by s 54's 'annual' requirement to publish. This cyclical approach require corporations to demonstrate progress, which generates risk continuously, rendering 'beyond compliance' an ongoing 'journey'. This temporal element is rarely discussed, but chimes with Polanyi's account of the 'double movement', which can be regarded as a 'recursive process' of persistent struggle. So, can a corporations be 'socially embedded'? The answer should be met with the question, 'when?'

5. LAWYERS, RISK AND THE REGULATORY LANDSCAPE

5.1 Introduction

In the previous chapter, I noted the deference of corporate employees to lawyers and the significant role they play in interpreting s 54. In this chapter, I explore further the role of lawyers as expert interpreters of s 54 and focus on the legal issues they consider and how they facilitate corporate compliance 'beyond the law'. In doing so, I examine the composition and activities of this important constituency, which addresses three main questions: how did corporations perceive and respond to s 54? Who took part in its implementation? What does compliance with s 54 reveal about light-touch and the role of law in society?

First, I consider the corporate legal governance landscape by setting out the key types of legal advisors involved in shaping corporate responses. To reveal the nuance in motivation, ethical obligations and priorities held by legal advisors, I characterise three types of legal professionals in detail: inhouse lawyers, compliance officers and external legal advisors. I explore how they regard s 54 and the kind of advice they give to corporations, including the pathways they take to access corporate decision makers. By exploring the legal profession's range of attitude to s 54 and their concerns, I contribute to and engage with existing scholarship on lawyers, legal ethics and the changing nature of the legal profession.

Then, I describe the complex matrix of legal risks identified by the legal informants I spoke to. Drawing on a mix of interviews and documentary sources, including some caselaw, I reveal that existing legislation and legal mechanisms contribute to an impetus

for corporations to do more than comply. My findings draw on Edelman's conception of 'legal endogeneity' and McBarnet's 'creative compliance' by showing that the legal profession is a setting for socialisation in which lawyers construct 'their understanding of professional norms and values'.[343] ' Lawyers are part of a brigade of creative enforcers and the legal instruments they draw on embodying similar values to those championed by the 'social sphere'. Thus, offering insights, which empirically exemplify the complex interplay between social movements, organisations and law.[344]

Existing empirical studies paint an unflattering picture of lawyers and their version of ethical and professional conduct. Sung Hui Kim found that inhouse lawyers, facilitated by the American Bar Association's rules, are placed under pressure to deliver solutions to facilitate corporate business goals and assist management to minimise risk as morally-neutral advisors.[345] John Flood found a loss of moral agency among transnational corporate lawyers operating under pressure to deliver business objectives for clients, evidenced by insensitivity to what is at stake morally and apathy to ethical dilemmas. Such attitudes were so prevalent and deeply embedded that Flood concluded that 'these ways are the norm'.[346] There is a glimmer of hope in Flood's description that many of his informants would draw bright lines, but it was not clear whether his informants would be able to identify a legal dilemma, such as a conflict of interest. Patrick Schmidt revealed that corporate disclosures

[343] Leslie C Levin and Lynn M Mather (eds) *Lawyers in practice : ethical decision making in context* (University of Chicago Press 2012).

[344] Edelman, Leachman and McAdam (n 150) 657.

[345] Kim, Sung Hui 'The ethics of in-house practice' in Leslie C. Levin & Lynn M. Mather (eds.), *Lawyers in Practice: Ethical Decision Making in Context* (University of Chicago Press 2012).

[346] Flood, John 'Transnational Lawyering: Clients, Ethics, and Regulation' in Leslie C Levin and Lynn M Mather (eds) *Lawyers in practice : ethical decision making in context* (University of Chicago Press 2012).

under the US Sarbanes–Oxley Act 2002 are a performative, annual routine of tweaking boilerplate templates, which portrayed lawyers as more concerned with their client's risk profile than ensuring that public interest is served.[347]

In light of these studies, I ask how lawyers responded to s 54 given its obvious public interest objective. Does it facilitate a more moral facet to legal advice? Or are lawyers apathetic to the clear public interest objectives of the law? Importantly, I note a few distinguishing features: (1) in contrast to existing research, there is no specialism of 'modern slavery' or 'business and human rights' within corporate law firms or corporations. It is a new and undefined practice area; (2) there is no self-identifying group of modern slavery lawyers and the methodology I adopted had to be led by my informants; and (3) the norms are still being established around s 54 because the provision is relatively new. These points of difference matter, as the informants in this chapter convey, s 54 is not an isolated provision and the way we understand it is influenced by and intertwined with existing legal standards. My analysis also revealed that the notion of 'risk' constitutes underlying concerns for unaccountable market forces and civil society reactions. By mirroring corporate concerns and highlighting key features of 'legal risks', lawyers effectively become 'insurers' against a myriad of potential problems.[348] In practice, they undertake subtle and personal struggles to reconcile public welfare with market freedom, find balance between profit and ethics and negotiate compromises by navigating opposing forces in the short term and 'beyond the horizon'.

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[347] Patrick Schmidt 'The ethical lives of securities lawyers' in Leslie C. Levin & Lynn M. Mather (eds.), *Lawyers in Practice: Ethical Decision Making in Context* (University of Chicago Press 2012).

[348] Robert Eli Rosen, '"We're all Consultants Now": How Change in Client Organisational Strategies Influences Change in the Organisation of Corporate Legal Services' (2002) 44 Arizona Law Review 637.

The contribution of this chapter to the overall plan of the thesis is first, to demonstrate how s 54 is interpreted, understood and implemented by lawyers. In some cases, it provided an ethical outlet for lawyers to go incorporate public interest and moral values, while other lawyers exploited s 54's ambiguous requirements and enforcement strategy to facilitate corporate objectives. Most surprisingly, I found that 'legal engineering' of s 54 enabled external law firm lawyers to amplify legal risk, taking advantage of the moral and public interest objectives of the law, which in turn generated business for their own firms.[349]

5.2 The corporate governance landscape

5.2.1. Inhouse lawyers

Inhouse lawyers played a crucial role in deciding where s 54 should fit within a business, and which resources should support its implementation. Inhouse lawyers, also known as general counsels, are often regarded as trusted advisors within businesses. As Morse, Wang and Wu observed, inhouse lawyers could be 'the most significant emblem of internal governance to the firm'. Internal governance is an idea that has grown in popularity in the last 30 years, as corporations have increasingly become exposed to regulation and sanctions for misconduct. Internal governance promises to monitor internal and external threats in light of the corporation's priorities. The performance and skillset of these tasks

[349] Doreen McBarnet, 'Financial Engineering or Legal Engineering? Legal Work, Legal Integrity and the Banking Crisis' in Ian MacNeil and Justin O'Brien (eds) *The Future of Financial Regulation* (Hart Publishing 2010).

have caused the inhouse counsels to be described as 'not a lawyer that understands the business, but a businessperson that happens to be a lawyer.'[350]

As paid employees, they are expected to understand the business's pressure points, strategy, and objectives and effectively explain the risks and legal issues involved in any decision to the company's senior managers. Effective legal counsels are expected to produce what they described as, viable, tangible and tailored solutions or 'workarounds' for the company. Inhouse legal teams often work with external law firms, which can help save both time and money. General counsels, the leading inhouse lawyers, have a strategic role within senior management. Some general counsels also lead functions like human resources or finance and provide independent legal oversight and guidance of those operations. Inhouse counsels are internal monitors, earning them the title of 'gatekeeper'.[351]

On a day-to-day basis, an inhouse counsel might deal with contracts, mergers and other commercial issues. But according to John, the general counsel of a large UK multinational, horizon scanning, and anticipating future risk is a crucial part of the inhouse lawyer's job, which resonates with the label 'strategic officer'[352]:

> Certainly, the inhouse lawyer's role is looking at how a company is doing its business. Reputational risk is enormous, especially for consumer-

[350] Adair Morse, Wei Wang and Serena Wu, 'Executive lawyers: Gatekeepers or Strategic Officers?' (National Bureau of Economic Research Working Paper 2016) <https://www.nber.org/papers/w22597> accessed 27 August 2022, 9.

[351] Adair Morse, Wei Wang and Serena Wu, 'Executive lawyers: Gatekeepers or Strategic Officers? (2016) 59 The Journal of Law and Economics 847.

[352] Morse, Wang and Wu (n 356, 357).

> facing retailers. So, if you've got a lawyer that says, "let's do the minimum, so we don't get sued by anybody", then actually they are not fulfilling their mandate. Most lawyers will spend time, senior lawyers anyway, horizon scanning to see what is out there, and something that might not be a litigation risk immediately might become a litigation risk in 10-30 years.

For instance, John had to assess 'how we organise the governance of corporate responsibility and how modern slavery fits into that'. Note that this concern is framed as 'how we manage our internal affairs' – not 'are complicit in actually harming people'. He consulted external resources before he spoke to the business. He explained that there were good external tools available, including guides issued by the Global Reporting Initiative, an NGO focused on transparency, and the One World Trust, an independent trust dedicated to educating the promoting education of politicians and decision-makers. John explained his approach to other external influences:

> Two key players for us from whom we can learn are the Ethical Trading Initiative, which we've been very involved with for a long time and supportive of and learn from and we are using their 'Due Diligence' framework. The second one is the Business and Human Rights Resources Centre, and we also talk to Anti-Slavery International and use the UNGPs. There are quite a lot of reference points for us. The other one which is highlighted in the report, is the trade union aspect. Stronger Together is another interesting [multistakeholder] initiative.

By seeking to work with NGOs and civil society, John is effectively allowing social actors to encourage others in his company to implement practices that are not explicitly required by s 54.

Beyond making decisions on resourcing and governance, inhouse lawyers like John must also 'set the tone'. The risk of liability is an obstacle for many corporations in their attempts to go 'beyond compliance.' John explains that being risk-averse is a matter of reflex for most lawyers, but there are constructive ways of being risk-averse.[353] Through our conversation, I gathered that John's definition of 'risk' means circumstances detrimental to the efficient operation, reputation, and profitability of his company, which can harm its long-term success. He said that he encourages his team to open up and actively find where the risks are, rather than shut things down to avoid risk. He said:

> For me, my role is to say we want to be open and transparent. So, really, it's a cultural issue. If somebody says to me, 'can we say this, I will say, 'well, of course, we can say this, why not?'", as opposed to 'hmm…not sure about managing the risk'. So, the second aspect of that is when there is a risk, that there is something bad in the supply chain, or indeed in any other part of the business, what do you do about it? My approach is to confront it head-on. If there is an issue, we need to address it and resolve it, look to our policies and standards. The more embarrassing criticism would be that we didn't take it seriously early enough.

[353] Risk avoidance is a common pursuit among inhouse lawyers. See Kim, Sung Hui 'The ethics of in-house practice' in Leslie C. Levin & Lynn M. Mather (eds.), *Lawyers in Practice: Ethical Decision Making in Context* (University of Chicago Press 2012)

Other inhouse counsels I spoke to had a more short term perspective of 'risk'. Some were more concerned about a loss of profit for the year or the risk of immediate lawsuits.

Overall, I found a spectrum of attitudes among inhouse counsels and their engagement with s 54. John is one of several engaged and open-minded inhouse legal counsels I spoke to. I formed the conclusion that at least among senior inhouse counsels, modern slavery s 54 is adopted with consideration to, if not in conjunction with, civil society concerns about corporate social responsibility. However, there were some outliers. I also spoke to a couple of inhouse lawyers who could barely outline the basic requirements of s54. One admitted to not having much knowledge, although she had 'heard of it'. That turned out to be quite a short interview.

5.2.2. Compliance counsels

Generally, large companies will have a legal department, with the numbers ranging from one or two to 30 or more, with specialisations in competition law, regulatory compliance and litigation. The formally tripartite executive known as the C-suite (chief executive, financial and operation officers) is now augmented by chief compliance officers. Compliance in a firm is subsumed under the 'soft areas of business operations'.[354] Writing in 2016, Sampson noted hundreds of ethics and compliance jobs advertised online, and surmised 'we are left with a single conclusion: compliance has arrived'.[355]

[354] Steven Sampson, 'The "Right Way": Moral Capitalism and the Emergence of the Corporate Ethics and Compliance Officer' 2 Journal of Business Anthropology 65, 71.

[355] Sampson (n 360), 71.

Compliance and ethics are intertwined. In practice, ethics can overtake compliance. Sampson noted that encouragement to go 'beyond mere compliance' refers to a further, normative aspect of to the compliance officer's job. [356] To 'do the right thing' will usually involve looking inwards and outwards. This creates another opening to external values and standards. Sampson found that specific professional skills are needed to navigate the laws, regulations and codes, but a moral skill set is just as important to recognise both internal culture and external moral norms. The mixed skill set is about knowing which rules must be followed and which ones can be ignored or broken. Compliance must respond to the organisation's own structure and business imperatives to decide whether the corporation they act for should comply, evade or resist s 54.

The relationship between legal and compliance is notionally separate, but in smaller companies, they can merge to form the 'Hybrid General Counsel', although professional rules around client-attorney privilege and conflicts of interest may preclude effective performance.[357] In larger organisations, compliance officers report to the general counsel. It is rare to have a compliance department that is entirely separate to legal. Whatever the structure, there are different checks and balances ensure proper oversight but in practice, these can spur conflict. To work, it requires close coordination and cooperation and key understanding of each other's role and the mutual dependencies.[358]

[356] Sampson (n 360), 72.

[357] John B. McNeece IV, 'The Ethical Conflicts of the Hybrid General Counsel and Chief Compliance Officer (2012) 25 Georgetown Journal of Legal Ethics 677, 677-678.

[358] Jose A. Tabuena and Jennifer L. Smith, 'The Chief Compliance Officer versus the General Counsel: Friends or Foes? Part II' (2006) 8 Journal of Health Care Compliance 13.

But in reality, one inhouse lawyer, who works in a relatively small legal team of nine lawyers, often finds herself 'doing compliance-related work'. When I spoke to her, she said s 54 should be a job for compliance counsels:

> I just did something today that is a compliance responsibility! It was something I was tasked with. I think we had a letter from one of the UK regulators inviting us to put a [MSA] statement up, but we've only got two compliance officers in the UK.[359] It seemed to be a job for compliance from my perspective. They don't sit with us. I mean, we do work with them from time to time, but we are quite separate.

One academic informant noted that he has not come across any evidence of the involvement of lawyers in the companies' responses to s 54. In the last 15-20 years, compliance counsels have come to be regarded as distinct from inhouse lawyers, although they often operate alongside, or within, the inhouse legal department.[360] A lot of their work can overlap, but compliance counsels regard themselves quite differently. They primarily manage a company's obligations under state regulations. In the UK, a compliance counsel (or officer, or compliance manager), ensures a company operates in a 'legal and ethical manner while meeting its business goals'. They are responsible for developing compliance programmes, reviewing company policies (from harassment to bribery and money laundering), and advising management on possible risk, such as breach of financial regulations.

[359] Under pressure from civil society at the end of 2018, the Home Office uncharacteristically decided to write to all companies indiscriminately stating that an audit would be undertaken and that companies must comply with s 54.

[360] See McNeece (n 363) which explains how fiduciary duties conflict with client-attorney privilege obligations.

According to Sampson, firms can differ in terms of their 'culture of compliance', which Robert Kagan and others identified as a product of sustained inspection and enforcement activities. Consequently, the regulations themselves acted as a reminder or guide to corporations as to what was required of them, rather than the threat or fear of enforcement.[361] In response to s 54, I observed that some corporations have an ethical mission while others move towards minimising risk. The tension and requisite skillset of compliance lawyers led to the notion of 'moral capitalism',[362] which is reflected in some of the struggles I witnessed.

My informants explained that compliance work could be very diverse. Relevant compliance regulations in the UK include the Bribery Act 2010, the Companies Act 2006 requirements and industry-specific requirements, such as the Financial Services and Markets Act 2000, which sets out rules for financial service providers, including banks and financial service providers.[363] But compliance counsels are often caught between hard law requirements and softer social responsibilities. They may be required to undertake internal and external reporting requirements for shareholders or regulators, investigate a range of activities including harassment and employment issues, monitor audits, train new employees on bribery and money-laundering obligations, and carry out risk assessments to see whether the company's standards and procedures work in practice.

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[361] Neil Gunningham, Dorothy Thornton and Robert A. Kagan 'Motivating Management: Corporate Compliance in Environmental Protection' (2005) 27 Law & Policy 289, 312.

[362] Steven Sampson, 'Good People Doing Bad Things: Compliance Regimes in Organisations' 5 Journal of legal Anthropology 110, 128.

[363] Stephen Pritchard, 'Top five compliance concerns for UK business in 2020' (*Computer Weekly*, 31 March 2020) < https://www.computerweekly.com/feature/Top-five-compliance-concerns-for-UK-business-in-2020> accessed 27 August 2022.

Corporate regulations tend to be jurisdiction-specific, but compliance officers at regional and headquarter levels may also have to draft group level policies concerning data privacy, gender pay gap, environmental sustainability and protection in line with general data protection requirements or health and safety standards.[364] As laws in one jurisdiction can determine the high water mark for the rest of a multinational's policies, compliance counsels need to compare many laws and navigate various requirements to ensure consistency without breaching laws in specific countries. One informant described the practical difference between legal and compliance in her company as whatever happens to be 'workable':

> We have a compliance team but what sits beside that is a legal team, so the idea is that the legal team do all the horizon scanning, interpret the law and provide legal advice. What the compliance team then have to do is turn that advice and that piece of law into something appropriate for the business to implement. We help the business implement that and make it workable, so anything that is outward facing, like an MSA statement, we as a compliance team would consult with our legal team and make sure they are comfortable with anything before it goes out.

Fran, a compliance counsel for a professional services company, defined her role more narrowly, with regulators such as the HMRC as her primary audience. She explained that compliance counsels do not have to assess risk to the company strategically, but they must comply with the requirements of established laws to avoid falling foul of state

[364] Deloitte, 'New Horizons: Compliance 2020 and beyond' (2020) < https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/risk/deloitte-uk-compliance-thought-leadership-16.pdf> accessed 27 August 2022.

regulators. From her perspective, risk arises from noncompliance with laws, rather than potential harm to the company. Companies define risk differently, which impacts the scope of work for compliance and legal counsels.

Fran expressed some frustration that her legal team did not have a policy on how to manage s 54. She said that they only decided to help the general counsel, 'because of their workload'. But 'no one knew what we were taking on, and we didn't have a proper policy because it was all so new.' She felt that it would make more sense for the 'general counsel to be involved and see what's going on with s 54'. After all, the company's responsible business committee 'includes the general counsel and the head of responsible business, but nobody from compliance!'

Another participant also noted the more proactive attitude of the compliance department. A former procurement officer at L'Oréal said the legal team there was 'completely overworked for requests like contracts and litigation'. It takes the lawyers 'two to three weeks to look into something for us.' She doubted that they had time to consider the implications of s 54. She said, 'it's more like…oh, an advertising complaint has come up, someone has put a claim against us, someone's intellectual property…, it's reacting to things, there's no proactiveness in the legal work.' In contrast, a separate department on regulatory affairs (i.e., compliance) is 'making sure the stuff on the back of our packs is correct, making sure that allergens are labelled correctly…they tend to be more hands on and have quite a different focus…'

Rayne, a compliance officer, who proactively incorporated s 54 into her workload and initiated discussions with the company's lawyers, managers and buyers told me that

she had to meet the company's CEO to obtain permission to spend more time on the task because the company's headquarters is in the US, and they did not think s 54 was important enough to invest so much time. But Rayne pushed ahead. This shows that just as inhouse lawyers reacted in different ways to s 54, the response from compliance counsels also varied.

5.2.3. External lawyers

Major law firms have increased their global presence to serve the needs of global corporate clients. At the same time, deregulation means lawyers now compete with other professionals such as consultants and accountants who offer integrated advice to clients.[365] External lawyers and inhouse lawyers, including compliance counsels, often work closely together on cases and deals, to outsource the labour-intensive work such as disclosure or to seek specialist advice. The relationships are built over time and can be institutional and personal. A law firm may be on a company's advisory 'panel' or be paid on a 'retainer' basis.

The law firm has undergone dramatic changes over the course of the 21st Century. As John Flood observed in his study of international law firms, which has grown exponentially to mirror the activities of transnational clients. Being so closely aligned with corporate structures mean that large law firms are subject to similar commercial pressures, but the lawyers in these firms are not always able to identify ethical dilemmas in their day-

[365] Mari Sako, 'Globalization and the Changing Role of General Counsel: Current Trends and Future Scenarios' (2017) Liquid Legal 33.

to-day work.[366] Robert Eli Rosen commented that law firms now mimic the structure of companies. He warned that 'the redesigned company's use of lawyers as consultants and lawyers modelling themselves and their organisations on those consultants may generate changed lawyer behaviours.'[367] My research suggests that lawyers consider a range of issues, with external lawyers in particular, keen to add value that is not already anticipated or addressed by inhouse counsels or compliance officers. One unifying theme in this is the international presence of law firms and the transnational scope of external legal advice.

Sam is a Partner at a regional office of an international law which specialises in the energy, infrastructure, financial services, real estate and advanced manufacturing and technology sectors. The firm has over 400 partners, a total legal team of around 1,800 people and more than 2,500 staff. The firm has 2 offices across Africa, Asia Pacific, Europe and the Middle East. It ranks among the top hundred law firms in the world by turnover. The firm advises Tim's company as a member of its advisory 'panel'. Tim is the company's Head of Compliance, which is UK based business in the sporting sector with supply chains across the world for its sportswear merchandise. Tim was not aware of the MSA until Sam provided advice on it, which demonstrates the inhouse lawyers' reliance on external advice, particularly in busy, understaffed companies.

Sam specialises in financial crime, corporate investigations, and regulatory enforcement and is a leading advisor to multinational corporations on white collar crime. According to Sam, most of the firm's clients are UK based. He said, 'many have adapted

[366] Flood (n 352).

[367] Rosen (n 354), 680.

their health and safety processes to look at modern slavery risk as well and they seem well placed…most of our clients are top-end that will have had longstanding compliance policies and procedures, adherence to the UN Guiding Principles on Business and Human Rights and those sorts of things.' Often, the problems that clients seek advice on are more difficult for their inhouse counsels to solve, in particular, organisations with overseas branches and supply chains.

Sam said that many of his clients would prefer the MSA to operate like international trade sanctions 'with the UN issuing the statement and then countries or the laws and rules those local countries adopt and implement.' The trouble seems to be inconsistency between different regimes. His clients are concerned with how s 54 applies to the 'international group' (including, franchises, subsidiaries etc.) and sought advice on limiting its effects to the UK level.

Sam says he found himself 'sharing the same space' or competes with consultancies and NGOs but he distinguishes legal advice from 'best practice' suggestions. He drew a line between s 54 and the Home Office Guidance. He said 'Once you get into what is good practice or best practice around human rights, modern slavery, we tend to refer them on or suggest that they consult the various NGOs who are, as you say, publishing a lot of information on this and also to get training from them…We've done some initial training around the law and the companies have followed up with the NGOs for more training.' He told me he often speaks panels with NGOs representatives. He explained that when a power company teamed up with a trade body, and organised a conference on this topic, he was asked to help identify speakers and work with them on the programme and he brought in some NGOs to help.

Sam said lawyers have legal expertise that NGOs cannot provide. Issues that are 'slightly greyer' such as youth labour and prison labour overseas. He explained that he had advised on situations where it may be unclear whether the issues fall under 'modern slavery' or labour law. For example, he said, 'discovering that suppliers have people who are working significant overtime – is that a human resources issue or is that a potential modern slavery issue – simple things like that.'.

He added, 'what we don't do is get involved in on the ground audits. And, as part of the risk assessment exercise, we nearly always recommend someone with overseas suppliers that they should be carrying out audits.' He explained that in a risk assessment, they look for risk in the country of operation, considering the sector and the value of the goods provided by the supplier. Sam explained that companies are unlikely to be able to carry out 'due diligence' on every one of their suppliers due to limits on time, cost and capacity, so they must prioritise based on risk. For example, a company is unlikely to carry out due diligence on a one-off transaction involving goods of low value but if it is a regular supplier, with an ongoing relationship with a high value contract, that supplier will be subject to a lot more scrutiny.

Harry was a legal consultant at a large international law firm at the time of our interview. He has since moved to another international law firm based in London. The firm has around 2,800 lawyers working in more than 40 offices in the United States, Europe, Latin America, the Middle East, Africa and Asia. In 2019, Harry is also a consultant to the supply chain consultancy, known for providing advice to companies on supply chain issues, including modern slavery.

Harry explained that when the MSA first came into force, the firm had not 'properly set up our standalone business and human rights practice. We were more focused on our disputes than on advisory work.' But 'requests [for advice] were being referred to us by lawyers elsewhere in the firm.'

Harry observed that companies who seek advice from lawyers tend to be 'risk-averse and less ambitious' than those that seek advice from consultancies specialising in supply chain management, although he also noted that external advice can be sought simultaneously from different advisors. He told me that the approach taken by legal functions within a business is often different to that sought by a sustainability or CSR function. Harry believes the legal function tend to be much more narrowly focused on compliance with the Act and regulatory sanctions, conscious of litigation risk and that can lead to a more conservative approach to both the MSA statement, and the underlying mechanisms, systems and processes on which the statement reports. He added 'My impression is that when reporting is led by non-legal functions then often you get a different engagement on the substantive issue.'

Harry said he had to scare some companies into taking a broader, more international approach. He said:

> We've had some cases in California which falls under consumer protection litigation, so we had to talk to our clients in the UK about misrepresentation in MSA statements, anything that might be false or misleading. Because it's actually helpful in producing arguments of potential legal liability. When we speak about fraud, and litigation, they start to look at [s 54] seriously and look at their supplier contracts to

> substantively improve systems and processes. Otherwise, I find that what clients are doing just does not align with international law.

According to Schmidt's research, the transnational requirements of securities regulation highlighted the 'moral impulses behind lawyers' work'. He found that the cross-border due diligence processes, which requires lawyers to identify corruption in foreign economies led some securities lawyers to regard themselves as investigators or gatekeepers fighting against corruption.[368]

Harry regards this as an area in which lawyers are able to distinguish themselves from other types of advisors. Advice about how an MSA statement might affect other potential sources of legal liability is the key contribution of lawyers. He said 'that's not something a non-legal consultant is qualified to talk about to the extent that a MSA statement can be used to prove an assumption of a duty of care under tort law; as it could be used to found a consumer protection litigation. But I think these are material issues which are of relevance, particularly, to in-house counsel where we do have a different role to play.'

William is an associate at a 'Magic Circle' international law firm, headquartered in London. William has worked on legal aspects of MSA compliance since the Act came into force in 2015. He said that, in his opinion, companies 'can't do an effective MSA statement that is going to pass muster with the NGOS without considering the wider universe of business and human rights…'

[368] Schmidt (n 353), 235.

Marie is a corporate finance partner at an international law firm's London office. She was managing partner of another European office for the firm between 2006 to 2014. She is the leader of the firm's Environmental, Social and Governance ('ESG') initiative and the global ESG and BHR groups. She advises clients across a wide range of industries, including financial services, infrastructure, mining and commodities, life sciences and shipping. The MSA and issues relating to supply chain management are encompassed in Marie's work. Marie is a well-known and active commentator on s 54. She has collaborated with academic institutions on research relating to business and human rights 'due diligence'.

Marie told me that believed the MSA is the beginning of an international business and human rights movement. When advising multinational clients, Marie considered s 54 in the context of other emerging laws. She explained that as a global law firm, she is always looking at the broader international picture 'so, it sort of doesn't make sense to have a piece of legislation in a little island somewhere in the world and not spread it around. At the moment, it seems to me that there is an interesting situation in the market. Many of the trends are now spreading through businesses actually taking the ideas up and implementing them. Then the legislature plays catch up with those processes, which they then try to give some shape and form.' A discussion on the interaction between the government and international movements is in Chapter 7 and 8.

Taking this approach enabled the firm to participate in the modern slavery legislative process in Australia. To illustrate the point, Marie explained that the firm's Sydney branch has been instrumental in facilitating the process of passing the Australian Modern Slavery Act in 2018. She said, 'our office in Sydney was working with the

Australian government. They were giving evidence to the parliamentary committee and…because they had the benefit of learning from us [in the UK], what worked and what didn't.'

Like Sam, Harry and William, Marie believes that lawyers have a unique role as intermediaries between businesses and the law. As she explained, 'I am a corporate finance lawyer by background and have always been doing deals and working with corporations. I am very much involved in corporate governance, with the various systems and governance processes being implemented. Because the business and human rights area is so potentially broad and so tricky to capture, if you try to legislate without actually understanding what is feasible and what is not feasible, and without understanding the companies in this area, you just are very unlikely to come up with the right outcome.'

On writing MSA statements, which Marie sees as a very small part of the overall exercise, but the culmination of a lot of work, she said, 'the biggest mistake used to be made by the CSR teams who created more philanthropic statements of intent rather than specific hard facts about the very gruesome business of modern slavery and human rights in general, so we are certainly weaning them off this flowery language and concentrating their minds on the fact that the not-so-mandatory headings are in fact the principles of good human rights risk management and without that they are unlikely to have a good system. So, sooner or later, they will have to go through those headings in their internal processes and systems and the writing of their statement in relation to the clients who are doing the right work. It's a question of a couple of days, because you literally just summarise what you have done.' This means she differentiates her work from NGOs. She said:

> I believe that we have quite an exceptional level of detailed, substantive knowledge of systems, processes, sources, general situation on the market, and we can really help, we can really make a difference. We have a true understanding of what a risk-based process means and how you can defend it once you have embarked on a set of actions which flows from your risk analysis and if attacked by groups saying you haven't done the right thing. So I see us as a very happy leading force in this space. How, then, to make a difference is why I am in it, personally, because I think it is such an important area and you see real people at the end of it.

Hilary was an associate at a boutique law firm in London. The firm characterises itself as 'an international law firm that specialises in dispute prevention and resolution around the globe'. It differentiates itself from other law firms with its 'lean model and flexible fee structures', which means they can be more competitive. The firm has a specialised practice in Business and Human Rights, where Hilary worked for two years before moving on to her current role at an Institute in human rights.

Hilary explained that she has not been asked by clients to draft MSA statements, but she has advised companies on their supply chain review processes. She said, 'One company based in the US has asked us to look at their supply chains, in order to understand whether they are meeting the expectations of international standards, what their competitors are doing, what particular stakeholders and NGOs are interested in. One of the issues is modern slavery. So it is very much on their radar and largely driven by the UK MSA and s 54. That's certainly been a kind of driving force to put that on their radar.'

She added, 'I think we need the inhouse lawyers to realise these are not just legal issues. These are issues that require an approach that isn't purely legal, that isn't purely compliance with regulation and may require a shift in the commercial concerns of the company to take genuine steps to address these issues. So I think there needs some sensitivity to that, that you can't just translate these concepts in respect of modern slavery, in respect of human rights into a check list and I think there's a real temptation to do that.'

My interviews with external lawyers highlighted their awareness of NGOs and the different work that they are doing. As lawyers, they have a broader set of concerns. When I asked NGOs about who the audience of MSA statements are, they generally thought they were. Lawyers are generally more mindful of investors, shareholders and take into account international norms and how s 54 relates to the global normative framework.

5.3 Perceived legal risks and corporate liability

'Legal form produces legal consequences', one lawyer told me. From his perspective, s 54 should not be underestimated, despite its light-touch requirements. Its introduction raised questions about how it interacted with other areas and types of law, including legislation, international conventions, secondary regulations and even case law. External lawyers and inhouse lawyer shared a similar outlook as they insisted that s 54 produces a range of legal risks. On the conference circuit, external lawyers raised these concerns and prompted some of the initial scramble to comply. Corporations found themselves treading ever more carefully in their efforts to comply with the new provision, which increased demand for lawyers who had experience and knowledge to spot the legal issues and map out a path without exposure to legal pitfalls. As one legal advisor put it,

whenever there is a piece of new legislation, lawyers inevitably become involved. This is reflected by the fact that none of the corporations I spoke to had implemented s 54 without legal or compliance advice.

Fisher explained that risk is a 'regulatory construct', and the implication of this is that it can evolve over time in light of different experiences, institutional concerns, political trends and specific events.[369] Risk-based regulations, have become popular as a low-cost regulatory strategy, but as Baldwin and Black suggested, for such regulations to work, regulators must understand the regulated firms' behaviour, attitude, and culture; regulation's institutional environments, interactions of regulatory controls, regulatory performance; and change. This underpins a 'really responsive' framework. So far, this thesis has not designated s 54 as 'risk-based' regulation, but as discussions in the following section shows, s 54 triggers 'risk' by association with social norms, which becomes an important mechanism for its widespread effects. Lawyers interpret 'risk' specifically with reference to existing rules and legal doctrines. An empirical analysis of this can facilitate the responsive regulation approach Baldwin and others advocate.[370]

5.3.1. Companies Act 2006

One of the main 'legal risks' highlighted by my legal informants is the overlap between the Companies Act 2006 and s 54. Two of the main benefits for incorporation are the enjoyment of separate legal personality and limited liability. More precisely, corporate

[369] Elizabeth Fisher, 'Risk Regulatory Concepts and the Law', OECD (ed) *Risk and Regulatory Policy: Improving the Governance of Risk* (OECD Publishing 2010), 54-55.

[370] Black and Baldwin (n 111).

law can allow company directors to escape personal liability for harms arising from outsourced production.[371] One of the tools that governs corporate liability in the UK is the Companies Act 2006, which sets out the board of directors' right to determine the best interests of the company, while still being bound to balance the interests of other stakeholders participating in an enterprise. This model underlines companies' and – especially – directors' discretion and obligations.[372] As one of my legal informants said, one of the main reasons that s 54 has been so effective is because it requires directors to personally sign MSA statement, adding 'whoever got that through was very clever.' The directors who sign the MSA statements are bound by the general duties of directors to promote the success of the company, exercise independent judgment and exercise reasonable care, skill and diligence.[373] These duties must be carried out when directors approve and sign strategic and non-financial reports.[374] In the event that they acted knowingly or recklessly, directors can be convicted and fined.[375] The consequences of publishing a misleading MSA statement is analogous. A legal advisor said, 'if the [MSA] report is so far removed from reality, it doesn't take much for a smart investigative journalist or a lawyer to prove that, so if a business is saying we are doing all of this, then you can bring the whole of the Companies Act into play.'

[371] Aseeva (n 68), 67.

[372] Andreas Rühmkorf, *Corporate social responsibility, private law and global supply chains* (Edward Elgar Publishing 2015)

[373] Companies Act 2006, ss 172-174.

[374] Companies Act 2006, s 414CA.

[375] Companies Act 2006, s 414D.

A legally trained NGO representative told me they expect companies to name all the affiliated entities in one statement, but some statements only cover part of the group entities, other ones only include the entities that meet the revenue threshold, which excludes holding companies, non-trading holding companies. Corporate lawyers interpret s 54 in ways that avoid scrutiny. For example, the company Babcock Group excludes 40% of its workforce in its MSA statement and probably does so deliberately to avoid scrutiny.[376] Because of this, NGO representatives found 'it really difficult to capture the entities that are really required to report, and to check whether they've reported or not… So many companies tell us that they are covered by a group statement, but without them telling us, no one would have any idea, because they are not named anywhere.' The way the statements are formulated can shield company directors from taking on responsibilities for operations that they are not familiar with. But to some NGOs, 'that is just a lazy way of complying with the law, so perhaps requiring every entity to report is a resourcing issue too.'

5.3.2. Bribery Act 2010

The UK Bribery Act 2010 was one of the proposed models for what became s 54. It was rejected for being too much of a burden on companies because of its extraterritorial reach and harsh penalties.[377] The Bribery Act introduced strict liability for corporate organisations and companies if an 'associated person'[378] performing services on its behalf

[376] Hsin and others (n 168).

[377] LeBaron and Rühmkorf (n 36).

[378] Bribery Act 2010, s 8.

bribes another person to obtain or retain business or a business advantage.[379] The associated individual or entity that carries out the act of bribery on behalf of the organisation need not have any connection to the UK, so long as there is a connection to an entity incorporated or 'carrying on business' in the UK.[380] The Act carries a severe penalty, as corporations can face an unlimited fine and individuals can be imprisoned for up to 10 years for committing an offence under the Act.[381] As Sam explained, the Bribery Act's extensive powers worried a lot of companies at the outset. They were worried for two reasons. The first was that the MSA's definition of 'commercial organisation' is the same as that in the Bribery Act. Second, they both have extraterritorial reach. So, according to one lawyer, 'we were concerned that if our clients start publishing MSA statements on behalf of the group, there might be a risk that it could open parent companies to increased liability for their subsidiaries, so it's not just about the Modern Slavery Act.'

Since modern corporate structures are often very complex, Sam added that some overseas companies do not want to unwittingly subject themselves to the Bribery Act. He said:

> For an overseas company that supplies to the UK or has a UK subsidiary, from a bribery risk perspective, you might wish to argue that you are not a commercial organisation as defined by the Bribery Act. But if you then publish a MSA statement, then that could potentially be used as a counter argument that you can't have it both ways. You either assess yourself as a

[379] Bribery Act 2010, ss 1-6.

[380] Bribery Act 2010, s 7.

[381] Bribery Act 2010, s 11.

commercial organisation for the purposes of the MSA and therefore you are a commercial organisation under the Bribery Act, or you are not!

Since s 54 could potentially apply, corporate alarm bells rang and Sam recalled that when the MSA was first introduced in 2015, his firm was asked by a number of European and American inhouse counsels to provide advice on how to avoid falling within the jurisdiction of the Bribery Act. They wanted to know whether publishing a MSA statement at parent company level would risk undermining the legal analysis of being out of jurisdiction for Bribery Act purposes. Sam advised that they should publish local UK-entity MSA statement only, rather than group MSA statements, to limit exposure to the Bribery Act.

5.3.3. Import bans

The world's economies are linked together by a complex web of trade and investment agreements. These range in scale from bilateral agreements to large multi-country free trade areas, to the World Trade Organisation. Traditionally, trade deals would eliminate tariffs and expand market access. In recent years, the agreements have included expansive rules to protect the investments, profits, and intellectual property rights. They can also incorporate customary and international norms. These rules can dramatically affect the freedom of countries to introduce standards and laws not only on trade but on other matters including the standards of living, conditions of work and the environment.[382]

[382] BHRRC, 'Trade and corporate accountability' <https://www.business-humanrights.org/en/big-issues/trade-and-corporate-accountability/> accessed 27 August 2022.

In fact, the US already has laws designed to regulate certain corporate sourcing practices. S 1502 of the Dodd-Frank Act 2010, for instance, requires publicly traded US companies with products containing 'conflict minerals', such as gold, tin, tungsten and tantalum (some of which are commonly used in the production of electronic goods) to report on the origins of those materials. The purpose of the law is to expose the underlying source of trade in 'conflict minerals'. In January 2018, Senators Bob Menendez and Rob Portman introduced the Anti-Trafficking Act to suspend countries from US trade preference programs for one year for failing to addressing trafficking.[383]

According to a representative from the American Department of Justice, who spoke at a modern slavery conference I attended in 2018, these laws were being passed to counter North Korean labour-produced goods (assumed to be forced labour). She said these products 'must be stopped at the border' butnoted the unsuccessful use of the Alien Tort Act, which had seen some 40 cases filed against multinationals for alleged harms committed outside of the US. The US Supreme Court seemed divided on the application of the Alien Tort Act, in its decision concerning terrorism financing in the Middle East. The US is also the only country that publishes an annual 'Trafficking in Persons Report' which is frequently used by benchmarking companies, consultancies and even other states to signal to companies where specific 'risks' lie in the world. The report is influential and a consistent factor for corporations deciding where to set up businesses, but it is also a political statement, written from the perspective of America's foreign alliances and

[383] Hinrich Foundation, Trade and Modern day Slavery (12 February 2020) <https://www.hinrichfoundation.com/research/article/sustainable/trade-and-modern-day-slavery/> accessed 27 August 2022.

interests. While these American rules have little to do with s 54, companies that operate transnationally have to understand how they overlap.

Recently, the UK government has also used s 54 to prohibit particular types of products or goods imported from a particular country or region. In January 2021, the Foreign Secretary Dominic Raab announced that the UK would use s 54 to curb the import of cotton harvested by forced labour in Xinjiang by Uyghurs and other Turkic- and Muslim-majority groups in China.[384] Specifically, he introduced financial penalties for businesses that do not comply with s 54 measures, and increased support for UK public bodies to exclude businesses complicit in human rights violations from their supply chains.[385]

Therefore, the duty to report under s 54 would cover concerns about goods made by children or prisoners. But these issues have become more than social, they are politically intertwined with foreign relations and international trade. One lawyer mentioned that this is one of the trickier intersections with the MSA that he has had to deal with. He said:

> A lot of companies will have statements that say they have zero tolerance towards bonded labour. We have had a couple of clients who discovered that suppliers in the UK have relationships with prisons. Now, that is a positive thing, getting people back in the workplace, putting them back in

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[384] HM Government (n 159).

[385] Business, Energy and Industrial Strategy Committee, 'Uyghur forced labour in Xinjiang and UK value chains' (17 March 2021) < https://publications.parliament.uk/pa/cm5801/cmselect/cmbeis/1272/127206.htm> accessed 27 August 2022; Paul Burns and others, 'UK, US and Canadian Governments Announce New Measures Over Alleged Xinjiang, China Human Rights Concerns' (*Baker McKenzie Blog*, 18 February 2021) <https://supplychaincompliance.bakermckenzie.com/2021/02/18/uk-us-and-canadian-governments-announce-new-measures-over-alleged-xinjiang-china-human-rights-concerns/#:~:text=On%20January%2012%2C%202021%2C%20the,be%20produced%20using%20forced%20labor.> accessed 27 August 2022.

> society, and if you cut that off, their position is going to be harder. But understandably, companies are reluctant about setting out any details of the discovery of these issues for the fear that during a procurement exercise somebody reads this statement and creates a scandal. So, we try to adopt a balanced approach and not just have a knee jerk reaction. We advise companies to say that they are not going to work with any suppliers that have people working long hours or some element of child labour. The approach is to consider everything on a case-by-case basis. As lawyers, we will advise around the content of their MSA policy statement to make sure there is some balance and help them with the wording of their published MSA statements because we come from the school of thought that if you are going to engage with this legislation and the objective of the legislation, then you should be putting something in about your risk areas and describing perhaps in general terms some of the issues that have been discovered. I think that is part of engaging with best practice; some companies will do it, but some companies will want to keep it really plain vanilla.

Legal and policy advisors have noted that the drivers of forced labour in supply chains are complex and import bans or other single regulatory interventions are unlikely to effectively reduce forced labour on their own in a sustainable way.[386] Instead, lawyers

[386] Irene Petriepoli, Owain Johnstone and Alex Balch, Policy brief: effectiveness of forced labour import bans (*Modern Slavery & Human Rights Policy & Evidence Centre*, July 2021) < https://modernslaverypec.org/assets/downloads/PEC-Policy-Brief-Effectiveness-Forced-Labour-Import-Bans.pdf> accessed 27 August 2022.

counsel against divesting from problematic issues, and encourage companies to engage directly instead, as much as they can to resolve the root cause of the problem. This means the government has had to realise that s 54 is more than just a corporate disclosure requirement. One lawyer remarked that 'this type of issue touches every single government department, so the foreign office, the Department for Business, Energy & Industrial Strategy, Home Office and even Education etc. are all involved. I don't think they saw that coming when the MSA was introduced.'

5.3.4. Corporate criminal liability

Criminal liability is an increasing concern for corporations. Unlike other sections of the Act, s 54 does not impose criminal liability but as one informant suggested, 's 54 sort of sits a little bit strangely within the MSA, but what is interesting is if you get to s 54, it refers back to the top of the Act and I think that's critical because what it's saying is, any person can commit these offences and legally, a person can be a body corporate. So, corporations in theory can be prosecuted under the MSA, and there has been one case already for crimes in modern slavery.'[387]

In this first instance of criminal prosecution, a Mr Antuzis and several other Lithuanian men worked as chicken catchers for DJ Houghton Catching Services Ltd (DJ Houghton), which served UK-wide suppliers of poultry. They were grossly overworked and illegally underpaid, working and travelling 100 hours every week and paid according to the number of chickens caught. They also lived in appalling conditions, sleeping in vehicles or with chickens, and denied proper food, rest, convenience breaks and access to

[387] *Nerijus Antuzis & ors v DJ Houghton Catching Services Ltd & ors* [2019] EWHC 843 (QB)

medical care. A company director, Darren Houghton, and a company secretary, Jacqueline Judge oversaw this treatment and illegally withheld wages, regularly omitted to pay the workers, falsified payslips and failed to keep records of the hours worked. The High Court decided that company directors can be held personally liable for the exploitation of company workers, but only if they act in breach of their fiduciary or other personal legal duty owed to the company (such as the Companies Act 2006 obligations discussed in 4.3.1). In other words, the focus is conduct and intention in relation to his duties towards the company, not towards any third party.[388]

Only two lawyers I spoke to note the overlap between s 54 and labour law, even though prior to the MSA, labour law was the only tool for forced labour offences. The reason is probably because they were mostly commercial lawyers, but the MSA and labour law intersect in a way which also carries criminal liability. As the academic Judy Fudge pointed out in her article, there is an institutional overlap and a conceptual one. With the Immigration Act 2016, the Conservative government linked illegal working to labour exploitation, creating a crime of illegal working and introducing a number of initiatives to combat labour market exploitation, which is the term used in the UK to characterise violations of workers' labour standards. She said, 'together, the MSA and the Immigration Act 2016 have blurred the lines between criminal, immigration and labour law.' [389] The institutional overlap exists because the Immigration Act 2016 extended the remit of the Gangmasters Licensing Authority ('GLA'), from licensing labour providers in a limited

[388] *Nerijus Antuzis & ors v DJ Houghton Catching Services Ltd & ors* [2019] EWHC 843 (QB).

[389] Judy Fudge, 'Why Labour Lawyers Should Care About the Modern Slavery Act 2015' (2015) 29 King's Law Journal 377, 386. Also see, Alex Balch, *Immigration and the State: Fear, Greed and Hospitality* (1st edn, Palgrave Macmillan 2016) 164 for a discussion of the UK's hostile environment for illegal migrants.

number of sectors to include enforcing labour law trigger offences and the prohibition of modern slavery involving labour exploitation across the entire UK labour market.[390]

The UK's Joint Committee on Human Rights, in its report Human Rights and Business 2017, recommended the introduction of a criminal offence for failing to prevent human rights abuses and setting up a new 'Gangmasters and Labour Abuse Authority' to monitor this.[391] This is how the civil claim against DJ Houghton was framed. The Lithuanian claimants brought civil claims against the GLA, a non-departmental public body governed by an independent board and works in partnership to protect vulnerable and exploited workers, in negligence and under the Human Rights Act 1998 for breach of the prohibition on slavery and forced labour in Article 4 of the European Convention on Human Rights.[392]

Criminal liability has become even more real with the UK's law commission consultation process concerning the criminal liability of companies and limited liability partnerships, launched on 9 June 2021. At present, such legal persons may only be convicted of a criminal offence if it has a fault element, a 'strict liability' offence, or if an individual or group of senior individuals within the organisation has the necessary fault element. Even though the proposal has nothing to do with s 54 directly, and despite the absence of written law, it is creating anxiety among corporations and lawyers watching this

[390] Fudge (n 395) 377-378.

[391] House of Lords and House of Commons Joint Committee on Human Rights, *Human Rights and Business 2017: Promoting responsibility and ensuring accountability* (2016-17, HL 153, HC 443), 42-44.

[392] Allen & Overy, 'Modern slavery: Directors can be personally liable for employee exploitation' (*Allen & Overy*, 25 March 2019) <https://www.allenovery.com/en-gb/global/news-and-insights/publications/modern-slavery-directors-can-be-personally-liable-for-employee-exploitation> accessed 27 August 2022.

development because the law could be reformed to impose criminal liability on corporations for economic crime Lawyers interpret the 'gap' by drawing on s 54 as expectations of best practice. McBarnet and Whelan pointed out that 'gaps and uncertainties are not contingent or anomalous but the inevitable product of the forms of law - these are not weak points in the system but a source of operational strength - a crucial means by which the legal system is able to work at all - and of ideological strength - precisely what allows the law to be all things to all men, to contain contradictions, to manage the gap between what it does and what it should.'[393]

Some legal advisors believe s 54's trajectory will move increasingly towards criminal liability including individual liability of directors and senior managers for offences committed by corporations.[394] As a subject matter, modern slavery overlaps with criminal law, human rights and labour standards, and according to some lawyers, corporations seem to be under increasing pressure to know and care about the practices of their suppliers.

5.3.5. Emerging 'patchwork' of domestic legislation

Against the background of the UNGPs, which set out for the first time in law, and corporate obligations to 'do not harm', the MSA was heralded as a breakthrough when it was introduced in 2015. The then Home Secretary Theresa May set up an independent review of the 2015 Act a year after it received Royal Assent. The review, conducted by

[393] McBarnet and Whelan (n 135) 167.

[394] Demonstrated by the Law Commission's initiative on Corporate Criminal Liability. See generally, Law Commission, Corporate Criminal Liability <https://www.lawcom.gov.uk/project/corporate-criminal-liability/> accessed 29 August 2022.

barrister Caroline Haughey, found that the 2015 Act had set 'an international benchmark to which other jurisdictions aspire'.[395] One lawyer explained that she was working with a large company in the US, who has asked her to consider issues relating to their international supply chain. She said:

> They wanted to understand whether they are meeting the expectations of international standards and what they need to do to bring their standards up to that, what their competitors are doing, what particular stakeholders and NGOs are pushing for and one of the issues is modern slavery, so it is very much on their radar and largely driven by the UK MSA and s 54. These big companies look at the broader global regulatory developments to see what the direction of travel is and how they can most efficiently meet all the requirements in one go.

As explained in Chapter 2, the MSA was modelled on the Californian Transparency in Supply Chains Act 2010. The main differences is that the MSA requires companies to make annual disclosures on modern slavery, whereas the Californian act requires a one-off publication, without the need for approval from directors of the company. The Californian Act has since been criticised for not being sufficiently effective and fails to hold companies to account. As civil society groups have attempted to enforce the law in court, only to find that the law created a 'safe harbour' for corporations who disclose adverse information in their disclosure. The rationale behind that is that companies should not be penalised for the

[395] Caroline Haughey, 'The Modern Slavery Act Review' (31 July 2016), 3 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/542047/2016_07_31_Haughey_Review_of_Modern_Slavery_Act_-_final_1.0.pdf> accessed 27 August 2022.

actions they have taken to comply with the Californian law. According to a report in 2015, the 'average disclosure compliance score' under the Act was 60%, and the average "affirmative conduct score" relating to 'the extent of corporate-driven action' was a mere 31%.[396] But one legal academic who spoke at a business and human rights conference noted that there are already 'forceful examples in the US consumers litigation against Walmart and Nestle are based on the Californian Transparency in Supply Chains Act, which will send alarm bells throughout the corporate world and influence the UK and EU disclosure requirements.'

The French Droit de Vigilance 2017, the Australian Modern Slavery Act 2018 and the Dutch Child Labour Due Diligence Law 2019 were all enacted after the MSA, not only improving and clarifying the requirements, but broadening and increasing obligations on businesses to comply. Although not all focus on 'modern slavery', they similarly require businesses to disclose information on how they plan to address exploitation and human rights violations in their supply chains.[397] Fundamentally, they all require businesses to report on their supply chain activities and align with the UNGPs. Other jurisdictions, including Canada, Switzerland have legislative proposals underway. In Asia, Hong Kong legislators Dennis Kwok and Kenneth Leung proposed a bill on Modern Slavery in 2018, modelled on the UK MSA. As one lawyer put it at a conference, these developments signal an emerging 'patchwork of domestic legislation' that require companies to account for

[396] Development International 'Corporate Compliance with the California Transparency in Supply Chains Act of 2010' (2 November 2015), 2 <http://media.wix.com/ugd/f0f801_0276d7c94ebe453f8648b91dd35898ba.pdf> accessed 27 August 2022.

[397] The different laws have different qualifying thresholds; in the UK, it must be a company earning over £36 million turnover a year, in Australia, it is $100 million, and in France, the law applies to companies with over 5,000 employees in France or headquartered in France or abroad and employing more than 10,000 employees worldwide.

activities in their supply chains, which now includes environmental regulations.[398] Companies are naturally concerned about what these laws mean, how they interact and how to minimise the effort and risk associated with compliance. One lawyer even told me that the MSA is only continuing to be successful because of this growing web of obligations.

The legal risk in this 'patchwork' is not strictly related to liability, it is about setting the standard for multinational corporations. As Hong Kong, New Zealand, the US, Singapore, Brazil, Switzerland, Germany and the EU all formulated different requirements, it becomes more challenging to follow and compare the requirements. This is where lawyers once again become relevant. Most multinational companies also use multinational law firms with local offices, which enables advice from local lawyers. The inhouse lawyer must consolidate these requirements and formulate a strategy, deciding which jurisdiction poses the most risk – legal or otherwise.

The patchwork analogy is applicable again. One lawyer stated that the 'Australian Act creates the sense that there are stricter reporting requirements on the horizon. Sensible businesses or even those who might not be particularly engaged in the underlying risk for the purposes of reducing human right impacts but are cautious in terms of litigation risk and regulatory risk are keen to know what's on the horizon as to be able to prepare for that.' He explained that he had seen 'increased engagement since the beginning of this year

[398] For example, due diligence about sustainable forestry: Department for Environment Food & Rural Affairs, Due diligence on forest risk commodities – Consultation document (August 2020) <https://consult.defra.gov.uk/eu/due-diligence-on-forest-risk-commodities/supporting_documents/duediligenceconsultationdocument.pdf> accessed 28 August 2022 and Department for Environment, Food & Rural Affairs and The Rt Hon Lord Goldsmith, 'Government sets out plans to clean up the UK's supply chains to help protect forests' (*gov.uk*, 3 December 2021) <https://www.gov.uk/government/news/government-sets-out-plans-to-clean-up-the-uks-supply-chains-to-help-protect-forests> accessed 28 August 2022.

and that would suggest that a driver for change in corporate culture, particular amongst the clients who tend to come to us is regulatory risk and litigation risk.' Although he admitted that most clients that ask for advice from his firm tend to be large corporations and said he 'wouldn't generalise about all businesses. The legal compliance function and the lawyers and compliance professionals come to us to seek support for change in the regulatory landscape or potential litigation risk.'

5.3.6. Civil Litigation risks

According to many lawyers I spoke to, s 54 is a risk from a legal perspective because it exposes companies to public scrutiny. The MSA statement can be used as evidence to support civil litigation ranging from misrepresentation, consumer protection, to human rights or a tortious duty of care.[399] Liability may be evidenced with human rights policies, MSA statements and those policies and reports linked to labour rights, the environment and sustainability more broadly. As one lawyer put it, 'you need to be careful about how you describe these things in [MSA statements], and it would be wrong to think that there aren't people looking at these things who didn't wish your company harm, there are claimant side law firms who consider this as a way to make money.'

Based on a rapidly growing body of civil liability law suits against large companies suggest tort law-based litigation can arise if there is evidence of 'operational control' by a

[399] Hogan Lovells, The Implications of the UK Supreme Court's Decision in Vedanta for the Management of Human Rights Risk in Overseas Operations and Supply Chains' (*University of Oxford Business Law Blog*, 30 May 2019) <https://www.law.ox.ac.uk/business-law-blog/blog/2019/05/implications-uk-supreme-courts-decision-vedanta-management-human> accessed 27 August 2022. Also see Mark Wilde, 'Extraterritorial liability of parent company for the torts of its subsidiary: Okpabi and others v Royal Dutch Shell' (2021) 37 Journal of Professional Negligence 142.

company over entities further along their supply chain.[400] Legal advisors I spoke to talked about to the extent to which an MSA statement can be used to prove an assumption of a duty of care and degree of operational control. One lawyer commented that:

> I think these are material issues which are of relevance particularly to in-house counsel, where we do have a different role to play. I mean, companies will be required to be transparent about what they have in place. If you twin that with the potential for enforcement by claimants, based on civil law, holding businesses accountable for what they say their statements, where business is required to say something and they say something which is false, then it creates a legal risk and well-advised companies won't do that…Any enforcement of that should be done through the civil law so that it is not really self-regulation. I think when you combine the reporting and litigation, you do move towards greater transparency and those instances where companies are dishonest, they should be subject to legal liability.

Legal claims can also be based on a breach of consumer rights or misrepresentation. One lawyer explained that he cautions his clients against making statements that guarantees an outcome, such as 'there is no slavery', and suggests stating the measures used to prevent modern slavery instead, even though 'it is not what is expected under the

[400] The liability of a UK parent company has been a high-profile topic in recent cases. In *Okpabi & Ors v Royal Dutch Shell plc and Shell Petroleum Development Company of Nigeria Ltd* [2021] UKSC 3, *AAA & Others v Unilever PLC and Unilever Tea Kenya Ltd* [2018] EWCA Civ 1532 (QB), and *Vedanta Resources Plc and Konkola Copper Mines Plc. v Lungowe and others* [2019] UKSC 20

Act, it is not what is expected of advisors, it's not what is expected under the UNGPs but it is potentially a source of *hard legal risk* [emphasis added] because all you will need is one example of modern slavery somewhere in your supply chain and you can be shown to have been dishonest or misleading in your statement.' He added that he was involved in cases in California based on consumer protection law, and it is possible that can happen in the UK as well, with a claim based on misrepresentation or fraud for statements which are false or misleading.

> So, we would often caution companies about making promises in their statements. Instead, we suggest writing clear descriptions of the company's systems and processes. I think that can reduce potential legal liability while also improving the systems and processes, reducing the ultimate adverse human rights impact because it's a much more realistic expectation. Much less likely that reporting companies and also companies in their supply chain who they may pass their obligation on to in contract will actually look to substantively comply with the statements on systems and processes rather than statements on outcomes they can't realistically fulfil.

Another external lawyer stated that the legal function primarily focused on compliance with the Act, potential regulatory sanctions, and litigation risk. This can lead to 'a more conservative approach to the statement itself and the underlying mechanisms including the systems and processes on which the statement reports.'

However, one inhouse lawyer I spoke to was worried that litigation threatens companies unevenly, thus defeating the objective of 'levelling playing field'. He said,

responsible companies are engaging with s 54 by publishing a statement in the public domain. This means that they are also more likely to be the target of litigation 'because the companies that aren't doing anything and saying nothing won't give the ammunition to people to claim. They simply don't assume responsibility or the duty of care.' He added, 'I think currently, the disfunction in the legal and policy environment is made worse by the quasi-voluntary nature of the reporting requirement under the MSA.' Another lawyer who advises companies on their MSA statements commented that:

> I think it would be fairer to those businesses who are actually engaging in meaningful measures to address, identify and address the risk modern slavery if reporting against those criteria was mandatory and I think it would refocus attention on those companies who are doing nothing or not doing enough and focus attention away from those companies which are already meaningfully engaging, which is where we are at the moment. I think it's interesting if you look at the business reaction to the MSA UK when it was going through Parliament in 2014/2015, there were concerns about competitiveness against other companies outside of the UK, familiar arguments about new regulations, particularly with the extraterritorial effect.

The threat of litigation sets the corporation up against NGOs and civil society actors, as they are often the financial backers of claimants. One lawyer who acts for plaintiffs told me that most cases settle before they go to court, because most companies want to avoid publicity. In negotiating settlements, he found that lawyers rarely disagreed about the wrongfulness of the actions underlying the dispute; instead, the discussion is usually about

how much it should cost and the approach to quantifying remedy. He noted that the NGOs that instigate strategic litigation are trying to 'make new law', by testing the boundaries of existing legal principles. In doing so, they seek compatible legislation, such as s 54 of the MSA as an 'olive branch' to show that if compliance is good, or corporations make the effort to go beyond compliance, they can avoid lawsuits and minimise the risk associated with public scrutiny. Most lawyers have echoed this message, as a way of persuading corporations to act because it is 'good for business'.

5.4 Conclusion

In this chapter, I set out to explore further the actors involved in the implementation of s 54. The focus here were legal actors involved in advising companies on how to respond to the provision. I pointed out that there are subtle differences between inhouse lawyers, compliance counsels and external lawyers. Their influence over corporate activity has been described extensively by scholars such as Steven Sampson, who noted the struggles of inhouse compliance lawyers, 'as moral compass and legal watchdog for the organisation…[with] an obligation to adhere to public values of trust and honesty and to represent the highest ideals of their profession. [But] the 'demand for company loyalty and confidentiality thus clashes with the ethics and compliance officers' responsibilities to external authorities…they are 'informally deputised regulatory agents within the company'.[401]

Vaughan and Oakley found that inhouse 'corporate lawyers are, by and large, ethically apathetic…the 'standard conception' of legal ethics…is to do that which the client

[401] Sampson (n 368) 125.

asks of them (provided such is within the bounds of the law)' and Rosen noted the lawyer-client relationships are precarious and unstable, which can drive some lawyers to say what their clients want to hear. I found that lawyers could separate their personal values from the corporate strategy. The judgement and decision is not static, they are constantly being worked out. More often than not, compliance was not evasive, creative or symbolic. Some lawyer recommended superficial strategies, but on the whole, most lawyers admitted that 'beyond compliance' was the safest option for their clients, and it was good for business. How and where to strike the balance between commercial interest and social reform may relate to the sense of 'safety'. Combining this with the previous chapter's finding that social embeddedness can occur at certain points in time, I suggest that when 'safety' is compromised or under threat, organisations are more likely than not to retreat to market-driven values. However, as previous chapters have shown, the 'market' constitutes social values as well as commercial priorities. Such complexity defies theoretical ideals and reinforces the importance of understanding the empirical effects of s 54 in context.

Lawyers as insurers prioritised 'safety' in order to minimise risk. To define risk, lawyers have to consider the types of risk at play, the likelihood of occurrence, and the consequences of risk. Since the light touch requirements of s 54 did not present immediate risks to corporations, lawyers were compelled to consider long-term legal risk and social risks. Most lawyers, who translated s 54's requirements into the context of corporate law, know about CSR and saw s 54 as part of a broader global movement towards corporate liability. It was easy to persuade corporations to examine their supply chain processes as a long-term risk mitigation exercise. In other words, 'beyond compliance' is actually 'preemptive compliance'. Some might regard this is as 'managerialisaton' to maximise

corporate priorities or mere ‘window dressing’, but this view fails to consider complex interaction between organisations, lawyers and social movements, described in this chapter.

In the next chapter, I explore how these dynamics have played out among non-legal advisors, who are not bound by expectations of assurance. Instead, compliance with s 54 and ‘beyond compliance’ strategies are considered immediate solutions to an urgent and pressing problem.

6. A LUCRATIVE NEW FIELD OF 'EXPERTS'

6.1 Introduction

It might be expected that companies and their lawyers are the primary actors in debates about the kinds of obligations s 54 establishes and what compliance with s 54 means. I have considered their perspectives in Chapters 4 and 5. Further to these findings, I observed a much wider group of actors and organisations involved in the operation of s 54. The government had intended s 54 to be monitored by 'civil society' but the term was not defined.[402] The corporate informants I spoke to were convinced that s 54's ambiguous requirements fuelled 'an industry of self-proclaimed experts' who wanted a slice of this 'lucrative new field'. Key questions include: who are they and what do they do? How can their actions be understood in relation to the socio-legal theory? The findings in this chapter revisits questions about how s 54 operates in practice and whether we could consider s 54 as social intervention, which underpins my investigations into the practical effects s 54.

This chapter is structured in three main parts to correspond with the type of work undertaken, namely: (1) facilitation of collaborations (i.e., MSOs, industry groups), (2) supply chain consultancy (to include academics, hybrid NGOs, CSR consultants) and (3) audit and data solutions.

The novel contribution of this chapter to the thesis is the identification of new actors and technologies that erode traditional dichotomies such as public/private, commercial/not-

[402] Home Office (n 10).

for-profit, state/non-governmental. It was surprisingly difficult to distinguish between whether an actor is motivated by public concern or self-interest.

Many scholars have since pointed out such dichotomies are not clearly defined. The sociologist Isaac Martin described it as 'a mess'. However 'conceptually sloppy'[403] these terms are, the reality is sloppier. As Braithwaite noted, the categories of public and private are interconnected, which he described as 'privatisation of the public, publicisation of the private', and as Lange and Haines pointed out, the 'social sphere' is a powerful force, capable of driving changes in law and behaviour. But to understand the 'sphere', 'system' or 'field', we must look at the individuals that occupy the regulatory space. As Power noted, the problem with studying organisation control, compliance and accounting means we lose sight of the individual.[404] In particular, he highlighted that no individual person, or group of persons calling themselves accountants seem to ever be responsible or blameworthy, because of the 'legalistic illusion of separate entity hood backed by neoliberal belief in the coordinating priority of the market has led us to think of them as autonomous islands.' But the empirical data here suggests there is more nuance than these distinctions might suggest. In Chapter 5, lawyers could not be easily classified as purely economic actors since they are susceptible to social concerns. Moreover, the broader category of legal professionals can be further broken down into specialisms that have more (or less) moral inclinations, for example, compliance officers. For convenience, in this chapter I sometimes use 'civil society' as an umbrella term. This is also a term used in official guidance to the MSA.

[403] Isaac William Martin, 'Reading The Great Transformation' 44 Contemporary Sociology: A Journal Of Reviews 163, 163.

[404] Michael Power, 'Risk Management of Nothing' (2009) 34 Accounting, Organisations and Society 849, 854.

However, as I show below, the actors and activities discussed in this chapter do not fall neatly into conventional categories (e.g. economy/ society, public/ private)' etc. Most do not work solely within the UK. In the same way as the law firms featured in Chapter 5, the global movement in BHR and human rights due diligence had a profound effect on corporate responses to s 54.

6.2 Proliferation of actors and mixed motives

S 54's ambiguous requirements fuelled 'an industry of self-proclaimed experts' who wanted a slice of this 'lucrative new field', suggesting that s 54 has led to the emergence of its own social world, which I set out to explore and map in this section. As one corporate employee put it,

> There has been a marked proliferation of actors. There's also a huge number of events going on. Just all the time, the number of organisations that seem to have become specialists in organising those events is ridiculous. There's a lot of people talking to the same people in a closed-loop about what they are doing, which is of limited use. I think there's good stuff in there, but they are also opportunistically offering expertise that may or may not be very valuable. It's understandable that this supply industry has risen in response, but like any industry, you've got to pick the wheat from the chaff, and it can be pretty tricky sometimes. Also, there is a tendency to go for a quick fix.

One corporate employee told me he thought that the market would naturally settle down over time, but other informants I spoke to were worried that the lack of control and

oversight of such actors could skew the implementation of s 54 and derail its intended purpose, which according to them was to eliminate modern slavery in supply chains. This finding provides interesting echoes of the points made in Chapters 3 and 5 about different perspectives on risk and what is at stake in compliance with s 54. Legal risk was a long-term concern, part of a general counsel's 'horizon scanning' exercise to ensure the 'safety' of corporations. Here, the requirement to publish an annual statement to comply with s 54 fuels monitoring solutions, which advertised as faster, more efficient ways to solve an immediate problem: to identify whether there are instances of exploitation and modern slavery in supply chains. Alternatively, this corporate fact-finding missions is designed, as one informant NGO informant suggested, 'to find no evidence of modern slavery'. This is about compliance. So, what is the impetus to move 'beyond compliance'?

The following subsection sets out the actors I have classified as 'civil society' on the basis that they are not state-run, and their work facilitates corporate compliance with s 54. The work they do appears to fall into three main categories: (1) facilitation of collaborations of corporate actors; (2) data management and analysis of supply chains; and (3) investigations of supply chains. Analysing the data in this way helps to capture the vast range of actors involved in the different types of work for the purposes of structuring the material presented in this chapter. The first workstream is usually undertaken by multistakeholder organisations ('MSOs'), industry groups and commercial organisations that organise events to facilitate events and discussions on s 54, but I also saw consultants and academics conducting similar work. 'Data management and analysis' is an umbrella term I use for a range of activities relating to the gathering, analysis and reporting of information concerning modern slavery in supply chains. This includes risk assessments of

suppliers for commercial organisations, reports and guidelines on the content of MSA statements, and the analysis and synthesis of information concerning modern slavery broadly. This workstream is carried out by nearly all of the actors featured in this chapter to varying degrees. The third workstream describes activities including paper audits, on-site audits, surveys and research of suppliers. Many organisations and actors carry out more than one of these workstreams, but very few organisations or actors do it all. In practice, the workstreams overlap, and the actors work together. It is not always clear cut which organisations are doing what or how. This chapter explores the activities of these actors, their motives, objectives, the ways they work together, and their contribution to the implementation of s 54.

6.3 Facilitating collaborations

As noted above, an important way in which companies educate themselves on s 54 is via collaborative projects and resources accessed via organisations such as MSOs, industry groups and commercial intermediaries. I consider each of these in turn.

6.3.1 Collaboration via multistakeholder organisations

Since the 1990s, MSOs have proliferated to address a range of social ills.[405] When Nike and Walmart factories revealed the use child labour, President Clinton convened the Apparel Industry Partnership with major apparel companies to address sweatshops problems in global supply chains, which resulted in the Fair Labor Association being established to monitor factory standards and worker rights, bringing together industry and

[405] Anita Ramasastry, 'Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability' (2015) 14 Journal of Human Rights 237, 242.

human rights groups to administer a code of conduct. When Global Witness and Amnesty International highlighted the role of the diamond industry in the armed conflict in Sierra Leone through the purchase of so-called conflict diamonds, the Kimberley Process, a MSO involving governments and the diamond industry was established. The Bangladesh Accord, mentioned in Chapter 3 followed in the aftermath of the Rana Plaza disaster.

The term MSO loosely describes organisations like the Ethical Trading Initiative (ETI), a 'leading alliance of companies, trade unions and NGOs that promotes respect for workers' rights around the globe.'[406] The ETI works with retailers, brands, and their suppliers to improve the working conditions of the people who make the products they sell. ETI members pay fees, and NGO members can join at a discount. To join, corporate members must also meet the ETI 'base code', a set of standards based on the conventions of the International Labour Organisation (ILO) which is an internationally recognised code of labour practice. Theoretically, corporate members are subject to regular checks to see if they meet the base code standards. However, some informants have also told me that ETI's standards have dropped over the years, and it no longer scrutinises its members in the way it used to. Meeting the base code and membership fee requirements allow corporate members to use the ETI logo as evidence of corporate social responsibility, and they also mention ETI in their modern slavery policies, as a shorthand for compliance 'beyond the law', which I critically analysed in Chapter 3.

Since the introduction of the MSA, ETI has been actively encouraging companies to comply with s 54. A policy informant said ETI was one of the early adopters of the term

[406] Ethical Trading Initiative, 'About ETI' <https://www.ethicaltrade.org/about-eti> accessed 28 August 2022.

'modern slavery'. The organisation worked alongside NGOs and businesses in the legislative process, promoted s 54 at conferences, published a report in collaboration with Hult University,[407] and produced guidelines to help companies comply.[408] As a result, ETI is one of the most prominent MSOs in the UK on modern slavery issues. Its representatives appeared at conferences, workshops and seminars throughout 2018 and 2019. Similar to NGOs, ETI representatives spoke in favour of stronger sanctions and criticised non-compliant companies. At times, it was difficult to tell them apart. In contrast, other MSOs are more transnational, and have less of an advocacy role. An example of this type of MSO is the UN Global Compact (UNGC).

UNGC is a non-binding United Nations pact to encourage businesses worldwide to adopt ten sustainable and socially responsible policies and report on their implementation. UN Secretary-General Kofi Annan announced the establishment of the UNGC at the World Economic Forum on 31 January 1999.[409] It was officially launched at UN Headquarters in New York City on 26 July 2000. The UNGC has a mandate granted by the UN General Assembly as an organisation that 'promotes responsible business practices and UN values among the global business community and the UN System.'[410] As such, it is a sister organisation to the Principles of Responsible Investment ('PRI'), the United Nations

[407] Quintin Lake and others (n 31).

[408] Owain Johnstone, 'First ever framework for writing good modern slavery statements produced' (*Ethical Trading Initiative*, 7 November 2018) <https://www.ethicaltrade.org/blog/first-ever-framework-writing-good-modern-slavery-statements-produced> accessed 28 August 2022; Ethical Trading Initiative, ETI Base Code Guidance: Modern Slavery (3 July 2017) < https://www.ethicaltrade.org/resources/base-code-guidance-modern-slavery> accessed 28 August 2022.

[409] Secretary-General proposes global compact on human rights, labour, environment, in address to world economic forum in Davos, Press Release SG/SM/6881, 1 February 1999, <https://www.un.org/press/en/1999/19990201.sgsm6881.html> accessed 18 November 2022.

[410] Abagail McWilliams and others (eds), *The Oxford Handbook of Corporate Social Responsibility: Psychological and Organisational Perspectives* (Oxford University Press 2019), 264.

Environment Programme Finance Initiative and the United Nations Conference on Trade and Development. All of these entities have a business focus to their work.

However, unlike these organisations the UNGC is an MSO endorsed by an Inter-governmental Organisation, primarily to function as a platform for discussion and information sharing. In contrast to the PRI, it has a lower financial and reporting threshold for membership. It is the world's largest voluntary corporate sustainability initiative, with 10,435 companies in 166 countries. Collectively, this means they generate 70,142 public reports each year. The UNGC's day to day work involves mobilising companies to 'do business responsibly by aligning their strategies and operations with the Ten Principles on human rights, labour, environment and anti-corruption.'[411] It also aims to 'take strategic action to advance broader societal goals' such as the UN Sustainable Development Goals, emphasising collaboration and innovation.[412] The relevant principles require businesses to support and respect internationally proclaimed human rights and ensure they are not complicit in human rights abuses.[413]

The UNGC is made up of 72 local networks. Companies pay a fee depending on their size and revenue to the headquarters of the UNGC in New York. Companies can choose to join as signatories or participants. If they join as a participant, there is no additional fee, but joining as a signatory attracts a nominal fee of around £300. During my fieldwork I spoke to two managers at the UNGC network in the UK: Melanie and Jill. The

[411] UNGC (n 227).

[412] UNGC, 'Our Mission' <https://www.unglobalcompact.org/what-is-gc/mission> accessed 28 August 2022.

[413] UNGC (n 227).

UK network has worked actively to promote and support the MSA since 2016 when the statute entered into force. It is also responsible for the UNGC Modern Slavery Working Group, a working group made up of 20 UK-based members. According to Jill, this forum was created to support and generate 'best practice amongst peers.'

Working group members range from multinationals to UK based companies that distribute regional and professional services, such as law firms and auditing companies, banks, financial institutions, investors. According to Melanie, modern slavery concerns unite them all, although they may be operating in different countries and with different commodities, they are all sourcing from countries that face huge issues with modern slavery in their supply chains. Melanie noted that 'when we think about creating new working groups, we think about the demand.' Given this structure and the steering from member companies, the membership companies set the UNGC's agenda.

In December 2020, I was asked to present to the UK's UNGC modern slavery working group on s 54. I found the most vocal members to be law firms, while other corporate representatives seemed barely interested in my research on the MSA statements of two companies. The impression I had was of a group of busy corporate employees ticking off an engagement. One participating businessperson later told me, 'I think the UN Global Compact gets gravitas because they are affiliated with the UN, but I've not seen any good come out of being on the UNGC modern slavery working group. Nobody says "wow, let us share this with you, this is what this organisation has done for me" – literally nobody. It's a perfunctory commitment.'

MSOs like the UNGC and ETI are generally set up as to provide a democratic solution to social problems. But once set up, their inner workings are rarely scrutinised. By facilitating collaboration, they act more as a conduit, prone to influence from other actors and dependent on resources. Their shell-like structure can facilitate networking between actors, but such arrangements tend to provide platforms for the loudest, most motivated actors with specific interests. In the UNGC, commercial interests seem to prevail, whereas in the ETI, concern about workers' rights is the primary driver. By selecting MSOs to join, on one hand, corporations are signalling their interests and as Edelman suggested, in her concept of 'symbolic compliance', but in practice UNGC introduce international law to its members, the ETI reinforces the ILO conventions on workers' rights. As these ideas percolate, the MSOs are the fertile ground for co-constructing the meaning of s 54.

6.3.2 Collaboration via Industry groups

Industry groups are also constituted by membership, but they operate quite differently to MSOs in a way that is more collaborative but less critical, without the involvement of NGOs. For example, the American Apparel and Footwear Association ('AAFA') is a popular industry-specific membership association based in the US for many textile and garment industry companies. It currently has 133 members, among them a large textile company with operations in the UK which joined after s 54 entered into effect. According to an affiliate company's corporate social responsibility manager, Lauren, the AAFA provides her with insight on 'what our peers are doing, so we don't fall behind.' Joining the AAFA helped Lauren's company understand the requirements of s 54, and how their business might perpetuate modern slavery.

The AAFA produces a range of guidelines, from 'Legwear, Hosiery, and Sock Testing' to 'Joint Disclosure Guide: UK Modern Slavery, Australia Modern Slavery, and CA Transparency Laws', which is a comprehensive guide for AAFA members to assist them in 'complying with both the letter and spirit of each law.'[414] As a member of the AAFA, the company must abide by its rules and meet specific targets. For example, in response to the AAFA's calls, Lauren and her team started working on responsible recruitment. Lauren said, 'this is one of the biggest drivers for companies to do something, when there's some sort of pact for doing it, which everyone follows. It's a really good thing.' Lauren described the work of the AAFA as being 'over and above the requirements of s 54.'

Another example of collaboration facilitated by industry groups is the Grocers for Ethical Trade ('GET'). It was started by an independent consultant as a forum for food suppliers and retailers to talk about a common human rights risk assessment and has evolved into 55 companies working together to identify and tackle common human rights risks. The group has a low fee to join, no permanent staff and everyone involved works on it pro bono. One of my informants, an administrator of GET, explained that the members in this group range from mid-tier suppliers to supermarkets. While some of them are subject to s 54, many are not. In other words, many of these companies do not have consumer-facing retail operations, they are lower down in the supply chain, in the 'second tier' and beyond. My informant also told me that many of these companies joined GET because they

[414] American Apparel & Footwear Association, Tools and Resources <https://www.aafaglobal.org/AAFA/Solutions/Tools_Research_Nav/AAFA/Solutions_Pages/Tools_Research.aspx?hkey=15779e99-86fe-435f-b154-a6723544e8e9> accessed 28 August 2022.

have trouble identifying their suppliers. The group meets every fortnight to share information and discuss how current affairs might impact food supply or the level of risk of human rights violations. The meetings are usually attended by CSR employees who, at this level of the supply chain, are less likely to be lawyers, and more likely someone in a management role, who found that they need to respond to social concerns.

For example, my informant told me that one group member needed help dealing with issues such as sourcing tomato puree suppliers, after he found out that much of the UK's tomato puree come from Xingjian, where reports of state-sanctioned human rights abuse of Uyghurs have been reported. To re-source the supply chain, they looked to Italy, only to find that the tomato supply chain in Italy has associations with the Mafia and they too, obtain their tomatoes from China. By working with others in the GET group, this corporate employee was able to find alternative suppliers in Portugal and Spain.

Yet, one NGO informant explained to me, industry groups have become more than just 'employer associations' these days, they are more 'socially motivated, advocating better standards among their business constituents.' Longstanding industry groups such as the Confederation of British Industry and the British Consortium of Retailers, have also appeared regularly on the conference circuit encouraging companies to report under s 54. Industry groups have an important role to play. One NGO informant told me,

> there are many sectors where the industry associations are not guiding their members, but when they do, big things happen. Companies will compete against each other on the modern slavery statements. I have seen companies team up against bad suppliers that they all use and exert pressure jointly to set standards in countries where the laws are quite weak.

> Therefore, persuading industry groups to take s 54 seriously is an important task.

In areas where s54 compliance is not being pushed as strongly (such as non-retail) industry groups have an especially key role to play. Not only is MSO coverage patchy, but benefits of membership also vary. This inconclusive portrayal suggests that we cannot clearly label MSOs as pure social actors, especially given that their inner workings are generally unknown and undocumented. This is an area with potential for further research.

6.3.3 Membership-based social enterprises

The activities of the organisations I discuss in the following subsections overlap and some are difficult to define. They appear to be MSOs, but they are classed separately because their activities seemed more commercially motivated. For example, Innovation Forum, which claims to be 'a purpose driven business…our mission is to help make sustainability mainstream in business', organised one of the conferences I attended in London. They describe themselves as a platform for change, they also conduct 'research, create, and facilitate debate-driven, focused events and discussions tackling the critical business sustainability challenges around the world.' They were also charging participants over £1000 to attend a two-day conference. One of the CSR consultants I spoke to told me that these organisations hold themselves out as 'social enterprises' but they 'only care about modern slavery because it attracts big money.'

I first met Andrea at the conference organised by the 'Front Group'. I recalled that she was a vocal participant and hosted a break-out session to discuss her report on the diamond industry. When I spoke to her again, I reminded her of the conference and asked

what she thought about it. She replied, ‘They wouldn’t let me attend as a speaker until I paid £5000! .... £5000! I told the organisers “I don’t think so! You should be paying me that because I am the expert, not you!” She added that while conferences can be good for networking, as an independent CSR consultant, ‘I just can’t afford that kind of money to network. A lot of businesses in attendance at these events are the big brands, and to be frank, they don’t want to talk to smaller, niche people like me. They want the stamp of [large consultancies like] KPMG or PwC, even though they won’t get good advice, so I learned that a long time ago and I can’t waste my money going to these events.’ Front Group has since decommissioned their online presence and no longer organises events. Innovation Forum on the other hand, seems to be going strong. These two organisations were direct competitors, which demonstrates that there was a demand for them and a marketplace for such services peaked in 2018 and 2019.

Kelly, the head of another MSO, confirmed my observation that there are a lot of MSOs focused on revenue. She explained that the modern slavery message ‘can become a bit lost and denominational, so you get a bit of a sense that businesses are saying “we don’t want legislation”, which is not representative of the more nuanced perspective we see within companies. So, we try and play that role and get that perspective out there more.’ But she confirmed that companies cherry pick which MSOs they become affiliated with, and it is usually a mixture. Some high-profile international MSOs provide certifications, others focus on updates and training. Being part of an array helps to inform companies and ensure that their work is seen by the right audience. By helping businesses ‘go beyond the law’, Kelly insisted that her MSO is unique. Unfortunately, this cannot be proven, and it is unlikely to be true. My research suggests that this phrase is increasingly used as a marketing

device, with almost all MSOs promising to facilitate businesses on their 'journey' towards better, more transparent supply chains. I have witnessed that over the course of my research (four years), the 'social enterprises' and MSOs with less than genuine social intentions can quickly go from boom to bust.

6.4 Information is key

6.4.1. Auditors as data collectors

According to Ford and Nolan's research on s 54, supplier auditing has become the second most popular method for identifying human rights impacts or risks.[415] Their study noted the correlation between self-regulatory or reporting initiatives, like s 54 and the increased prevalence of social or ethical compliance auditing as a tool to address exploitative labour conditions.[416] This burgeoning industry in social auditing alone is now worth US$50 billion and account for up to 80% of ethical sourcing budgets.[417] It is also the most common tool utilised by multi-stakeholder and corporate-led initiatives established to address the human rights impacts of global supply chains. ETI (mentioned in s 6.3.1) is one MSO among many that rely on social auditing to enforce their standard of conduct. The increasing costs and complexity of extensive social auditing has also produced the demand for platforms to facilitate audit-sharing among companies (see data managers in s 6.4.2).

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[415] Robert McCorquodale and others. 'Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises' (2017) 2 Business and Human Rights Journal 195, 209.

[416] Ford and Nolan (n 343) 31.

[417] Joint Committee on Human Rights, *Human Rights and Business 2017: Promoting responsibility and ensuring accountability* (n 397); Ethical Trading Initiative, 'Audits and Beyond' <https://www.ethicaltrade.org/issues/auditing-working-conditions> accessed 28 August 2022.

Auditors are information gatherers operating on the frontline. Though some perform desk-based audits on accounting records, others conduct on-site inspections. There are specialist auditors, working off established criteria, or as one CSR employee put it, 'they can be anyone, even truck drivers if they are trained to turn on their dashcams when they feel something is not right.' Specialist auditors operating in different locations have to understand the local context and learn to communicate with local workers in their own language. My informant said, 'this is where audit needs to be backed by long-term commitment. With our 'field technicians', we don't call them auditors, they meet the farmers once a month in growing season to talk about growing techniques and just observe.'

For example, one corporate informant said one of her auditors had exposed hidden exploitation in Vietnam. She said:

> Normally with our audits, everything would come out shiny and clean. Everyone would submit their papers and say they paid this, which is completely in line with the legal framework but when we really sat down and spoke in Vietnamese, which is the language spoken by the migrant workers we were focusing on, they were paying a lot more in the recruitment process for things like insurance, mandarin language training, dormitories. The amount really varied by nationality, the Filipino workers paid a lot less and the Indonesian workers paid a lot less, so when our suppliers hired more Vietnamese workers than any other nationality, it got me thinking, is it cheaper for the management to hire Vietnamese workers,

because the workers are bearing the costs rather than the factories? It led to an investigation and a new cost model being implemented.

There did not seem to be any fixed idea about the role of auditors in s 54 compliance. Some companies have inhouse auditors, while others outsource or have not reached the auditing stage of their 'journey' yet. Attitudes vary too: some informants told me that audit is one of the best ways to ensure compliance and finding out the truth, while other informants thought 'audit is failing' because it has become 'box-ticking' exercise and inherently superficial.[418] One auditor clarified that 'only unannounced inspections work, because suppliers can prepare for scheduled audits'. He added, 'I've come across factories in Malaysia, where the unpaid and illegal workers are told to hide under the floor when there is an audit. Everything looks amazing, good ventilation and good facilities, the accounts add up, but it's not until I speak to the employees that I discovered an entire shed down the road where the real work is being done.' Another informant told me 'it takes someone with patience and insight to get workers talking. Especially with modern slavery, which is hard to spot because it can be so many things. In fact, most people who are in modern slavery wouldn't even identify as that themselves, and not asking closed questions, learning about the signs you can spot, the training and education are key.'

Technology is playing a key role in overcoming the barriers of geographical distance and some of the drawbacks of traditional audits. Ford and Nolan suggested that technology may be a useful supplement to an audit by giving workers a direct channel for voicing their concerns, 'but much depends on the tool's accessibility, trustworthiness, and

[418] Ford and Nolan (n 343) 34.

uptake among users…to uncover and address workplace problems.'[419] One company I encountered during my fieldwork introduced an 'everyone's business' app, which is 'an app that you can pull up on your phone, for employees in the UK or overseas, to log an issue or flag a problem. So, everyone becomes a social auditor, even though technically, they are not auditors. The app gives our guys in India some protection, I think'. In a webinar called, 'Can audits work to tackle human rights violations?'[420] one panelist who works in CSR at a multinational said she has to conduct more than 1000 audits in 50 countries every year, so automating the process is 'incredibly valuable'. Another panellist who works for a company with more than 90,000 direct suppliers and 250,000 third party suppliers to audit, said most of these companies being small family farms where the farmer's family works alongside. In such cases, technology is an efficient and appealing solution. Having complained about the scale of their work, all the panellists were keen to emphasise that technology was a 'tool, not the solution.' They regarded conventional audits as more effective when supplemented by technological and creative strategies, including night-time audits, surrounding neighbourhood audits, and collaboration with local NGOs, such as CARE in Sri Lanka, and IGOs, such as UNICEF. The panellists also suggested treating audits like an ongoing, iterative process. They predicted demand for investigators and auditors to grow in future, despite nervousness around data privacy and surveillance of workers. As one panellist said, 'technology can help but training and education of workers is absolutely key.'

[419] Ford and Nolan (n 343) 37.

[420] Innovation Forum webinar, 'Can audits work to tackle human rights violations?' (3 December 2019).

Although it may seem that auditors have a neutral role, in practice, their job is 'to prove that something is not there.'[421] In my research, I found that auditors generally did not consider themselves responsible for uncovering modern slavery nor did they want to be complicit by turning a blind eye to dodgy activities. As they put it, their role is about following a set criteria and making sure that processes are following. The use of technology is seen as a positive step to make that process more efficient.

6.4.2. Data managers

Data, or information about modern slavery and supply chains is a valuable commodity in the business of s 54. This information can fall into two categories. The first category encompasses information that helps companies assess risk. This type of information can range from human trafficking rates around the world in reports such as the US Trafficking in Persons Report, published annually,[422] to legislative updates, and even individual supplier surveys or questionnaires, as the information collected from suppliers can inform companies about where modern slavery might occur in supply chains. The second category consists of information that judges the performance of companies, including benchmarking reports like the Corporate Human Rights Benchmark, which publishes annual rankings on businesses' impact on human rights.[423] Some information, such as onsite audit reports can fall into both categories. For a supplier, an audit report constitutes a judgement on their performance, while for the purchasing company, the

[421] Genevieve LeBaron, Jane Lister, and Peter Dauvergne, 'Governing Global Supply Chain Sustainability through the Ethical Audit Regime' (2017) 14 Globalizations 958, 971.

[422] US Department of State, Trafficking in Persons Report <https://www.state.gov/trafficking-in-persons-report/> accessed 28 August 2022.

[423] World Benchmarking Alliance, Corporate Human Rights Benchmark<https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/> accessed 28 August 2022.

information helps them understand where there might be vulnerabilities in their supply network. The trouble is, most companies need someone to wade through a large volume of data, especially in the first category. While most large corporations have inhouse lawyers and sustainability advisors, 'manual review of such a large volume of information would require an army', as one of my informants, a corporate employee pointed out. As a result, there is a growing demand for automated templates, specialised databases, machine learning, artificial intelligence tools such as 'blockchain' and other automated processes designed to help companies seeking efficient means of finding out what is happening in their supply networks, but which lack the technical capabilities and innovation to address this need inhouse.

During my own fieldwork, from 2018, I noticed the presence of data solution providers selling their wares at conferences and meetings. By 2020, almost all the large companies I encountered had outsourced, to varying degrees, the collection, synthesis and analysis of supply chain information to external providers.

In the following sections, I explore two types of data managers: database providers and information scrapers. In response to s 54, two MSA registries were established. Cleo, a journalist, investigated the background of each. She told me that the 'Modern Slavery Registry' was an NGO-backed online platform. The TISCreport, on the other hand, was established as a not-for-profit with industry support. The Home Office had asked for a central repository and caused tension between the Modern Slavery Registry and the TISCreport over who should be in charge of monitoring MSA statements.

The Modern Slavery Registry is a manual database, while the TISCreport was 'more automated, and designed to sweep the world wide web for mentions modern slavery…so they were scraping any kind of MSA statement from companies abroad as well and collecting it, and even if it's not an actual s 54 statement, they were building up a picture of what is going on globally. The technology can identify high risk companies and open source too.' Cleo called the woman behind the company 'an in-betweener' because 'she is a tech person and she's an entrepreneur, who started a not-for-profit company and wanted to work in this space and do good.'

> The TISCreport devised a membership-based model. It was free to access the registry, but industry can pay a membership for better analysis and free access to the modern slavery helpline. The NGOs went mad. They said "this is corruption, how dare you get cozy with industry and if industry groups are paying you, you will make them look good." But the woman behind the TISCreport has experience in running a digital agency. Unfortunately, they were accused of siding with industry when there was no evidence of it.

Since the Home Office established its own registry in 2021, the Modern Slavery Registry has become an archive, while the TISCreport continues to operate. But as Cleo characterises this situation as a battle between new technology, new social enterprises and traditional NGOs, the tension between the two MSA registries highlight some deep-seeded prejudices, which I explore in greater detail below.

6.4.2.1 Database providers/digital platform hosts

Another type of data manager are platforms facilitating the sharing of audit results. Anna has had extensive experience in labour rights and improving workplace safety in the apparel sector. Anna also works with the Global Compact Action Platform, an organisation related to the UN Global Compact. In our interview, she made a point of highlighting her experience in the non-profit sector.

The supplier self-survey is a simple Excel spreadsheet with questions for suppliers to answer. Suppliers are asked to give themselves a score on a range of issues from legislative compliance to working conditions and migrant recruitment processes. So long as the suppliers answer honestly, the completed supplier self-survey spreadsheet should provide purchasing companies with a clear picture of the suppliers' operations. In particular, the supplier self-survey can reveal how products are made, the conditions in which they are made and identify issues of concern, such as labour exploitation. Anna said, the supplier self-survey is 'transparent, proven, and defensible. Best of all, it allows companies to work off one another's data and reduce duplication, which leads to supplier fatigue.'

Standardisation of supplier information is a key benefit of this type of service. Supplier fatigue can happen when a supplier company, which sells products to more than one purchasing company, has to respond to a different social audit request or questionnaire for every company they sell to. A significant advantage of sharing data is to minimise the paperwork burden on suppliers. One NGO informant told me that before the MSA came into force, a manager in a textile factory in India faced two or three requests a month for

information, but after s 54 was enacted, responding to questionnaires became his full-time job. Suppliers are reportedly frustrated by the increase, especially because the requests are all slightly different. To reap the full benefits of the supplier self-survey, suppliers can join the database for a fee, so when they update information about workers, wage rates etc., these updates are automatically visible to all the purchasing companies, which further streamlines the reporting process. Thus, providing an efficient solution with considerable advantage to all concerned. However, this technology is only available if the purchasing companies and suppliers become paying clients of Anna's consultancy firm.

Anna is also a committee member of the Social Responsibility Alliance ('SRA'), which is a social enterprise/MSO offshoot of the consultancy firm she is working for. The purpose of the SRA is to update the supplier self-survey's questions by a multistakeholder committee. The committee consists of 11 independent members, 20 corporations, two academics, nine advisory firms (including lawyers and auditors) and three civil society organisations. When I spoke to Anna, she asked if I would be interested to join as a member.[424] The SRA committee meets on a quarterly basis to revise supplier self-survey questions. One member said she became involved because she used the supplier self-survey for herself, others include representatives from the US Department of Labour, members of civil society and academia, the University of Sheffield, London, and the University of Bath are both involved.

[424] To maintain neutrality in my research, I declined the offer.

The SRA and supplier self-survey are essentially data platforms, which relies heavily on supplier input. In contrast, there are data specialists who proactively scour external resources to provide contextual information of suppliers, such as the law of the countries they operate in. This type of service becomes useful at the start of the due diligence process, even before auditors are sent into the field to gather information. One company I interviewed, T-Research, illustrates how information can be used to prioritise work, and assess the accuracy of information gathered by auditors and surveys.

6.4.2.2 Information scrapers

T-Research is a data solutions provider founded in 2004. It has two offices, one in London and one in Ireland with a total of 60 employees. Research is the focus of the organisation, and it hires highly qualified individuals: social scientists, data scientists, computer scientists, and ethical and legal experts, many with doctoral degrees, who collaborate across technological-social disciplinary divides 'to assess the impact of emerging technologies to avoid adverse and unwanted consequences while delivering sustainable innovation.'[425] During my fieldwork, I interviewed two employees of T-Research. Helen, Senior Practice Manager, joined T-Research in 2012. Janice is a Senior Research Manager and part of a specialist human trafficking research team , focusing on security, human rights, crisis, gender and privacy-social impacts.

The firm is a social enterprise because its primary mission is to enhance societal wellbeing through research, any profit is reinvested back to the firm. They have links with

[425] Trilateral Research <https://www.T-Research research.com/about/> accessed 28 August 2022.

the UNGC corporate responsibility initiative and its principles in human rights, labour, the environment and anti-corruption.

T-Research differentiates itself from other consultancies advising on supply chains. Helen explained, 'I think our point of view is much more on data-driven insights and how you can gain a picture of risk and understand both current and forward-looking rather than how you ensure transparency and protection of your supply chain.' T-Research has a proactive approach to gathering data. Unlike the SRA's supplier self-survey, which relies on supplier responses to questionnaires, and auditor inspections, T-Research looks at a wider range of resources. For instance, when T-Research worked with the UK government to assess the level of risk in different countries, it identified threats and vulnerability by scraping the internet for 'threat indicators', such as news about organised crime groups, corruption, gender discrimination, and human trafficking. Combing through data on the web required specialist artificial intelligence tools, which can identify relevant keywords to achieve what Janice called 'a better understanding of human trafficking risk from a data point of view.'

Rather than looking at the number of instances of human trafficking for a specific country, Helen's team had identified over 20 open data sets from different sources to form a picture of the risk of human trafficking on a broad scale. To go deeper and genuinely understand the data, Janice had to engage with the humanitarian sector – something they are trying to do more of. Helen said 'we identified about 15 high-level risk factors that have some connection with each other that contribute to human trafficking, and we did that through desk-based research and interviews with experts in the field. And that was the first stage of the work, then we had to identify where the risk comes from and how it contributes

to human trafficking in certain places.' The same principle could be applied to businesses seeking to invest in a foreign jurisdiction. Janice felt a similar method for assessment could be marketed to companies worldwide. The aim is to provide a much lighter and cheaper version of the technology they have developed to other organisations so commercial organisations can also benefit from the work achieved with public funding. Helen explained that they have been reliant on EU funding and some UK innovation and research funding. But they needed to diversify our income streams if we want to fulfil our social mission. Janice added:

> As a small company, we are considering the idea of selling our technology to companies. If we do go for it, we need to put a lot of effort into it because there are millions of NGOs already working around similar issues, mapping supply chains etc. And that goes back to how s 54 ended up in the MSA. It wasn't the government thinking we need this; the lobbying from businesses and NGOs made it happen.

The data solutions that T-Research offers was originally developed for use by public authorities in connection with criminal aspects of MSA, but Helen and Janice plans to adapt them to help companies in monitoring their supply chains. This suggests that the data solutions field is seeing cross-pollination of ideas and technologies between public and private, criminal and civil aspects of the MSA. It is also clear that such activities are new to corporations, and to develop the knowledge necessary to provide transparency in supply chains require a vast amount of resources, funding and expertise – an unintended but significant effect of s 54.

6.5 Consultants

Consultancy is an advisory service. Industry analysts estimate that over 200 different types of consulting areas can be distinguished, the result of dozens of combinations of different sector and expertise areas.[426] From the 1960s, the consultancy sector has expanded and 'consulting' is most readily associated with management- and business consulting services in the field of strategy, management and organisation.[427] The global consulting market has grown to become a multi-billion industry with extensive international reach.

Thanks to CSR and sustainability regulatory measures like s 54, supply chain consulting has become a specialised and lucrative profession. CSR consultants are individuals or agencies that help businesses develop ethical, environmentally responsible and/or community-minded programs that create links between a business and the community. Vogel noted the proliferation of CSR consultants as a 'market for virtue' or 'market for advice'.[428] Scholars have also remarked on the CSR consultants as leading the charge 'to reconcile environmental and social impacts with profitability, following the "business case" logic'.[429] CSR consultants are not a homogenous group. The actors working as CSR consultants on s 54 include academics, commercial consultants and even

[426] Consultancy.uk, 'Market segments' <https://www.consultancy.uk/consulting-industry/market-segments> accessed 28 August 2022.

[427] Consultancy.uk (n 432)

[428] David Vogel, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (Brookings Institution Press 2006); Ghadiri, Gond and Brès (n 141).

[429] Archie B. Carroll and Kareem M. Shabana, 'The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice' (2010) 12 International Journal of Management Reviews 85.

NGOs. Generally speaking, these actors are involved in a range of activities, including public relations, reporting, analysis auditing, facilitating, responsible procurement, and awareness raising. In practical terms, consultants can be involved at any stage of a corporation's attempt to comply with s 54, from the design, implement, and/or monitor an organisation's modern slavery policy to evaluating the risks of suppliers and communicating such risks to a range of audiences, including external stakeholders, such as state regulators, investors and consumers.[430] Their activities also include the second work-type described as data management and analysis above. Many large-scale consultancies exist, but s 54 tends to be peripheral to the work they do. In the following subsections, I explore three of the most unique of consultants, and s 54 is central to their work.

Existing literature suggests there are academics concerned with what they refer to as 'the commodification of CSR', which is cast as a contradiction, and a source of tension. After all, being responsible should be part of our social conscience? How can we put a price on being responsible? But little is known about how organisational actors practically manage the tensions resulting from the concomitant search for profit and social responsibility. Some research has critiqued the commodification of CSR.[431] Others focus on the actors: the consultants of CSR who manage the tension between profit and social responsibility, and the emergence of 'hybrid' professional identities.[432] My research follows a similar approach, by engaging with the professionals who must live with these

[430] Jean-Pascal Gond and Luc Brès, 'Designing the Tools of the Trade: How corporate social responsibility consultants and their tool-based practices created market shifts' (2020) 41 Organisation Studies 703, 708.

[431] Shamir (n 326).

[432] Ghadiri, Gond, Brès (n 141).

alleged contradictions. I found that they adopt linguistic, value-centred strategies to mitigate paradoxical identity, such as by alternating between invoking and negating culturally shared values. When challenged, they draw on social intentions and pragmatism to argue for a certain result.

6.5.1 Academics as consultants

Since s 54 came into force, many academics and academic institutions have become involved in measuring and commenting on the effectiveness of s 54. The University of Greenwich, for instance, has published a series of reports of MSA statements and guidance on different industries.[433] The University of Nottingham has a specialist group known as 'Rights Lab' that works on modern slavery issues. Many of the academics studying s 54 and supply chain exploitation issues can be classed as 'activist academics' whose work challenges the status quo, 'in the sense of not avoiding the politics of knowledge, acknowledging that knowledge is essential for social action and social change.'[434] Taking a stance has led some of my informants to question their identity as academics, their role in the debate around s 54, what they should do, and how should they apply knowledge and address questions of power, privilege, politics, positionality, identity.[435]

[433] Including University of Greenwich, *Protecting human rights in supply chains: a guide for public procurement practitioners* (May 2017), *UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities* (September 2020)*, UK Modern Slavery Act Transparency in Supply Chains: the Second Year of Reporting by Universities* (June 2018).

[434] Colette N. Cann and Eric J. DeMeulenaere, *The Activist Academic: Engaged Scholarship for Resistance, Hope and Social Change* (Myers Education Press 2020), 149.

[435] Cann and DeMeulenaere (n 440), 150.

Other academic interventions have taken the form of collaborative projects, such as the ETI/ Hult Business School research referred to in s 6.3.1 above[436] and a 2018 report on managing human rights issues in supply chains, jointly published by international law firm, Norton Rose Fulbright and British Institute of Comparative and International Law.[437] Beyond contributing academic commentary, some individual academics have also branched out as consultants, such as Professor Robert McCorquodale, who worked at the University of Nottingham, currently sits on the UN Working Group on Business and Human Rights, is also a barrister at Brick Court Chambers and head of a private consultancy, 'Inclusive Law'.[438]

While I was doing fieldwork, I was approached by consultancies and law firms to participate in s 54 initiatives. Such collaborations were framed as a 'win-win' situation: I would gain profile and they could become associated with a prestigious academic institution. I also convened several panel discussions, book launches and seminars, which meant that I was, in effect, creating a forum for collaboration between different actors. I did so because I was keen to find informants, network and learn. I also thought it might help my future job prospects. Reflecting on my own mixed motives made me realise that other academics must also have various reasons to become involved in the assessment, critique and implementation of s 54, including its potential to attract funding.

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[436] Lake and others (n 31).

[437] Lise Smit, 'Making sense of managing human rights issues in supply chains' (*British Institute of International Comparative Law*, 1 January 2018), <https://www.biicl.org/publications/making-sense-of-managing-human-rights-issues-in-supply-chains>.

[438] Inclusive Law <https://www.inclusivelaw.com/about>, Brick Court: <https://www.brickcourt.co.uk/our-people/profile/professor-robert-mccorquodale> and University of Nottingham <https://www.nottingham.ac.uk/news/expertiseguide/law/professor-robert-mccorquodale-.aspx> accessed 28 August 2022.

One academic informant suggested that the incentive to consult is driven by the pressure on academics 'to publish and produce work with 'impact' and for others, it is 'a bit of extra cash'. An associate professor said that publishing in journals can be difficult, time-consuming, and often goes unnoticed, but collaborations with other actors like NGOs or consultancies garner instant attention, and potential for funding. She mentioned working in Southeast Asia with the ILO in addition to her primary role at a UK university. She preferred to collaborate with NGOs and IGOs, such as the ILO and IMO, because working with companies can be perceived as in her words 'a cash grab'. But academics do work with corporations directly. Many are sought after as neutral and independent arbiters of businesses and civil society. For example, one academic I spoke to was hired by a company to assess the human rights situation in its supply chain in Latin America. He told me he was able to 'do some good by persuading the corporate managers to relocate indigenous populations including a bit of compensation,' but he was unable to give them back their ancestral lands and the work he did has left him feeling ostracised by the academic community. He felt stigmatised for his willingness to engage with companies to understand the problems they encounter. 'Standing on the outside and pointing fingers won't get us very far' he said, 'just look at the way NGOs are excluded from the conversation; I did not want that, I wanted to change things from the inside.' The evidence highlights that academics are not only standing on the outside pointing fingers but also 'on the inside' changing practices. It is also clear that academia is a key constituency in debates about s 54. They not only shape ideas about what compliance means, they are active participants in the practice of compliance. Critically, this means that academics are part of the industry that has proliferated around s 54, under the semblance of neutral impartiality, which has

left individuals and groups questioning its own identity and position in this debate, and the industry it has contributed to.

6.5.2 Lawyer turned CSR consultants

In this section, I focus on independent consultants with legal training, like Andrea, who is a former lawyer at a large UK law firm but left legal practice to pursue her own business. Unlike large consultancy firms, s 54 is a central focus for these lawyer-turned-consultants. Andrea established Sustainability International in 2010 as a private consultancy. She is now an independent consultant in 'sustainability, business and human rights…with expertise in modern slavery.' While I also spoke to a large consultancy firm with an established reputation on business and human rights issues, I found that they tend to analyse supply chain problems and provide systems-based advice such as introducing database services to help procurement professionals monitor supply chains and document concerns about suppliers – effectively creating a checklist to maximise efficiency around compliance with s 54. Independent consultants claim to be more hands-on. They offer to dive deeper, to understand their clients' needs while simultaneously focus more on going 'beyond the law' to focus on the victims of modern slavery. But in practice, the services they offer are not very different. Both can provide tailored training for employees, provide strategic advice, analyse data and interpret the law. The difference, as I saw it, was the scale and stature of the corporations and the consultants, creating a mirroring between such partnerships.

Andrea's online profile describes her as a solicitor with over 25 years' experience of working with businesses and NGOs across sectors 'at both a strategic and operational

level'. She offers training to both directors and employees on human rights, modern slavery and sustainability issues. Andrea acknowledged that the introduction of the MSA had been a positive move. Her business was initially focused on environmental sustainability but after the enactment of s 54, she pivoted, and found herself in an already crowded marketplace and fierce competition. She said, 'I accept that I will have to compete with people who have the same expertise. What I don't accept is where you have local councillors saying, 'we want to set up something' then refusing to let private consultant, like me in. Instead preferring to work with NGOs that just want the public sector funding!'

Money was a central theme in my discussion with Andrea. She seemed frustrated by the business elements of her work. Andrea had hoped that, with the enactment of the MSA there would be more business opportunities to tap into government's funding for modern slavery, but found herself competing against civil society, large consultancies, lawyers, academics and NGOs. She also found it difficult to work with large corporations, because her team at Sustainability International consists of just five interns, two administrative staff members and two consultants.

Andrea's struggles with funding and fight for inclusion seem to fuel the myriad of activities she is involved in, including her decision to set up a new foundation to help victims of modern slavery. She explained:

> We are putting together a foundation because I hate the fact that nobody collaborates. I am going to create a platform where people can, by choice, collaborate so that we can give £10 to this girl through the Survivor's Alliance, £10 makes such a difference to her life. Just think what £100 or even £1000 can do! I've got the vision together and the objectives. I've

> got the people who are going to be my trustees. We've developed the concept note for the first two projects so it's going to take a while because I am doing it in between other stuff, but it will sit alongside the business as a foundation. I think it can probably also attract some money to do more research and stuff, like the funding from the Home Office. I think what we want to do is really innovative and will produce something really tangible. Still, I can't fund something like that through the business, so I have to use a foundation to do that. Some of that stuff can hopefully go through the foundation to create more value, you know?

Andrea's foundation is essentially a means to serve and sustain the consultancy. Andrea's experience illustrates how smaller-scale activities of self-employed consultants require creativity and strategy. Unlike large consultancy firms, they depend upon public funding as well as private patronage, but it is less about the law, the underlying social concern, and much more about the individual, and whether they offer a unique service, not found elsewhere. Terri's experience contrasts with Andrea and highlights this point further.

Terri is another private consultant. Like Andrea, Terri was also a lawyer. She specialised in Mergers and Acquisitions at an international law firm, became involved in international law work through the firm's pro bono group, and became familiar with the UNGPs. Terri then joined an IGO. In her words, she started 'doing international law on the ground'. She was also in Kenya for a while and then Libya and doing post-transitional justice work with an NGO.

Terri qualified as a lawyer in Europe but spent much of her working career in New York and Europe. Initially, she worked for a large consultancy for three years full time. The large consultancy advises large corporations. Terri then started her own independent consultancy catering to smaller businesses. She said, 'nowadays, I am doing 60% of my time with my private work and 40% with the large consultancy.' Terri explained that all the big brands are working with the large consultancy, like H&M, Unilever, Total, which frees her up to go down a tier in the supply chain and work with smaller companies on her own. She said this is not only good for her but also 'good for transmitting important information from one group to the other, allowing the 'trickle down' of good behaviour envisaged by the UK government.'

Terri regularly attends Business and Human Rights conferences in the UK and internationally. She has positioned herself as an international advisor with legal know-how, capable of working across geographical boundaries. She promotes herself as uniquely placed to provide legal *and* business advice to transnational corporations. This is Terri's unique selling point, and unlike Andrea, she seems to have no trouble with clients or funding. Terri told me she has to turn down more invitations than she can accept.

From the above, it is clear that while lawyer-turned-consultants have entered an industry built around s 54, they have had to struggle for attention in an already crowded market of CSR consultants. To differentiate themselves, they have to be creative, and offer a unique selling point and affiliation with large-scale consultancies or organisations with positive credentials. But inherently, their experience and reputation become commoditised, which requires individuals like Andrea and Terri to trade not only on their insights and knowledge, but their reputation and autonomy. Much like academics, consultants who

espouse virtue claim there is no difference between doing the right thing and doing right by their clients.

6.5.3 Hybrid NGOs

This also highlights another unremarked and neglected group of actors I call 'hybrid NGOs'. In the past decade, there has been leap in the 'scope, scale and variety' of NGO engagement in commercial activities.[439] While early literature examining the new roles for nonstate actors focused on three separate sectors: the state, for-profit businesses, and non-profit NGOs, recent studies suggest that 'marketisation' or 'commercialisation' of NGOs are increasingly 'firm-like'.[440] That is, they resemble corporations in their structures.[441] The adoption of corporate practices and processes appears to be driven by the increasing financial independence, NGOs are relying less on charitable donations and more on self-generated earned income through social entrepreneurial ventures.[442] MacLean and Brass identified three major organisational forms that have emerged through this process of commercialisation: NGOs with commercial programmes, NGOs with for-profit spin-off subsidiaries, and businesses with a social mission, or social enterprises.[443] Almost all the

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[439] Dennis R. Young and Lester M. Salamon, 'Commercialization, Social Ventures, and For-Profit Competition' in Lester M. Salamon (ed) *The State of America's Nonprofit Sector Project* (Brookings Institution Press 2002), 423–446.

[440] Debra C. Minkoff, 'The Emergence of Hybrid Organizational Forms: Combining Identity-Based Service Provision and Political Action' (2002) 31 Nonprofit and Voluntary Sector Quarterly 377; Lauren M. MacLean and Jennifer N. Brass, 'Foreign Aid, NGOs and the Private Sector: New Forms of Hybridity in Renewable Energy Provision in Kenya and Uganda' (2015) 62 Africa Today 57, 61.

[441] MacLean and Brass (n 446).

[442] Jutta Joachim and Andrea Schneiker, 'Humanitarian NGOs as Businesses and Managers: Theoretical Reflection on an Under-Explored Phenomenon' (2018) 19 International Studies Perspective 170.

[443] MacLean and Brass (n 446) 75.

NGOs I encountered combine some form of commercial activity with their social mission. This was an unexpected but significant finding. These commercially-oriented NGOs displayed tensions between the motivation to make profits and their social mission – characterised by one legal informant as a 'conflict of interest'.

The variety of NGO objectives is often overlooked because the assumption is that NGOs seek to promote the greater good and are lumped together as a uniform group with a common purpose. This is not the case. In practice, they disagree, compete with social enterprises and challenge one another. One general characteristic I observed among NGOs in the modern slavery space is that they do not operate purely for a public or social purpose. Their motives are mixed.

HRS is a charity established to benefit the international community, to end abuse and exploitation and act as a global catalyst for change. It primarily aims to raise international awareness of human rights in the shipping industry. HRS has a revenue-generating, but non-profit entity known as HRS International, which provides advisory services. It advertises its service as 'reputation assurance based on reliable, independent advice'. Hank, who works as a consultant for HRS International, explained:

> As the charity's non-profit arm, we provide discreet human rights consulting services to the international community on human rights issues. We serve corporate clients, often with high-risk elements within their recruitment supply chain. But the income goes directly to support the work of the parent charity. All profits after disbursement go to the charity.

The MSA has been a boost for HRS International, as clients increasingly want to know how s 54 applies to the shipping context. As Hank put it, 'we have found an opportunity to capitalise on the advice and consultancy through the trading subsidiary that didn't exist previously through the charity.' He added, 'the whole donation-for-services system didn't sit comfortably with us. Therefore, setting up a trading subsidiary has generally been the solution for charities to exploit that commercial opportunity.' Hank told me that several big charities have set up trading subsidiaries. He said:

> I am under the impression that charities have done this because donors like to see that they are not simply asking for money but have a system and all sorts of ways to demonstrate that they are capable of generating funds by alternative means. Donors are more likely to donate when they see more money put to use**.** Donors are much like investors in a business.

Another example of a hybrid NGO as I understand that term is Survivors Hub, a NGO well-known for its modern slavery victim support services. After s 54 was enacted, the NGO established a commercial arm, SH Pact, which provides supply chain advice to businesses. SH Pact is a membership-based service, similar to ETI. It has 60 corporate members. SH Pact has a small sales team that approaches businesses. Gwen, a Technical Services Manager said, 'we also know people in the industry through trade organisations and the charity arm. We have donors too, and some of those people have spread the word about SH Pact. Those who have become members of SH Pact and recommended it to their networks, this is how our organisation has evolved over the last couple of years.'

SH Pact's membership includes smaller companies that turnover less than £10 million, well below the threshold of s 54. But, as Gwen pointed out, 'what you then find is

that your customers, clients, are pushing the impetus down, to smaller companies. These smaller companies have to report back to their purchasers with social auditing information, which feeds into modern slavery statements and strategy more broadly, so it's important to get the smaller companies to do a good job.' So, SH Pact spotted a gap in advisory services to small businesses that fall below the MSA threshold, but which are caught indirectly by the due diligence activities of suppliers higher up the chain. While their services do not differ qualitatively from consultants, Gwen believes they focus more on the plight of victims. She explained, 'we will look at companies that have made MSA statements, and we will look at them and give them feedback.' In addition:

> We tend to focus on practical day to day applications. So, where social auditing looks at processing and policy, we look at what your policy means day-to-day. We understand that a social audit is just a snapshot, so it's not an audit that we do. We do site assessments practically and dialogue with workers, not just looking at management processes. We don't have off the peg solutions. That's why we have a three-year membership requirement, because we think it is essential to understand their business, understand their business model and understand their vision. A company looking to comply is very different to one that wants to demonstrate leadership or influence. They are two different agendas. We look at the organisation's vision and strategy; otherwise, it will not achieve any real impact.

As Gwen put it, 'we can't expect a small £10 million company to have the leverage for massive change in modern slavery in a supply chain that is global. That is the point of understanding how and where there is impact and how the collaboration piece comes in.'

It is also another illustration of the emergence of the broader effects of s 54, and evidence of a social world around s 54.

SH Pact is an interesting case study because several informants referred to it by name and seemed upset by its activities. Lawyers like Tom and corporate executives like Elena (mentioned in Chapter 5) regard Survivor Hub and SH Pact as an aggressive and money-grabbing NGO. It has upset many people for changing its focus from survivor support to s 54. But Gwen believes that the organisation is doing positive things in the market with a distinct approach. She said:

> I think what we see in talking with businesses is where there are many people out there, and they have some excellent services, great toolkits and information. There is a lot of theory out there. The difference our organisation is the involvement with rescue and the practical involvement of working with victims. And that is something other organisations just don't have.

But as one seasoned NGO representative, who has witnessed the development of a modern slavery industry said:

> Yes, there's a lot of mud in this space. Human rights work is relatively poorly funded, but modern slavery is not, partly because of its morality and the way it appeals to the political right as well as the political left, not the mention the religious right too. Now you have large foundations that are well funded by a whole variety of donors. So there's quite a lot of money for NGOs here and that's created a bit of a honey pot and bees things. They are conflicted because once NGOs get involved on a

> contractual basis, they will not be blowing the whistle or calling themselves out to challenge relations.

He added, 'I think it's true to say a lot of NGOs have been co-opted in this space because of the honey trap aspect of it, and that's a shame. Not all NGOs, of course, but it has created a bit of an industry.' Cleo, the journalist I mentioned previously, however, is worried about NGO behaviour as they become more 'hybrid'. She said, 'I think this is where the NGOs are getting into trouble because they just don't know the industries.'

Cleo observed that:

> NGOs are coming in and saying we need to sort out your supply chain, but the reality is very complicated and reaching anybody at all is hard. 99% of the industry is small to medium sized businesses, so it's really, really hard getting down there. There's a general feeling of industry apathy, but that's changing now, and now there have been court cases around the industry, people have been caught, and the bigger companies are saying there might be a problem, things are starting to move but I would say that all my interactions with NGOs have been quite frustrating because they want to take the moral high ground on everything, which is fine but they are very emotional, and companies don't respond to that very well.

She said that most NGOs 'are also fighting for funding and they are fighting each other, putting out toolkits and products when they don't actually get the problem.' Cleo said, the 'civil society' around s 54 'is a bit like the wild west, NGOs are trying to control

the legislation and the narrative around what is happening. The reality is that so many NGOs are all about income streams.'

Several conclusions emerge from this data. S 54 is not unique in creating the conditions for the emergence of hybrid NGOs, but it has created a sustainable market for their services. Second, 'mixed motives' is one way to understand this hybridity. However, another angle on this debate, as Gwen's pointed out, suggests that the interrelationship between criminal and civil aspects of the MSA can help businesses understand modern slavery better, such that the hybridity of experience allows NGOs to advise more effectively.

6.6 Conclusion

I set out in this chapter to explore a wider set of 'social' actors working to facilitate corporate responses to the provision. The so-called 'industry of self-proclaimed experts' who wanted a slice of this 'lucrative new field'. My findings revealed three types of activities undertaken by these actors. The first work-type is the facilitation of collaborations between different groups, through MSOs, industry groups and membership based social enterprises. The second work-type is data management and analysis, including investigators, auditors, hosts of digital platforms and information scrapers. The third work-type is consulting, which involves the use of the first and second work-type and I have chosen to highlight the atypical consultant: academics, lawyers and NGOs who have turned to consultancy work.

The evidence presented has shown that these actors are loosely holding businesses to account under the legal requirements of s 54 by encouraging discussion and keeping it

under the spotlight. Their involvement shows what 'embedding' social concerns look like in practice. New practices, technology, collaborations and attitudes shape corporate responses to the s 54, which are unforeseen and unintended when s 54 was enacted. Power provocatively asked whether there can be a 'wrong kind of embeddedness', referring to corporations that do not relate to wider social networks. He pointed out in that the financial crisis of 2008 was largely the result of a failure to represent and understand entity interconnectedness in the wider sense of social embeddedness.'[444]

In this chapter, I demonstrate that social embeddedness is fluid and inevitable. A key feature of this chapter is the overlap of work between different actors. NGOs, academics, and consultants and others formed partnerships, blurring boundaries between public/private, commercial/not-for-profit. Another feature is that all the actors regarded the opportunity to make money to be consistent with increasing corporate social responsibility. In some cases, it seemed that the cross-pollination and mixed perspectives helped to open channels of unconventional development. Another key feature is the mixture of motives. This is the 'social sphere' in the context of s 54. It may seem messy, but as my analysis in the next two chapters will show, the 'market for advice' represents a stage in the development of s 54.

The provision has arguably created a market for 'beyond compliance' strategies, which some might regard to be 'just enough' compliance. This marketplace is in the commercial interest of most of the actors described here. Corporations have allowed 'risk' management to be outsourced. While corporate compliance officers and risk managers

[444] Power (n 410) 852.

wrestle with their dual roles as regulator and internal advisor, auditors and consultants play an influential role in their understanding and management of compliance with s 54. In sum, it seems that the corporation has become an arena for intense competition as internal and external auditors, legal specialists, MSOs, inspectors and others jostle for a place in the market for internal advice; and in the market for defining regulatory compliance.

But it is necessary to consider how s 54 has been received beyond the UK. The active market for defining compliance is global. Most corporations subject to s 54 have transnational supply chains, and most consultants pushing for 'human rights due diligence' refer to international norms. The capabilities and horizons of national regulators is called into question.[445] I develop these insights in the next chapter, where I consider areas of the proposals to reform s 54, in which politics have come to dictated certain foreign policy outcomes, and the 'recursive' of international law comes to dominate and surpass the UK's modern slavery agenda.

[445] Baldwin and others, 'Risk management and Business Regulation' (*London School of Economics and Political Science* 2000)

7. EXPORTING S 54

7.1 Introduction

In the final two chapters of this thesis, I focus on the political and transnational effects of s 54 through the framework of 'recursive law', which considers the interactions between global and local norms to be a dynamic and recurring process of mutual influence.[446] This turn towards a more global vantagepoint should come as no surprise given that the previous chapters have included evidence which gestured towards s 54's international effects. As has been illustrated, s 54 is a form of socio-economic intervention, the malleability of which has fuelled an industry of service providers, multistakeholder organisations, industry groups, consultants, lawyers, data solution providers, NGOs, and academics, eager to provide advice on how s 54 should work and what corporations should do to comply. This mix of commercial and social objectives, as well as the diversity and scale of this industry, has caused their influence flow across extensive transnational supply networks.

In this Chapter, I examine the one aspect of the recursive process by asking what is the effect of s 54 internationally? In doing so, I examine another realm of possible impact s 54 has had on other countries' attitudes and approaches to 'modern slavery'. Through this analysis, I identify four key findings: (1) the UK public authorities have not been as 'hands-off' as NGOs might have suggested, (2) certain public actors have been pushing for similar initiatives in other countries, (3) s 54 has come to represent the UK's stance on labour exploitation and human rights, and (4) s 54 will undergo some amendments. These findings

[446] Halliday and Carruthers, *Bankrupt: Global Lawmaking and Systemic Financial Crisis* (n 160).

raise questions about who these actors are, and what actions have been taken. What could explain these actors' push for laws similar to s 54 to be enacted or to modify s 54? These questions address the central question at the heart of Chapter 7 and 8: what is the relationship between s 54 and international norms?

These findings are significant contributions to our understanding of s 54 as no study to date has considered the effect of the provision internationally, and very little attention is given to the government, political institutions and policy advisors, like think tanks. On the international stage, the UK government does not have jurisdiction or total regulatory capacity to enforce s 54. The reality is that there are multiple regulators, both private and public, and they operate with limited capacity, authority, and enforcement opportunities. The existence of these multiple actors is well documented in the literature. Meidinger observed how private actors could often act independently of states, while Braithwaite and Drahos found that 'no one actor appears as the master of the world', and other scholars, including Ruggie, Abbott and Snidal noted the vast range of diverse actors working internationally. One must consider a large network of 'interlocking actors, with a unique configuration in each sector and jurisdiction who provide information, knowledge and recommendation for action to policymakers'. [447] Scholarship on policy advisors differentiate actors according to an 'insider-outsider' rationale, which indicates whether they are located within or external to government. [448] According to this distinction, the

[447] Jonathan Craft and Michael Howlett, 'Policy formulation, governance shifts and policy influence: location and content in policy advisory systems' (2012) 32 Journal of Public Policy 79.

[448] Bert Fraussen and Darren Halpin, 'Think tanks and strategic policy-making: the contribution of think tanks to policy advisory systems' (2017) 50 Policy Sciences 105.

actors characterised in this Chapter can be seen as in and outside of government, because my finding suggests that the lines are blurred by informal partnerships and collaboration.

The contribution of this chapter to the overall argument of this thesis is two-fold: (1) the findings provide the contextual account of the local-global portion of the recursive process, and (2) it demonstrates the diversity of the 'state' by exploring the constituency of actors that work to promote s 54 to the world, which challenges the view that 'state' entities are homogenous and uniform in their goals, values, outlook and approach. Together with Chapter 8, this chapter casts doubt on established categories, groups and professions, to contribute empirical insights of specific actors and their activities, which are often complex and nuanced.

Furthermore, the final two chapters of this thesis challenge the theoretical dichotomy of Polanyi's 'double movement' and by extension, Ruggie's 'embedded liberalism', which suggests that international norms represent the social values, while national priorities represent the market. He attributes the rise of international norms, like to Universal Declaration of Human Rights 1948 to entities such as the UN, which now serve as a moral compass with, arguably, universal application. But the empirical findings are far more nuanced than the categorisations would permit, with more tensions and contradictions. Seen from this perspective, I argue that s 54's focus on the narrowly construed concept of 'modern slavery' could be seen as a form of resistance against the UN's agenda to introduce broader human rights due diligence.

7.2 S 54: domestic law with international effects?

When s 54 was adopted, the actors involved in the legislative process recognised that modern slavery was a global problem. In 2016, then-Prime Minister Theresa May revealed that s 54 was designed to have extraterritorial reach:[449]

> Modern slavery is international and requires an international response. So rather than chasing individual criminals in Britain as they are reported, we need a radically new, comprehensive approach to defeating this vile and systematic international business model at its source and in transit, and we need to flex the muscle of all parts of the UK government and collaborate with international partners.

In 2017, at the UN General Assembly, Mrs May called on world leaders to join together to 'defeat something which has persisted for so many years in the shadows' which 'require[s] our concerted efforts, our efforts at home, but also internationally, to drive and to deliver a coherent global response.'[450] The subsequent Prime Minister, Boris Johnson, seemed to acknowledge the international nature of modern slavery as well. In the government's own 2020 modern slavery statement, he wrote, 'as a government, we don't have to produce this statement. But we want to…' in the hope of 'setting an example that will be followed by governments and businesses right around the world.'[451]

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[449] Theresa May (n 22).

[450] Theresa May 'PM speech to UNGA on modern slavery: "behind these numbers are real people"' (*gov.uk*, 20 September 2017) <https://www.gov.uk/government/speeches/pm-speech-to-unga-on-modern-slavery-behind-these-numbers-are-real-people> accessed 28 August 2022.

[451] HM Government, *UK Government Modern Slavery Statement*, Prime Minister Foreword (18 March 2020) < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875800/UK_Government_Modern_Slavery_Statement.pdf> accessed 28 August 2022.

Since 2015, there have been a range of international outreach activities in which the modern slavery agenda has been presented as the UK's 'new' and innovative contribution to the framework of international human rights, allowing the UK to appear as a leader and champion of human rights. In 2017, the UK government made a global Call to Action to End Forced Labour, Modern Slavery and Human Trafficking by 2030, as a key policy objective. It claimed to be strengthening cooperation with countries from which victims are regularly trafficked to the UK, and to be leading the global change through multilateral organisations such as the Commonwealth and UN. These efforts were supported by a £200 million UK Aid commitment, which included the Modern Slavery Innovation Fund, which supports overseas projects to trial innovative ways of stopping modern slavery.

This chapter focuses on the specific events that demonstrate s 54's influence beyond the UK. It begins with a discussion of the Australian Modern Slavery Act, enacted in 2018, modelled on s 54, then moves to how s 54 played a role in Qatar and Russia's major sporting events, and the UK's response to the alleged human rights abuse of Uyghur people in China. Drawing on my observations at various meetings, interviews and primary written sources, I piece together the story of how the UK government has exported s 54, supported and facilitated to a large degree by the Commonwealth Parliamentary Association (CPA UK), the UK's All-Party Parliamentary Group on Sport, Modern Slavery and Human Rights (APPG), various 'Think-Tanks', and NGOs.

7.2.1 The CPA UK

The CPA UK is a Commonwealth-wide network of some 17,000 national, state, provincial and territorial parliamentarians within 180 legislatures in 53 countries. The

purpose of the CPA is to strengthen parliamentary democracy within the 53-country Commonwealth, providing a space for parliamentarians to share, learn, compare and work together to promote Commonwealth values of democracy, rule of law, human rights, good governance and social and economic development. In 2016, CPA UK developed a modern slavery programme: a four-year multilateral project funded by the Home Office and the CPA UK to introduce members of parliament, officials, and legislative drafters to 'the benefits of having robust legislation against modern slavery, human trafficking and forced labour.' According to Danielle, a senior project manager of the modern slavery programme, 'the crime is constantly evolving, so the legislation has to evolve too. Otherwise, it does not capture what is happening on the ground.' CPA UK's objective is to contribute to the global effort to 'eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour'. It expressly aligns its work with the United Nations Sustainable Development Goal ('SDG') 8.7 to 'end Modern Slavery, Trafficking and Child Labour', part of a collection of 17 interlinked global goals designed to be a 'shared blueprint for peace and prosperity for people and the planet, now and into the future'.[452] Adopted two years after the MSA in 2017, the SDG 8.7's reference to 'modern slavery' is derived from and a nod to the UK legislation, since no other country or law had previously used the term.

Danielle explained that her team has been working to introduce similar legislation in commonwealth countries and former British colonies. She said:

[452] United Nations Department of Economic and Social Affairs, 'Do you know all 17 SDGs?' <https://sdgs.un.org/goals> accessed 28 August 2022.

> The idea for the project is to support parliamentarians with a willingness to work on modern slavery. After three years, we built and strengthened relations with MPs, officials, drafters, and clerks. We were able to identify then which parliaments had an interest in continuing the project and which parliament did not want to continue. The focus of the project is to encourage legislation. This year we worked with nine countries, three in Asia: Sri Lanka, Bangladesh and Pakistan, and six in Africa: Malawi, Nambia, Kenya, Uganda, Ghana and Nigeria.

One of the success stories for the CPA was Australia, which enacted modern slavery legislation in 2018, Australia's Modern Slavery Act ('Australian MSA'). Australian senator Linda Reynolds noted the CPA's contribution. She stated,[453]

> The Australian parliament has passed the Modern Slavery Bill 2018. This legislation is due in no small part to CPA UK because, without the workshops and access to those involved in all aspects of the UK legislation, it may not have happened.

Like s 54 of the UK MSA, the Australian MSA requires businesses to publish a statement on the risk of modern slavery in their supply chain, but the Australian version has broader application and more robust accountability mechanisms – perceived to be a vast improvement on the UK Act according to civil society organisations. It requires companies with a consolidated revenue of $100 million, which conduct business in

[453] Commonwealth Parliamentary Association UK, 'New Australian modern slavery legislation "is due in no small part to CPA UK" - Senator Linda Reynolds' (10 December 2018) < https://www.uk-cpa.org/news-and-views/new-australian-modern-slavery-legislation-is-due-in-no-small-part-to-cpa-uk-senator-linda-reynolds/> accessed 28 August 2022.

Australia (regardless of where they are domiciled) to report on and disclose steps they have taken to identify and address risks of modern slavery. Similar to the UK Act, a relevant 'principal governing body', such as the board, must approve the statement, but there are no strict penalties for failure to report, and the government does not provide a list of the organisations required to report.

Unlike the UK MSA, the Australian MSA requires companies to respond to mandatory reporting criteria; it establishes a state-run modern slavery registry; and it requires governmental actors to publish MSA statements. These elements have long been on the wish lists of NGOs in the UK, including the BHRRC, which produced three consecutive annual reports on the FTSE 100 companies' MSA statements. Each one recommended greater state involvement in the implementation and operation of s 54, including mandatory reporting criteria, a state-run registry and extending the provision to cover public procurement.

The Australian MSA was considered by NGOs to be a significant improvement on s 54. The comparison between the two provisions became frequently discussed at modern slavery conferences throughout 2018 and 2019. At a conference in Australia in May 2019 and at the Forum for Business and Human Rights in Geneva in November 2018, NGOs, businesses and academics all enthusiastically celebrated the Australian MSA. Generally, the participants thought it was a step in the right direction and improved upon the UK MSA, causing s 54 to be further criticised. The Australian MSA also refers expressly to the UNGPs on Business and Human Rights. For lawyers and NGOs alike, the reference showed alignment between the Australian MSA and the most up to date international norms on businesses responsibilities. Whereas s 54 did not acknowledge the UNGPs and referred

instead to ILO conventions and EU directives on human trafficking and slavery that had nothing to do with the business and supply chain aspects of MSA.

The CPA held many of its workshops in conjunction with business representatives, who shared knowledge and their first-hand experience of s 54 with Australian legislators. Elena, one of the corporate human rights and CSR professionals I spoke to said she was invited by the CPA to speak to Canadian legislators in 2018. In Canada, numerous attempts have been made to enact a law similar to s 54. The Bill C-300, which aimed to ensure the protection and promotion of international human rights standards in respect of the mining, oil or gas activities of Canadian corporations in developing countries failed to pass in 2009.[454] Elena spoke to Canadian delegates who were visiting the UK to learn more about the MSA. She talked to Canadian MPs about how her company used s 54 to obtain cooperation from suppliers in other countries.

Soon after, in October 2018, the Parliament of Canada's Standing Committee on Foreign Affairs and International Development and the Subcommittee on International Human Rights issued a report entitled, 'A Call to Action: Ending The Use of All Forms of Child Labour in Supply Chains'. On 13 December 2018, Bill C-423, to be known as the Modern Slavery Act, was introduced in the Parliament of Canada, with the stated purpose of implementing Canada's international commitment to the fight against modern slavery through the imposition of reporting obligations on entities involved in the manufacture, production, growing, extraction and processing of goods in Canada and elsewhere. As one

[454] Openparliament.ca, Bill C-300 (Historical), <https://openparliament.ca/bills/40-3/C-300/> accessed 28 August 2022 and Richard Janada, 'Note: An Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries (Bill C-300): Anatomy of a Failed Initiative' (2010) 6 McGill International Journal of Sustainable Development Law and Policy 97.

article suggests, Canada seems to be 'following the global trend'.[455] However, Bill C-423 did not pass before the dissolution of parliament, a new Bill S-211 introduced on 5 February 2020.

Danielle explained that the CPA has a network of more than 250 stakeholders and organisations, many like Elena, who has hands-on experience of implementing s 54. She said, 'At the start, we identified stakeholders, a list of people willing to support us, with deep knowledge of the subject we are working on. Anytime we are organising an activity, we always call on expert, expert advisors, consultants, to bring more information, we always work with local people where possible. We would call on national and international experts and we would always call on experts in the country to work with their parliament so if we are in Nigeria, we will call on someone in Nigeria.'

The CPA has also influenced policy decisions in New Zealand. In 2017, New Zealand parliamentary representatives Kelvin Davis MP and Joanne Hayes MP attended the Asia-Pacific Regional Workshop on Modern Slavery in London.[456] The workshop was co-hosted by the United Kingdom Home Office's International Modern Slavery Fund and CPA UK. The sessions focused on the implications of modern slavery in the broader sustainable development context. The New Zealand representatives were attracted to this policy framework, and the UK's efforts to enhance cross-border cooperation to combat

[455] Norton Rose Fulbright, Modern slavery legislation – Canada may follow the global trend (*Norton Rose Fulbright*, December 2018) < https://www.nortonrosefulbright.com/en/knowledge/publications/ee653db4/modern-slavery-legislation---canada-may-follow-the-global-trend> accessed 28 August 2022.

[456] New Zealand Office of the Speaker of the House of Representatives, 'Commonwealth nations combine forces to combat modern slavery' (*New Zealand Parliament*, 24 April 2017) <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/office-of-the-speaker/press-releases/commonwealth-nations-combine-forces-to-combat-modern-slavery/> accessed 28 August 2022.

human trafficking and the growing threat of bonded labour in supply chains. A central outcome of the workshop was that delegates would return to their home parliaments with an increased awareness of all aspects of modern slavery, knowledge of good practice on how to combat it, and a commitment to the development of modern slavery legislation. Following the workshop in April, a New Zealand Transparency in Supply Chains Bill 2017 was introduced as a private members' bill by Dr Liz Craig. But the initiative has not progressed any further and remains as a proposal at this stage. While some commentators such as criminal barrister Tomas Harre, advocated for New Zealand's existing legal framework for safeguarding against modern slavery,[457] pressure for legislation persisted following the passage of Australia's Modern Slavery Act in 2018. Many New Zealand businesses with consolidated revenues of more than AU$100m that operate in Australia are caught by the reporting requirements, including one of the largest clothing retailers in New Zealand, which was compelled to publish a modern slavery statement in 2019.[458] The Australian Border Force can also issue non-compliance notices to businesses without a Modern Slavery Statement. By October 2021, 2,500 statements were uploaded to Australia's modern slavery register, covering more than 5,000 reporting entities across 40 countries, and over 400,000 public searches were recorded in the first months of the register being established.[459]

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[457] Tomas Harre, 'Does New Zealand really need a Modern Slavery Act?' (*Law Aid international chambers*, 10 October 2018) <https://www.lawaid.co.nz/lawaidblog/does-new-zealand-really-need-a-modern-slavery-act> accessed 28 August 2022

[458] Amelia Arvesen, 'Kathmandu focuses on combatting modern slavery in sustainability report' (*Outside Business Journal*, 24 October 2019) <https://www.outsidebusinessjournal.com/issues/kathmandu-focuses-on-modern-slavery-sustainability-report/> accessed 28 August 2022.

[459] Nicola Swan, 'Modern slavery risk rising for New Zealand business' (*Chapman Tripp*, 16 October 2021) <https://chapmantripp.com/trends-insights/modern-slavery-rising-risk-for-nz-business/#:~:text=So%20far%2C%202%2C500%20Statements%20have,provided%20a%20Modern%20Slavery%20Statement> accessed 28 August 2022.

New Zealand businesses have taken notice. Law firms and consultancies in New Zealand, including top tier law firm Chapman Tripp, have advised clients that the government will 'probably' legislate to align with Australia and the UK. The Ministry of Business, Innovation and Employment was tasked by the New Zealand government in September 2020 to consider potential law change. But this is not the first attempt. CPA efforts to inject modern slavery into the political agenda was initially made in 2017.[460] In 2017, New Zealand parliamentary representatives Kelvin Davis MP and Joanne Hayes MP attended the Asia-Pacific Regional Workshop on Modern Slavery in London.[461] The workshop was co-hosted by the UK Home Office's International Modern Slavery Fund and CPA UK. The sessions focused on the implications of modern slavery in the broader sustainable development context. The New Zealand representatives were attracted to this policy framework, and the UK's efforts to enhance cross-border cooperation to combat human trafficking and the growing threat of bonded labour in supply chains. A central outcome of the workshop was that delegates would return to their home parliaments with an increased awareness of all aspects of modern slavery, knowledge of good practice on how to combat it, and a commitment to the development of modern slavery legislation.

Now, there is considerable support for the concept in the business community, on the basis that consistency and uniformity is good for business. Over 100 New Zealand

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[460] There have been other attempts to introduce laws against *aspects* of modern slavery in New Zealand through customs and trade regulation. In 2009, former Labour MP Maryan Street introduced a member's Bill seeking to amend the Customs and Excise Act to prohibit the import of goods produced by slave labour. In 2015, MP Peeni Henare introduced a member's Bill with the same intent. Both Bills were voted down on the ground that slavery was imprecisely defined. In 2017, MP Dr Liz Craig introduced a Transparency in Supply Chains member's Bill; the Bill was withdrawn in March 2018.

[461] New Zealand Office of the Speaker of the House of Representatives (n 462).

businesses and organisations signed a letter asking the New Zealand Government to develop a modern slavery act.[462] Social actors, including the largest university in New Zealand have acquired funding to establish a new Centre for Research on Modern Slavery, which released a White Paper in September 2021 recommending adoption of human rights due diligence legislation, disclosure obligations, and an extraterritorial penalty regime.[463]

The CPA's purposeful approach may not have succeeded in Canada or New Zealand yet, many commentators I spoke to say it is only a matter of time. Danielle explained to me that there is a great willingness from MPs in the Commonwealth to understand supply chains, but she said it is not well understood so part of the CPA's ongoing efforts is on education and helping legislators understand how it affects them. Danielle explained that the CPA's 'action plan is to go deeper into the subject because we are not there yet. It doesn't make any sense for us to go to other countries when the countries we are working with, the parliaments we are working with, the knowledge is not there yet. To me, and my motto is not about quantity, it is about quality.' To do so, Danielle says they must be flexible with terminology, 'so if a parliament preferred to use human trafficking rather than modern slavery, we would be happy with that'. After all, she explained, this is 'a commonwealth project, so yes it comes from UK funding but the UK is also learning a lot from the project, we want to work together, so if in Ghana they don't want us to use modern

[462] BHRRC, 'Open letter to the New Zealand Government to commence an inquiry into a Modern Slavery Act for the country' (*BHRRC*, 17 March 2021) <https://www.business-humanrights.org/en/latest-news/open-letter-to-the-new-zealand-government-to-commence-an-inquiry-into-a-modern-slavery-act-for-the-country/> accessed 29 August 2022.

[463] Christina Stringer and others, 'Toward a Modern Slavery Act in New Zealand - Legislative landscape and steps forward' (September 2021) <https://cdn.auckland.ac.nz/assets/business/about/our-research/research-institutes-and-centres/CReMS/CRMS%20Toward%20a%20Modern%20Slavery%20Act%20v1.1%20WEB.pdf> accessed 29 August 2022.

slavery, they prefer the American terminology, like human trafficking, we don't mind as long as we know what we are talking about, and we were clear from the beginning.'

Recently, the CPA has partnered up with the Modern Slavery and Human Rights Policy and Evidence Centre (MSPEC), a consortium of six academic organisations led by the Bingham Centre for the Rule of Law and is funded by the Art and Humanities Research Council on behalf of UK Research and Innovation (UKRI).[464] The MSPEC aims to enhance understanding of modern slavery and transform the effectiveness of law and policies designed to address it with high quality research it commissions. The MSPEC seeks to assemble academics, policymakers, businesses, civil society, survivors and the public on a scale not seen before in the UK to 'collaborate on solving this global challenge.' The CPA and the MSPEC hosted a two-day virtual conference for parliamentarians, government officials, researchers, civil society and survivor organisations from the UK, Commonwealth and beyond on 15-16 September 2020. The conference and the MSPEC's work 'facilitate the flow of research and information between actors and countries.'

The CPA UK's activities target lawmakers and policy makers. In doing so, they rely on existing business and political networks, and collaborate to assert a problem, which may not exist in every jurisdiction. Their approach implies concerns that s 54 alone would not be effective in isolation and that other countries must do the same to build up uniform requirements globally. Their efforts constitute influence or interference with domestic political agendas, which is framed so definitively in terms of human rights protection that

[464] Rights Lab at Nottingham University, the Wilberforce Institute at Hull University, the Centre for the Study of International Slavery at the University of Liverpool, the Bonavero Institute on Human Rights at Oxford University and the Alan Turing Institute.

very few people would argue with their activities. But if we took a more cynical view, it could be said that s 54 has been instrumentalised for the UK's foreign policy agenda.

7.2.2 The APPG on Sport, Modern Slavery and Human Rights

The APPG is chaired by Alex Norris MP and Baroness Young of Hornsey. Much like the CPA, collaborations lie at the heart of this initiative. The group held regular meetings throughout 2018 and 2019 to 'find solutions to pressing human rights problems affecting large scale sporting events around the world, with a focus on three specific areas; the human rights impacts of the cycle of mega-sporting events, the effects of the UK MSA on professional sports companies and discrimination in sport in all its forms.'

The APPG works closely with two organisations, the UN Global Compact (see 6.3.1) and the Human Rights and Business Association (ABHR). The UK branch of the UN Global Compact is an UN-affiliated multistakeholder organisation and the ABHR is an 'international think tank on business and human rights' founded in 2009. ABHR has physical presence in Colombia, Myanmar, Singapore, Switzerland, the UK and USA. Among its patrons was Professor John Ruggie, the author of the UNGPs. Lawyers, academics and CSR professionals feature on its advisory council. Its mission is to 'shape policy, advance practice, and strengthen accountability to make respect for human rights part of everyday business.'

In June 2018, the ABHR launched a multi-stakeholder organisation working as 'intergovernmental standard bearers for human rights – the International Labour Organization (ILO) and Office of the UN High Commissioner for Human Rights (OHCHR) among the founders of the Centre.' The Founding Chair is Mary Robinson,

former President of Ireland and former UN High Commissioner for Human Rights, who is also a sponsor of ABHR. It acted as secretariat for the APPG, so the information of meetings and minutes were managed by them. All of the reports and findings are also published through the ABHR's website.

The APPG's work on sports and modern slavery focused on mega sporting events. It found that 50 people died in construction activity for the 2010 Commonwealth Games in New Delhi, 9 people ahead of the 2014 FIFA World Cup in Brazil, 21 for the 2018 Russia World Cup, 2 for the Tokyo 2020 Olympics, and a range of estimates exist for Qatar 2022, from 1,200 to 6,500.[465] The APPG used its influence, venue (House of Lords), and authority to gather evidence from those companies, trade unions, and NGOs involved in events such as the 2018 FIFA World Cup in Russia, Tokyo 2020 and Qatar 2022. The APPG also heard from journalists who cover some of these events as well as several media companies about their responsibilities as broadcasters.[466]

Some industry participants I spoke to remarked on the novelty of attending a meeting at the Palace of Westminster. One football club representative told me he did not know much about modern slavery but wanted to come along and see the building. He marvelled at being called to attend the House of Lords. As we left the meeting together, he asked me to take a photo of him and recounted his surprise at how pervasive modern slavery

[465] Pete Pattisson and others, 'Revealed: 6,500 migrant workers have died in Qatar since World Cup awarded' (*The Guardian*, 23 February 2021) <https://www.theguardian.com/global-development/2021/feb/23/revealed-migrant-worker-deaths-qatar-fifa-world-cup-2022> accessed 29 August 2022; Wesley Stephenson, 'Have 1,200 World Cup workers really died in Qatar?' (*BBC*, 6 June 2015) <https://www.bbc.co.uk/news/magazine-33019838>

[466] Modern Slavery and Human Rights All-Party Parliamentary Group on Sport, *Interim Report* (July 2019) <https://www.ihrb.org/uploads/meeting-reports/APPG_Interim_Report_July_2019.pdf>

seemed to be. He felt that the event highlighted an issue that he had not been concerned with before – which motivated him to return to his club in the north of England to share the findings. One senior aide of the APPG was proud of the success they have had in bringing people together:

> I mean, it's superficial to say this, but people like to come to the House of Lords. It's a nice venue. The Baroness is also good at getting people together and getting them to talk, so we found that there's been real engagement from different sectors, and that's a model we are hoping to use again in other industries. We will be hosting an event on the tea industry, for breweries and potentially also the hospitality sector. Parliament has a role to play. We can say to companies: "we know you've got issues, and we are watching you. You can't get away with it forever, but we can help you."

The APPG meeting I attended on 8 July 2019 focused on football and human rights. Another meeting held on 19 June 2018 concerned workers' rights in the construction sector. Both sessions focused on the FIFA World Cups in Russia (2018) and Qatar (2022). Attendees were asked to consider how they might use their influence to tackle these issues.

The UNGPs was a common topic for discussion at the APPG meetings. It was regarded as a compatible supplement to s 54. One participant argued that UK companies could lead by example and implementing the UNGPs require nations states and business enterprises to carry out human rights due diligence.[467] He said 'all Premier League football

[467] UNGP Framework (n 94).

teams should be captured by s 54, therefore all major football events should represent best practice in terms of supply chain due diligence and disclosure, in accordance with UNGP 4, 15 and 17.' It seemed that everyone took it for granted that s 54 and the UNGPs were aligned. Not one person questioned this narrative.

In contrast, a Qatari state representative refused to acknowledge the broader requirements of the UNGPs when he was asked about s 54. At a modern slavery conference in London, he explained how matters had improved because they were looking for modern slavery specifically. They are working on these issues as a matter of labour and employment conditions – not as human rights concerns. The representative, who worked for the Supreme Committee for Delivery and Legacy said most large businesses in Qatar working on the World Cup are UK or Europe headquartered companies, From his perspective, the UK companies have a joint responsibility for the workers' welfare. But he admitted that the 'Kafala' system is a local problem.

The 'Kafala' system was a key issue for the APPG. In Qatar, it required all unskilled labourers to have an in-country sponsor. Usually, their employer had to take responsibility for their visa and legal status. The practice is prevalent in the construction and domestic sectors across Bahrain, Kuwait, Lebanon, Qatar, Oman, Saudi Arabia, and the United Arab Emirates. But the 'Kafala' system is widely criticised for creating opportunities to exploit workers, as many employers take away passports and abuse their workers with little risk of legal repercussions, such that workers are effectively legally bonded to their bosses. Now, a new regulation has been introduced to prevent employers from requiring workers to work at noon, when temperatures exceed 40 degrees celsius.

An executive I spoke to after one of the APPG meetings said that s 54 gave him impetus to actually travel to Qatar, and the fact that it was a piece of legislation meant that they 'had the support of the government, so we had a bit more courage to go and approach the issue with the Qatari authorities'. As at the end of May 2018, over 30 contractors, many UK-headquartered companies from all tiers of the construction supply chain committed to return £6.23 million worth of unpaid wages to more than 6,000 workers. Qatar 2022's Supreme Committee for Delivery and Legacy for the World Cup began repayments in January 2018, which appeared to be reaching workers.[468] In part, due to the APPG's efforts of raising awareness of worker exploitation with UK construction companies in Qatar. It simultaneously exerted pressure on FIFA governing bodies and the Qatari state. This demonstrates the impact of s 54 beyond the UK, and the provision's potential as a symbol of the UK's stance on human rights and instrument of foreign policy.

7.2.3 The role of think tanks: ABHR

Think tanks are said to be central to the promotion of ethical business practices.[469] But their role and influence are not well understood. Simon James described them as agile actors, who have the advantage of intellectual 'light footedness' because they do not need to embroil themselves in the depths of research expected of academics.[470] Think tanks are largely 20th-century inventions, but the expert advisor and the intellectual working in the

[468] All-Party Parliamentary Group on Sport (n 472), 11 and Impactt, *Annual External Compliance Report of the Supreme Committee for Delivery and Legacy's Worker Welfare Standards* (2018).

[469] Amon Barros and Scott Taylor, 'Think Tanks, Business and Civil Society: The Ethics of Promoting Pro-corporate Ideologies' (2018) 162 Journal of business ethics 505, 507.

[470] Simon James, 'The Idea Brokers: The Impact of Think Tanks on British Government' (1993) 71 Public Administration 491, 503.

shadows of power have had a role in political life have always existed. Certain subject matters may require more specialist advice but having established themselves as a serious player in the 1980s, James observed that 'they are irregular, and their interventions are limited and sporadic.' He added, 'policy-making is an uncertain business: outsiders, like think tanks who feed ideas into a closed system, must expect a high failure rate.' Smith is more cautious, he said that a 'government of experts' must be scrutinised and summoned us to ask, again and again, what we really need to know to govern ourselves well.' Calling for a 'healthy egalitarian skepticism of the authority of experts'.[471]

The ABHR is an active think tank, its influence extends beyond the APPG and major sporting events described above. Its programmes go beyond s 54, but as one of the campaigners for the law, it has played a key role in the dissemination of s 54, establishing links between s 54 and migrant workers in supply chains in particular. According to the ABHR representative, Maurice, s 54 has been a 'beneficial instrument' for the ABHR. With it in place, Maurice said, 'we can see much more reporting on labour agencies and global recruitment. We have become quite involved with the Foreign Office and Home Office since 2015.'

Maurice said, 'we played a significant role in promoting it to the Australian government and the Canadian government and then scrutinising the limitations of their proposals and how it needs to be reformed, we play an increasingly active role in that.' Behind the scenes, the CPA and APPG also worked with the ABHR to generate interest in s and to 'export s 54 to the world'. The ABHR also co-hosted several meetings with Amber

[471] James Smith, *The Idea Brokers: Think Tanks and the Rise of the New Policy Elite* (Free Press 1993), 238-239.

Rudd when she was the Home Secretary and dinners involving the ambassadors of various governments, including Malaysia, Australia and Canada. Maurice said, 'I think we helped embassies in the UK take an interest in the UK legislation, and they reported back to their capitals on that.' In determining which countries to approach, Maurice said, they make pragmatic decisions, trying to identify countries that have problems according to the US Trafficking report. Maurice said:

> We have been active in both Thailand and Qatar, held workshops in Qatar and South East Asia even though they are not OECD countries, and brought Home Office officials to those meetings and ambassadors from the foreign office. We make sure that the Home Office is the lead on these MSA events. That way, they see how this manifests overseas in a political context and in a business context, where the rubber hits the road.[472]

Maurice said s 54 seems to suggest that companies in the UK are responsible for the whole supply chain, which is 'a hell of a burden, because it is a transnational problem, and the UK cannot fix this alone'. Maurice pointed out that international norms are full of holes. He criticised the UNGPs for not being specific enough. He believed that [International law and norms] 'are a starting point but the diplomacy aspect of this problem and getting other governments around the world to see the value of moving forward on this and creating their own requirement is absolutely crucial. And I think we will move…but

[472] Home Office works on immigration and migration issues. There was discussion in the beginning that it may not be the right government agency to advance and enforce the MSA, but here, the fact that the Home Office owns the MSA has led to its focus and influence internationally.

it's stronger requirements on the UK companies, that will move things a bit, but it will never be enough to eradicate the problem.'

By 'problem' Maurice meant migrant labour exploitation, arguably, a narrower subset of supply chain exploitation. Therefore, his focus is geo-political and transnational. Maurice talked at length about Taiwan, for instance. He pointed out that the island is not a member of the United Nations or the International Labour Organisation, because of its unique and controversial sovereignty status. But it is a well-known producer of bike parts, sports equipment, home furnishings and IT components. Any activities between the UK and Taiwan would offend China. To avoid awkward public relations, the answer was to establish a Leadership Group on Responsible Recruitment, an international network of big brands, NGOs, and UN agencies, similar multistakeholder organisations described in Chapter 6. According to Maurice, the companies in the Leadership Group have better contacts than the UK's public authorities. They also have hands-on experience and generally have a good understanding of modern slavery issues. Many were involved at the beginning of the MSA process or have advocated for similar legislation elsewhere. Maurice explained that 'when companies lead efforts in the jurisdictions where they have leverage, including political leverage, it can be very effective and the benefits to workers are almost immediate.' Maurice added the advantage of the Leadership Group include, 'if companies find they have supply chains that overlap, they can also work together to identify key problem areas, such as fishing in Thailand and Malaysia's IT manufacturing sector.' His unique take on s 54, including that it can be more effective than the UNGPs seemed to find favour with politicians and lawmakers. His idea that a multi-pronged approach should be led by public *and* executed by private actors seems to be reflected in the UK government's

approach to s 54. Maurice may not be the sole reason for s 54's effects beyond the UK, but he is by no means insignificant. It helps that Maurice is extremely well-connected, and he is likeable and knowledgeable. Wherever I went during fieldwork, I was sure to run into Maurice, and he was always happy to talk. These qualities alone can make a world of difference.

7.2.4 The Office of the Independent Anti-Slavery Commissioner

The Office of the Independent Anti-Slavery Commissioner (OIASC) was established by Part 4 of the MSA. The Commissioner has a UK-wide remit to encourage good practice in the prevention, detection, investigation and prosecution of modern slavery offences and the identification of victims. Dame Sara Thornton DBE QPM was appointed the Independent Anti-Slavery Commissioner in February 2019. She previously had a long career in policing, including as Chief Constable in 2007, and first Chair of the National Police Chiefs' Council from 2015 to 2019.

When I spoke to her, she was quick to stress that her focus is on the UK's modern slavery issues. As the official website confirmed, '[t]he Commissioner has a *UK-wide* remit to encourage good practice in the prevention, detection, investigation and prosecution of modern slavery offences and the identification of victims.' One government informant told me that the former Anti-Slavery Commissioner, Kevin Hyland, had taken to working on modern slavery issues internationally, often responding to countries asking for his help, but suddenly, he quit in May 2018, citing interference from the Home Office, stating that his independence had felt 'somewhat discretionary from the Home Office rather than

legally bestowed.'[473] My informant, along with others I spoke to said they were under the impression that Hyland felt he could do more on s 54 beyond the UK, but 'the Home Office wasn't listening, so [Kevin] had to go abroad and just do it.' Hyland was widely hailed for helping to champion the MSA and pushing the UN to adopt a target to end slavery by 2030 as part of the 17 SDGs.[474] This legacy seems to have continued through the CPA's work.

It was reported by Thomson Reuters that the Home Office had to advertise for the position twice, before Dame Thornton was eventually appointed nine months later. The considerable delay was a major concern for NGOs, who claimed that 'Britain has lost its figurehead, and hamstrung advisors who are deeply embedded and knowledgeable on the issue.' The former Anti-Slavery Commissioner is now a chair of the ABHR's Leadership Group. According to Maurice, he has participated in conferences held in 'Thailand, Singapore, Berlin, and Southeast Asia to demonstrate how s 54 or similar legislation can work at different stages of the supply chain.' I was not able to speak to Mr Hyland, but I did attend a conference in 2019 in London, where he spoke. It seemed to me that he is still playing an active role in the international realm and actively contributing to the 'modern slavery' agenda.

But evidently, the OIASC is not entirely autonomous, and its agenda is subject to Home Office discretion. Contrary to the view that all public authorities all sing from the

[473] This was confirmed in an Australian newspaper report: Karen McVeigh, 'Home Office under fire over "muddled" strategy on slavery that fails victims' (*The Guardian*, 23 May 2018) <https://www.theguardian.com/global-development/2018/may/23/home-office-muddled-strategy-modern-slavery-kevin-hyland> accessed 29 August 2022.

[474] Kieran Guilbert, 'UK anti-slavery drive 'thwarted' by failure to replace commissioner: sources' (*Thomson Reuters Foundation*, 12 December 2018) <https://www.reuters.com/article/britain-slavery-government-idUKL8N1YG5F6> accessed 29 August 2022.

same song sheet. The individual actors, their personal views on s 54 and their leadership also play important roles in determining how organisations contribute (or not) to the internationalisation of s 54.

7.3 S 54 as a challenger to existing ILO terminology

As noted earlier, the UN's adoption of 'modern slavery' in the SDGs was the result of UK diplomacy and influence. At the ILO, its employees felt that 54 and 'modern slavery' challenged to existing, well-established international norms. The ILO was established in 1919 under the auspice of the League of Nations, to reflect the belief that universal and lasting peace can only be achieved through social justice. The organisation became a specialised agency of the United Nations in 1946.[475] The ILO established some of the most fundamental employment standards, including hours of work, unemployment, maternity protection, night work for women, minimum age and slavery. Some of the ILO's conventions were listed in the explanatory notes of the MSA, including the ILO Convention (No. 29) Concerning Forced or Compulsory Labour 2014 and Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour – both ratified by the UK government.

The ILO's conventions do not mention 'modern slavery'. The 1926 Slavery Convention's well-established definition of 'slavery' focuses on the control and possession of a human being by another. But since the MSA was adopted, the ILO's website not only mentions 'modern slavery', it defined the term as 'traditional practices of forced labour, such as vestiges of slavery or slave-like practices, and various forms of debt bondage, as

[475] ILO, About the ILO <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm> accessed 29 August 2022.

well as new forms of forced labour that have emerged in recent decades, such as human trafficking also called "modern-slavery" to shed light on working and living conditions contrary to human dignity.'

A paper by Roger Plant for the ILO entitled '*Modern slavery: the concepts and their practical implications'* sought to reconcile the ILO's framework with 'modern slavery' by stating that national governments (such as the UK) are beginning to use it and therefore, it is pragmatic for the ILO to adopt it as well.[476] The paper recognised the incongruous development of 'modern slavery' and admitted that there is no consensus on how the term should be defined, which 'have at times led to confusion about how best to tackle the enormous challenges posed by contemporary forms of forced labour or what is often called "modern forms of slavery."' The paper concluded that rather than seeking a clear consensus over definitions, the focus should be on identifying the most appropriate forms of action, taking into account these differences, against the various forms of coercion and exploitation.

> But some practitioners said it feels more like a departure from the ILO framework,
>
> > Many people are asking what 'modern slavery' means now, and everyone is picking up on that, maybe it is catchier. They are aware of the UK's Modern Slavery Act, and I think because it's called the Modern Slavery Act, I believe the term 'modern slavery' has come to the fore of the agenda. No one wants slavery on their books, so clearly, everyone has to sit down and think about what it means.

[476] Plant (n 74) .

A former employee of the ILO's Special Action Program on Social and Labour Issues, Hans said the lack of clarity has caused the labour rights movement to become disjointed. He described the movement on modern slavery as a 'travelling circus which is becoming more and more popular because it absolutely has no demands and performance requirements whatsoever and it crowds out initiatives that are trying to achieve something. In 20 or 25 years, we've gone backwards on human rights standards, monitoring and accountability.' Hans added:

> I think the ILO is being disingenuous because they got blindsided by the UK's modern slavery movement… they always had the concept of forced labour. There is 100 years of jurisprudence behind it, and it was restrictively defined, but then modern slavery became so popular with so much corporate buy-in, the ILO suddenly thought, "if we don't reposition ourselves, we are going to get outmanoeuvred entirely here." So, they tried to incorporate it into their work. They've tried to energise their work on forced labour through modern slavery. But I fear that they are allowing themselves to get pulled into this feel-good, nebulous movement in the process. There is also a lot of money in the feel-good movement, and the ILO thinks we better grab some of that for ourselves, so there is a discourse or narrative around modern slavery now that everyone has felt the need to buy into. And I think it's doing us a disservice.'

Hans described the UK's modern slavery movement as 'mobilisation without organisation.' Throughout our conversation, he expressed concerns about how modern slavery creates confusion and feared that s 54 could threaten the ILO's established

principles because of its ambiguous requirements. He also disagreed with what he sees as a 'monetisation of labour issues'. Even so, he acknowledged s 54's 'enormous impact' on the ILO's agenda, and he could see that it has shone a spotlight on labour exploitation in supply chains. Hans regarded the UK's MSA as an unwelcome distraction with narrower scope and less stringent requirements. Because of this, he said, it has become very popular, and as a result 'has already influenced the ILO's work at every level'.

7.4 S 54 as foreign policy apparatus and condition of trade

Having established that s 54 has had an effect internationally through the efforts of quasi-public authorities such as the CPA, APPG and OIASC, facilitated by transnational think tanks, such as the ABHR, I now turn to consider how these international effects have prompted the government to extend s 54 as a tool in international trade with other countries.

In August 2018, the UN announced that it had obtained credible reports that China was holding one million Uyghurs in secret camps.[477] In November 2019, the New York Times revealed leaked documents detailing the exploitation, including forced labour, of the Uyghur population in China.[478] Following these reports, the UK government moved to condemn China's treatment of the Uyghur.

In January 2021, then-Foreign Secretary, Dominic Raab explained that the government would address the alleged exploitation with 'a package of measures to help

[477] Stephanie Nebehay, 'U.N. says it has credible reports that China holds million Uighurs in secret camps' (*Thomson Reuters*, 10 August 2018) <https://www.reuters.com/article/us-china-rights-un-idUSKBN1KV1SU> accessed 28 August 2022.

[478] The New York Times '"Absolutely No Mercy": Leaked Files Expose How China Organised Mass Detentions of Muslims' <https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html> accessed 28 August 2022.

ensure that British organisations, whether public or private sector, are not complicit in, nor profiting from, the human rights violations in Xinjiang.' The measures included financial penalties for companies that failed to comply with s 54. To support compliance with s 54, the UK government issued guidance on the specific risks and due diligence obligations for companies with supply chain links to Xinjiang, including those providing goods and services to authorities in Xinjiang, either directly or indirectly.[479] The guidance contains recommendations to undertake careful and robust due diligence on human rights, and to disclose such risks when reporting under s 54. According to one NGO informant I spoke to in a follow up interview, s 54 was suddenly more than just a reporting requirement, it had 'become one of the tools at the government's disposal to indirectly affect trade.' In 2015, when s 54 was introduced, the UK government was reticent about the extraterritorial effects of s 54 but now it is useful for the UK's foreign policy agenda as part of the state's sanctions regime.

The move to use s 54 to affect international trade was unexpected, but not surprising given the response of the international community concern over Uyghur exploitation. In February 2021, the US and Canadian governments also announced new measures over human rights violations alleged to be taking place in Xinjiang, China.[480] On 15 September 2021, the president of the European Commission, Ursula von der Leyen announced that the Commission would propose an EU ban on products made by forced labour. During a policy speech at the European Parliament, she said that 'Doing business around the world

[479] Foreign & Common Wealth Office, Foreign, Commonwealth & Development Office, Guidance: Overseas Business Risk: China <https://www.gov.uk/government/publications/overseas-business-risk-china/overseas-business-risk-china#business-and-human-rights> accessed 29 August 2022.

[480] Burns and others (n 391)

is good, global trade around the world is good and necessary, but can never be done at the expense of people's freedom and dignity. We will propose a ban on products made with forced labour.' The language is not 'modern slavery', but a return to the more specific, legally defined term of 'forced labour'. Although no specific countries were mentioned in her speech, this ambition regarding human rights may concern the Chinese production of cotton and the welfare of Uyghur workers.[481]

In the UK, further measures were proposed on 17 March 2021 by the House of Commons' Business, Energy and Industrial Strategy Committee in its Fifth Report of Session 2019–21, entitled 'Uyghur forced labour in Xinjiang and UK Value chains.' As part of its inquiry, the Committee invited 15 companies in the fashion, retail and information technology sectors, many of which are US-based, to provide written and oral evidence relevant to the inquiry. The Committee recommended tougher fines for companies in breach of s 54, i.e., not publishing MSA statements, if they are operating in Xinjiang. It further recommended creation of a publicly accessible digital depository on the Government's website containing annual modern slavery statements. The Committee also pointed out that responsibility for the initiatives and legislation governing this area of policy are spread across several Government Department, including the Home Office, which is responsible for modern slavery legislation and enforcement.

In 2021, the UK and New Zealand governments signed a trade deal. In Chapter 23 of the Agreement, the governments reiterated their commitments to international labour

[481] Pierre Bérastégui, 'EU proposal to ban products made by forced labour, European Trade Union Institute' (*ETUI*, 29 September 2021) <https://etui.org/news/eu-proposal-ban-products-made-forced-labour> accessed 28 August 2022.

standards and to not derogate from these to encourage trade and investment. It also contains commitments for the effective enforcement of labour laws, whilst protecting our right to regulate. Explicit mention of modern slavery in supply chains is also made, as the summary provides 'the chapter also addresses other areas of trade and labour – this includes gender equality in trade and the workplace, tackling modern slavery in supply chains, and promoting quality employment and decent working conditions.'[482] The New Zealand Ministry of Foreign Affairs website has changed to adopt this.[483] Further media campaigns have also increased to highlight the issue, justifying new legislation.[484]

7.5 Conclusion

In this chapter, I set out to explore the effects of s 54 beyond the UK. My investigation began with discrete events and separate actors, but I found that extensive political and international effects were achieved by just a few, very well-connected policy brokers such as the ABHR, CPA and APPG. They have played an active role in spreading s 54's influence across the globe. Through the CPA, s 54 was promoted to former colonies and existing members of the Commonwealth: from the enactment of similar legislation in Australia, to many others are considering the same, the message is that this type of legislation can be exported and transplanted. The former Anti-Slavery Commissioner was instrumental in the UN's adoption of 'modern slavery', and even after his resignation,

[482] Department for International Trade, 'New Zealand and Free Trade Agreement: chapter explainers <https://www.gov.uk/government/publications/uk-new-zealand-fta-summary-of-chapters/uk-new-zealand-free-trade-agreement-chapter-explainers#labour> accessed 28 August 2022.

[483] New Zealand Foreign Affairs & Trade, 'Combatting. Modern slavery' <https://www.mfat.govt.nz/en/trade/nz-trade-policy/combatting-modern-slavery/> accessed 28 August 2022.

[484] John Weekes, 'Sham marriages, crippling debt and broken dreams: Modern slavery abuses targeted (*New Zealand Herald*, 8 April 2022) <https://www.nzherald.co.nz/nz/sham-marriages-crippling-debt-and-broken-dreams-modern-slavery-abuses-targeted/HSPAAJMCCC2TVS7C6FZA7GXCJE/> accessed 28 August 2022.

request for his expertise highlights the demand for modern slavery knowledge and expertise. The APPG targeted high-profile mega sporting events, putting pressure on companies working in Qatar to enhance working standards for migrant workers, and effectively, facilitating an end to the 'Kafala' system. These results constitute evidence from outside of the UK that s 54 has become a relevant consideration alongside existing international norms.

Mobilisation, collaboration and partnership lie at the heart of these activities. The formal authority of public agencies ensured that corporate representatives responded to calls for participation. Whereas inter-governmental organisations such as the ILO are often constrained international priorities, which gives them little leverage in cases such as Taiwan. The UK's s 54 has allowed private actors such as policy brokers, NGOs and corporations to go where international organisations cannot. S 54 provided unofficial access and a legitimate excuse to intervene in foreign markets. In relation to the alleged human rights abuse of Uyghurs in China, s 54 has become part of a package of measures to control trade relations. The law has undoubtedly spread beyond to the UK and impacted international norms.

These findings can be analysed in terms of Ruggie's 'embedded liberalism', to exemplify the way national institutions represent national interests, which are often economically-oriented. In contrast, international institutions represent broader social values. However, these findings also support Methven O'Brien's view that the 'embedded liberalism compromise' should not be mistakenly regarded as true social embeddedness. She argued that Ruggie overlooked the fact that institutions cannot speak for individuals. She pointed out that supranational institutions depend upon on political agency. In this

chapter, the ILO and UN were not impervious to the UK's influence. On this basis, she argued that the UNGPs depend too heavily on institutions for the exercise social re-embedding, and the UNGPs fail to reflect genuine social values.

In the next chapter, I revisit this debate as I explore the inverse phenomenon of the 'recursive law' equation; namely, how international norms have affected s 54 and activities in the UK. My findings here and in the next chapter contribute to the Ruggie/Methven O'Brien debate by showing that there is a temporal element to the exercise of embedding social values. I suggest that their descriptions are accurate but static; whereas Polanyi's 'double movement' and my findings suggest that it is an ongoing process, which has no designated end point. As such, s 54 and the UNGPs represent incremental steps a dynamic, unpredictable and ongoing social movement.

8. BEYOND S 54

8.1 Introduction

In this final empirical chapter, I seek to understand how international norms have affected s 54 and related activities in the UK. UNGPs and HRDD concepts certainly have percolated through to UK domestic policy, but my focus is to provide an explanation for the so-called 'paradigm shift' towards HRDD in the UK, investment in research in business and human rights and proposed changes to s 54, and the Modern Slavery Amendment Bill.

To address this, I use Halliday and Carruthers' 'recursive' framework.[485] Halliday and Carruthers argue that domestic and international legal change may be influenced by global players, such as international organisations, powerful states and clubs of nations. Legal reform is a process of oscillation between formal law and law in practice until a new equilibrium is established.[486] Halliday and Shaffer examined how legal norms are developed in a range of discrete domains, including human rights, business, and regulatory legal norms that are transnational in scope, conveyed, and settled transnationally, from both bottom-up and top-down perspectives.[487] While most studies assume that international law influences domestic regimes, my research suggests they influence each other. Domestic rules and transnational rules continuously feed back into the rulemaking process and trigger rule revision to increase accountability and legitimacy. My research provides a case study of this phenomenon, as my findings suggest that interaction between 'business and human

[485] Halliday and Carruthers, *Bankrupt: Global Lawmaking and Systemic Financial Crisis* (n 160), 216.

[486] Halliday and Carruthers, *Bankrupt: Global Lawmaking and Systemic Financial Crisis* (n 160).

[487] Terence C. Halliday and Gregory C. Shaffer, 'Introduction: Transnational Legal Orders' in Terence C. Halliday and Gregory C. Shaffer (eds) *Transnational Legal Orders* (Cambridge University Press, 2015).

rights' norms and standards and the legal requirements of section 54 drove the momentum for new 'human rights due diligence' standards, which has affected s 54.[488] This chapter illustrates how international and domestic norm are generated, structured, and amended.

8.2 A 'paradigm shift'?

Back in 2015, s 54 was considered ground-breaking. NGOs and activists believed it was the first piece of national law to effectuate Principle 17 of the UNGPs, which imposed a duty on states to adopt national laws, which would encourage companies to 'carry out human rights due diligence'. That is, a process of 'assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.'[489] Although the UNGPs or its endorsement of 'human rights due diligence' (HRDD) were not expressly integrated into s 54 or the MSA, it appears that the UNGP standards have inevitably become part of general approach to compliance among large multinational companies.

The influence of the UNGPs can be found in an array of international standards, such as the OECD Guidelines for Multinational Enterprises and the revised Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy of the International Labour Organization (ILO). In practice, as I have shown in previous chapters, investors are becoming interested in how companies manage their human rights risks and large corporations have also taken voluntary steps towards HRDD. Some actors, including the UN Working Group on Business and Human Rights (UNWG), have called these

[488] Zamfir (n 164).

[489] UNGPs, Principle 17.

developments 'the beginning of a paradigm shift'.[490] In Europe, several countries have adopted the HRDD model. In France the 'duty of vigilance' law[491] requires companies to examine their supply chains and report on the findings, unlike s 54, which is a mere reporting requirement. But even in France, doubts have emerged about its effectiveness at holding corporations to account.

When the UNGPs were adopted in 2011, it set in motion greater recognition of human rights responsibilities for corporations in law and governance.[492] It increased social and political pressure on corporations not to ignore the human rights impacts of their corporations abroad.[493] They prompted new laws and initiatives toward improving accountability and addressing impunity of companies for the human rights impacts of their operations.[494] According to Amnesty International's 2017 report, the number of legislative initiatives 'point to the beginning of a paradigm shift'[495] and readers were encouraged to 'keep this momentum going and capitalise on the various legislative advances by tailoring proposals to their particular legal system, even if change is achieved through incremental

[490] UNGA, Working Group on the issue of human rights and transnational corporations and other business enterprises (73rd session, 16 July 2018) UN Doc A/73/163, para 20.

[491] Duty of Vigilance 2018.

[492] Nicola JÄGers, 'UN Guiding Principles at 10: Permeating Narratives or Yet Another Silo?' (2021) 6 Business and Human Rights Journal 198, 198.

[493] Peter Muchlinski, 'The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights' (2021) 6 Business and Human Rights Journal 212

[494] Florian Wettstein, 'Business and Human Rights: Overcoming Old Paradigms, Pushing for New Frontiers' (*E-international Relations*, 9 January 2022) <https://www.e-ir.info/2022/01/09/business-and-human-rights-overcoming-old-paradigms-pushing-for-new-frontiers/> accessed 28 August 2022.

[495] Amnesty International, 'Creating a paradigm shift: Legal solutions to improve access to *remedy* for corporate human rights abuse' (*Amnesty International*, 4 September 2017) < https://www.amnesty.org/en/documents/pol30/7037/2017/en/ > accessed 28 August 2022.

steps over time.' Academics and civil society were eager to frame these changes as a 'paradigm shift'.

This narrative has persuaded other actors to this constructed narrative. A CSR officer of a major US company told me, '[a]bsolutely, yeah, there's definitely a change and a movement in this and it's got momentum. There's a number of different efforts taking place to raise the profile of labour exploitation and modern slavery globally and not just within supply chains, but more broadly because of the UNGPs, there's a sense of these ideas trickling down and becoming law.' Lindsay, Kirkpatrick and Low wrote that s 54(5) of the MSA reflects key features of the UNGP that represent operationalisation of the corporate responsibility to respect human rights, namely, a policy commitment embedded within internal processes (including through the training of staff) and due diligence (including the mapping of supply chains and risk assessment).[496] In 2018, Virginia Mantouvalou's commentary on the MSA included a section dedicated to s 54 which refers explicitly to its relationship with the UNGPs and HRDD, which fall under the umbrella of BHR.[497] In the next two sections, I examine the BHR narrative with reference to s 54 and how the increase in national legislation incorporated HRDD to further realise the so-called 'paradigm shift'. The following section discusses the insights derived from the empirical data, which point to the importance of s 54 in the broader context and tensions. The main point of this is to highlight that the social movement for corporate social responsibility has been evolving and continues to do so.

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[496] Rae, Kirkpatrick and Low (n 223), 49.

[497] Mantouvalou (n 101).

At a higher level of abstraction, this contributes to the debate about whether the UNGPs adequately 're-embed' social values. According to Methven O'Brien, it does not. However, I suggest that there is a temporal element to the exercise of embedding social values. While Methven O'Brien's descriptions are accurate but static, Polanyi's 'double movement' and my findings regard this to be an ongoing process, which has no designated end point. As such, s 54 and the UNGPs represent incremental steps a dynamic, unpredictable and ongoing social movement.

8.2.1 UNGPs and human rights due diligence

The UK MSA makes no mention of the UNGPs, but the Home Office's guidance on modern slavery also referred to various UNGP-infused guides and toolkits, including the ETI's Modern Slavery Statement Evaluation Framework,[498] the CORE Coalition's Recommended Content for Modern Slavery Statement,[499] Examples of Weak and Notable Practice and Beyond Compliance: Effective Reporting Under the Modern Slavery Act, and the Walk Free Foundation Tackling Modern Slavery in Supply Chains Guide 1.0.[500] Prior to the UNGPs, there were also industry-specific due diligence requirements, such as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas. The due diligence requirement under the UNGPs sets out, for the first time, a generally applicable due diligence requirement on businesses.

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[498] Ethical Trading Initiative, 'Modern slavery statements evaluation framework' <https://www.ethicaltrade.org/issuesmodern-slavery/modern-slavery-statements-evaluation-framework> accessed 28 August 2022.

[499] CORE Coalition, 'Recommended Content for a Modern Slavery Statement' (June 2017) <https://corporatejusticecoalition.org/wp-content/uploads/2017/06/Core_RecommendedcontentFINAL-1.pdf> accessed 28 August 2022.

[500] Walk Free Foundation, 'Tackling Modern Slavery in Supply Chains: A Guide 1.0' <https://respect.international/wp-content/uploads/2017/11/Tackling-Modern-Slavery-in-Supply-Chains.pdf> accessed 28 August 2022.

As an introduction to the ecosystem on an international level, every year, the UN hosts a Forum on Business and Human Rights in Geneva, which was established under the guidance of the Working Group on Business and Human Rights, to serve as a global platform for stakeholders to discuss trends and challenges in the implementation of the UNGPs and promote dialogue and cooperation on issues linked to business and human rights.[501] The Forum is described as 'the world's largest annual gathering on business and human rights with more than 2,000 participants from government, business, community groups and civil society, law firms, investor organisations, UN bodies, national human rights institutions, trade unions, academia and the media.'[502]

I attended the 2018 Forum, held on 26-28 November, which focused on 'business respect for human rights – building on what works'. It was the seventh gathering of the Forum.[503] Based on the theme alone, it was evident that the discussion would focus on ways to extend existing strategies, including CSR and s 54. It also implied that there is a continuum of development, and the UN Forum can control its trajectory.

The queue to enter the Palais des Nations extended out of the building, around the corner and down the road. Over the three days that I attended the Forum, there were more than 120 panel discussions on how business and human rights developments around the world commercially, politically and socially. Each attendee was given a coloured lanyard to indicate the category they belonged to. I had an orange badge and lanyard for 'academia'.

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[501] Established by the United Nations Human Rights Council (6 July 2011) A/HRC/Res 17/4, para. 12.

[502] OHCHR, 7th UN Form on Business and Human Rights (27-29 November 2018) <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2018ForumBHR.aspx> accessed 28 August 2022.

[503] OHCHR (n 508).

I noticed that businesses representatives and civil society had different colours too: businesses wore blue, and civil society wore yellow. This had a fascinating effect of making it evident when business representatives swerved around NGO representatives. On one occasion, a representative of Samsung literally ran out of the session he was speaking in to avoid questions from civil society. Similar to Ruggie's description of the various stakeholders, these actors represent various interests, NGOs and business representatives dominated the Forum.

I attended a few of the official panel discussions, where government representatives and businesses were clearly the target audience. Several governments submitted official statements to the Forum in advance, including the EU, most of the western nations in the EU, Thailand and Japan, which were unexpected.[504] I found out that most attendees, had no plans to attend official events, unless they knew or wanted to meet someone on the panel. Instead, most participants lined up one-on-one meetings in advance. It seemed to me that the primary goal of the event was to network and socialise outside of the sessions. As a result of this, people rarely engaged in focused, critical debate in the sessions. Most speakers seemed to relish the opportunity to talk about their work, some speakers were keen to demonstrate how much had been achieved, while NGOs seemed determined to highlight how corporations have not done enough. The audience could also be categorised into two groups: those seeking to learn, and those seeking to influence.

[504] OHCHR, Government Statements <https://www.ohchr.org/en/events/forums/2018/7th-un-forum-business-and-human-rights#submissions> accessed 28 August 2022.

Modern slavery and the UK's MSA featured heavily in discussions throughout the Forum but the Act was always discussed as if it was a product of the UNGPs. Most of what I heard about s 54 was overwhelmingly positive. Participants described the MSA as 'a move in the right direction', 'a world first', and 'more governments need to enact similar laws to the MSA.' But the praise was also framed as encouragement for the UK government to make 'further improvements going forward'. News that the Australian MSA had passed was announced on the third day of the Forum. I was in a session at the time and the floor erupted in applause. Some people hugged. Following the announcement, the UK MSA was immediately reframed as 'not going far enough' and the Australian MSA was 'more closely aligned with the UNGPs'.

Despite the relaxed attitude of some delegates, the sheer number of people attending is evidence of the Forum's considerable influence. The conversations at the Forum were all about what the standards 'should' be. While I personally found the Forum lacking in critical discussion and in-depth intellectual engagement, I came to appreciate that this was precisely the point: the Forum was designed to achieve consensus and to persuade, not to promote debate. Specifically, it was to persuade delegates of the merits of UNGPs. Persuasion, whether it was through the formal sessions or in smaller groups over coffee and lunch, was subtle but pervasive. The delegates, myself included, undoubtedly returned to their countries and communities with a better grasp of the UNGPs and sense of their importance. And it is likely this message then percolated through their work.

I participated in a number of the smaller networking meetings too, mostly with NGOs and consultants, and the discussions were very similar: modern slavery is wrong, corporations are not doing enough, states are not doing enough, we can help them do more,

the UNGPs will show us how. These were always followed by invitations to speak, to participate in roundtable discussions or to write a blog. For a while, I was caught up in that world, and unconsciously looking at s 54 through the UNGP lens. It took some time for me to realise that is a NGO-constructed narrative, perhaps a logical one, but deliberately engineered nonetheless.

The UN is one of the few organisations globally that has the power to attract thousands of people from around the world. Although it was free to attend the event, every participant had to register, obtain prior clearance (I had to submit a letter to prove my researcher status) and pay for my own flights and accommodation. But I was in awe that I could be a part of the UN. Taking a step back, I realised that Ruggie's 'embedded liberalism' idea and reliance on 'embedded institutions' are at the heart of this event. For starters, his theories are foundational to the UNGPs. Additionally, Ruggie's view of the international economic order is a forum for disagreement and confusion, and those national regimes for money and trade are met with social values and concern for public well-being is played out at the Forum in real time.[505]

One participant summed it up in this way: 'it really comes down to how much you like the person.' Another UK participant told me, 'even though these events are all about the UNGPs, we don't all agree on how to go about it, but most of us here believe that the UNGP is the best we've got right now and we want to get behind the UN to spread the influence of this agenda. That means taking it back to the UK and helping lawmakers see that', He added, 'I guess the Forum, for all its flaws, is symbolic of the Business and Human

[505] Ruggie 1982 (n 207).

Rights movement.' All of this seems rather messy, but from a Polanyian perspective, Cangiani made the valid point that 'it is precisely the general characteristic of the economy of being 'disembedded' that, on the one hand, makes state regulation unavoidable, and, on the other hand, gives the social system its typical dynamism and complexity.[506]

Thanks to the Principles of Responsible Investment ('PRI'), a UN-endorsed multistakeholder organisation, the UNGPs has become relevant for investors and financial institutions. The PRI was launched in 2006 by then-General Secretary of the UN, Kofi Annan, who invited a handful of the largest institutional investors in the world to form the group around six principles of responsible investing. The initiative was about integrating environmental, social and governance factors in investment decision making. It began as a group of 30 investors who represent US$3 trillion worth of assets under management. With 4,000 signatories now, including pension funds, asset owners at the top of the investment chain, sovereign wealth funds, investment managers and even investment consultants, the PRI is financially independent from the UN. As a membership organisation, the PRI is funded by its members. The members (mostly investors) must report to the PRI using a specific reporting framework every year and subject to. The PRI is a sister organisation of the UNGC, discussed in Chapter 6, another multistakeholder organisation made up primarily of corporations.

According to Emma, a manager at PRI, the organisation's goal is to 'bring investors together to think about good practice.' The UNGPs is described as the PRI's engagement

[506] Michele Cangiani, 'Karl Polanyi's Institutional Theory: Market Society and its "Disembedded" Economy' (2011) 45 Journal of Economic Issues 177.

framework.[507] She said, 'we provide guidance documents, based on the UNGPs and we have a team analysing the issues and engaging with the stakeholders.' Emma characterised the PRI's work as 'raising awareness of specific issues with the investor community.' In relation to the MSA, Emma said:

> It is a UK law, but modern slavery is ultimately illegal, so it's quite tangible in a sense, so we think about what role investors can play. Part of that is about raising awareness. I don't think many investors were aware of it, and the MSA has helped that because companies are now much more familiar. They need to get the statement signed by the board or senior management, which is often the starting point for investors. This is part of what the UNGPs recommend, and we can see that investors want to know how seriously directors are taking these issues in the broader supply chain.

The PRI works closely with a number of governments. Emma described a recent initiative headed by the CEO of the PRI, Fiona Reynolds, known as the Finance Against Slavery and Trafficking initiative (the FAST initiative).[508] This initiative is a partnership between the Liechtenstein Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, Australian Department of Foreign Affairs and Trade, Norwegian Agency for Development Cooperation, along with private sector, philanthropic, and civil society associations. Emma added, 'For example, the New Zealand superannuation fund is a public investment body that is heavily involved with FAST and here in the UK, the development finance arm of

[507] PRI, The UN Guiding Principles: an engagement framework (*PRI*, 1 July 2015) <https://www.unpri.org/social-issues/why-are-pri-investors-using-the-un-guiding-principles-as-a-framework-for-engagement/453.article> accessed 28 August 2022.

[508] Finance Against Slavery and Trafficking, <https://www.fastinitiative.org/> accessed 28 August 2022.

the government has investments in sub-Saharan Africa and India, the developing markets. They are involved because they are exposed to a lot of the issues in the markets they operate in.'

The PRI's message to the various ministries of foreign affairs in the FAST initiative is based on the UNGP framework and the OECD Guidelines on Multinational Enterprises. For example, the FAST Blueprint, a set of goals designed to mobilise the financial sector to act against modern slavery, refers to the UK MSA and Australian MSA almost as if they were secondary legislation enacted to give effect to the UNGPs. The Blueprint encouraged financial enterprises to undertake 'UNGP enhanced due diligence', to identify modern slavery (and other human rights) risks in their businesses and relationships in accordance with the UNGPs first and second pillars.

In October 2020, the PRI published a 'landmark human rights framework for institutional investors'. The framework addresses why and how investors should act on human rights and aims to establish programmes to 'embed the UNGPs into investment activities.'[509] Once again, disclosure of modern slavery risks under s 54 was portrayed as an expression of commitment to the UNGPs. But Emma explained that before the MSA, no one was looking at modern slavery in connection with money laundering, quite simply, 'was not a connection that people made.' In practical terms, it means carrying out 'due diligence' within financial institutions. Emma explained:

[509] Fiona Reynolds, 'What institutional investors need to know about the "S" in ESG' (*PRI*, 22 October 2020) <https://www.unpri.org/pri-blog/what-institutional-investors-need-to-know-about-the-s-in-esg/6635.article> accessed 28 August 2022.

> Anti-money laundering measures in a bank have not traditionally been linked up with prevention measures for modern slavery and human trafficking. Since the MSA, we have seen banks checking its own records, and suppliers for suspicious activity, such as irregular transactions and payments. Now we realise it is just due diligence and good practice. The bank we heard from started tracking down consistent amounts in advertising and discovered that it was advertising for child prostitution and adult prostitution, so it's astonishing. You can then source back and track some of the criminal activity that's going on in the background because so many of us never thought about it until modern slavery became an issue.

According to Emma, the MSA has helped with the UNGPs initiatives and vice versa. BlackRock, the world's largest asset manager, and banks including ABN Amro and Citi, have published statements setting out their approaches on modern slavery risks *and* commitment to the UNGPs Reporting Framework.[510] In PRI's literature, s 54 and the international UNGP framework are presented as if they share the same objective. By combining s 54 and the UNGPs, the PRI has created a narrative of consistent development from international law to state implementation. It evidently feels that, by creating a sense of continuity and leveraging cooperation in this way, it can broaden the conversation and embed social concerns into financially driven institutions.

[510] Finance Against Slavery and Trafficking, 'Insight 5: Due diligence, disclosure and risk metrics relating to modern slavery and human trafficking' <https://www.fastinitiative.org/resources/insight_5/> accessed 28 August 2022.

8.2.2 'Patchwork' of domestic statutes and a Treaty

The notion of a patchwork of domestic legislation is apt because there is no harmonisation or consistency, which 'made it difficult for businesses to identify non-compliance and compare data across jurisdictions, causing companies to make fragmented efforts.' Recent legislative adoption of UNGPs and HRDD have had an effect on the UK in two ways: first, it highlighted that s 54 was no longer world-leading. As one legal informant said, 'the UNGP trends are now spreading through the market actually taking the ideas up and implementing them and then the legislature taking, playing catch up with those processes which then try to give it some shape and form.'

The French Duty of Vigilance, a law passed in France in 2018 is considered more onerous than s 54 of the MSA but more in line with international principles.[511] The law imposes a 'duty of vigilance' on certain large French companies (employing 5000 employees in France, or 10,000 globally), and the law extends to activities of French companies' subsidiaries 'with which the company maintains an established commercial relationship'. The French law does not just impose a reporting requirement. Its primarily goal is to require companies to implement a 'vigilance plan' which is supposed to include reasonable measures to adequately identify serious violations of human rights and the environment. It is the only legislative example to date that imposes a general mandatory due diligence requirement with respect to human rights and environmental impacts, as recommended by the UNGPs.

[511] European Coalition of Corporate Justice, 'French Corporate Duty of Vigilance Law (English Translation)' (*European Coalition of Corporate Justice*, 2016) <https://respect.international/french-corporate-duty-of-vigilance-law-english-translation'/> accessed 28 August 2022.

The French law has significantly changed the conversations around transparency in supply chains. Maurice from a human rights think-tank, described the MSA as 'show and know' while the French law is more 'know and show'. He explained that the latter is more in line with the UNGP's concept of 'corporate human rights due diligence', which encourages companies to look at their supply chains, find out what is happening, then devise a plan. The UK provision is a reporting requirement, so there is no need to assess the supply chain or devise a plan. Maurice said, 'we are at a fork in the road and the biggest question on the international stage is "do we lead with due diligence requirements like the French or transparency requirements like the UK and Australia?"'

But even in Australia, the MSA requires companies to do more than report. In a report published in 2021, *At the Crossroads: 10 years of implementing the UN Guiding Principles on Business and Human Rights in Australia,* the report found that 'over the past decade, there has been some progress towards implementation of aspects of the UNGPs in Australia by business and Government. Key areas of progress have included the Government's introduction of the Modern Slavery Act 2018 (Cth) (Modern Slavery Act), which is part of a wider global pattern of establishing similar laws.'[512]

The Australian MSA raised the bar by requiring companies to report against a set of mandatory indicators.[513] Another key difference is that the Australian MSA provides for the establishment of a government-run registry of statements and is the first modern slavery

[512] Australian Human Rights Institute and Australian Human Rights Commission, *At the Crossroads: 10 years of implementing the UN Guiding Principles on Business and Human Rights in Australia* (2021) <https://humanrights.gov.au/sites/default/files/document/publication/ungps_in_australia_report_september_2021_final_.pdf> accessed 28 August 2022, 6.

[513] Modern Slavery Act 2018, s 16.

disclosure law in the world to impose obligations on a government and its agencies in relation to public procurement. These developments have put the UK government under pressure. He joked, 'the UK hates to be outdone by the Australians, I am sure you are well aware on how competitive the two nations are!'

There are signs of similar moves to regulate to prevent supply chain labour exploitation in Germany,[514] Canada,[515] Denmark, New Zealand,[516] Switzerland[517] and Sweden.[518] But two main approaches have emerged: the UNGP mandatory due diligence approach, and the UK MSA voluntary disclosure approach.

Secondly, many transnational corporations who face this complex patchwork of legislative requirements in multiple jurisdictions have simply chosen to comply with the international requirements or the highest domestic standard. One partner of a leading international law firm said, 'we are dealing in global supply chains and so, it just doesn't make sense to have a piece of legislation (i.e. s 54) in a little island somewhere in the world, our clients work across borders, so we can't limit ourselves to local law only, given that everything is moving towards HRDD anyway.' Corporate employees I spoke to said it was logical and more efficient to comply with the highest standards.

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[514] Markus Krajewski, Kristel Tonstad and Franziska Wohltmann, 'Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?' (2021) 6 Business and Human Rights Journal 550.

[515] Bill S-216, An Act to enact the Modern Slavery Act and to amend the Customs Tariff

[516] New Zealand Ministry of Innovation & Business Development, 'Consultation on Modern Slavery and Worker Exploitation' <https://www.mbie.govt.nz/have-your-say/modern-slavery/> accessed 28 August 2022.

[517] Nicolas Bueno and Christine Kaufmann, The Swiss Human Rights Due Diligence Legislation: Between Law and Politics (2021) 6 Business and Human Rights Journal 542.

[518] BHRRC, 'Swedish mandatory due diligence campaign launched, with support from 42 companies' (*BHRRC*, 29 September 2020) <https://www.business-humanrights.org/en/latest-news/swedish-mandatory-due-diligence-campaign-launched-with-support-from-42-companies/> accessed 28 August 2022.

One corporate employee also noted the interest of investors in due diligence. He said, investors are interested because 'if you are allowing this to happen, and you are not paying attention to [human rights abuses], then what else are you not paying attention to, so investors are becoming more aware and asking for companies to do more. It just makes sense to do more.' Corporate employees have a pragmatic rationale, one human rights lead of a UK company with international supply chains summed it up this way:

> The way I see it, s 54 and these other domestic provisions, they [are] just making the UNGPs more specific, in relation to supply chain transparency. So I think actually, it makes my job easier. Because if more and more pressure is building, all I have to do is deal with context in which that business is done and put a spotlight on international standards and seek to raise those international standards and then hand over the baton to local branches. All I really need to look at are these international standards…now if there are other international standards coming in, we've the just worked to the highest agreed international standard.

NGO informants I spoke to were enthusiastic about using the global trend towards HRDD and UNGPs to leverage change in the UK. They repeatedly referred to corporate behaviour and other domestic laws to show how the UK government might 'fall behind', and the message reached the Home Office. One civil servant I spoke to admitted that the MSA needed an update. 'So if currently, the Australian model is the highest standard, reporting to that should enable these companies to meet the UK standard as well. It enables a kind of common reporting to happen.'

Finally and most significantly, on 23 February 2022, the European Commission issued its Proposal for a Directive on Corporate Sustainability Due Diligence to tackle human rights and environmental impacts across global value chains.[519] The Proposed Directive would impose a corporate due diligence duty on large EU and third-country companies, and smaller companies in certain 'high risk' sectors, to identify and take steps to remedy actual and prevent or mitigate potential adverse impacts on human rights in the companies' own operations, and their subsidiaries and value chains. Having established that there is an international trend to incorporate the UNGPs into domestic law, and a growing momentum towards mandatory HRDD in law, it is important to note that broader movements in BHR continue to move (albeit very slowly) ahead. Negotiations towards a Business and Human Rights Treaty are underway. The resolution for a treaty was introduced by Ecuador and South Africa in 2014.[520] Since then, numerous discussions and drafts have been produced, negotiated. None have yet been approved. The latest draft, published in August 2021, is the Third Revised Draft.[521] NGO informants told me the initiative is unlikely to go anywhere. The lack of progress may be the result of conflicting interests and politics, which chimes with Methven O'Brien's point that we cannot depend on politically structured institutions to 're-embed' social norms.

[519] European Commission, *Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937*, (2022) <https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf> accessed 28 August 2022.

[520] United Nations Human Rights Council, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights (26th session, 25 June 2014) UN Doc A/HRC/26/L.22/Rev.1

[521] OHCHR, *Legally Binding Instrument to Regulate in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises* <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf> accessed 28 August 2022.

However, these developments are important, because they symbolise progress in the social movement. These international developments inevitably affect the actors working in this space, they carry ideas, opinions and perspectives into the UK, which are imported and insinuated into the UK context. S 54 provides a convenient channel or opening for the influence of international movements. In the next section, I focus on the UK's response to the influence of UNGPs.

8.3 Human rights due diligence in the UK

In the following section, I synthesise the ongoing influence of UNGPs following the enactment of the MSA. The influence of UNGPs on UK policy can be traced back to 2009. In Chapter 2, I charted developments up to the Secretary of State for Foreign and Commonwealth Affair's 2016 report: *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*.[522] The report is an update on progress made since the 2013 National Action Plan. It noted that the UK was the first country to produce a National Action Plan to implement the UNGPs and reinforced the government's commitments to do so 'through the Modern Slavery Act and Modern Slavery Strategy.'[523] According to the report, the government gave effect to the UNGPs by enacting s 54.[524] The report did not specifically detail what due diligence meant for businesses, but it did expect

[522] HM Government, Good Business: Implementing the UN Guiding Principles on Business and Human Rights (Updated May 2016) (n 248).

[523] HM Government, Good Business: Implementing the UN Guiding Principles on Business and Human Rights (Updated May 2016) (n 248), 3. Also see, HM Government, National Action Plan (n 246).

[524] HM Government, Good Business: Implementing the UN Guiding Principles on Business and Human Rights (Updated May 2016) (n 248), 8.

due diligence to be carried out, in order to identify, prevent and mitigate human rights risks.[525]

In 2017, the UK's Joint Committee on Human Rights published a more critical assessment of the government's efforts on incorporate the UNGPs. In particular, the report noted shortcomings with s 54.[526] The Committee advocated for integration of human rights due diligence in law and recommended 'the Government bring forward legislative proposals to make reporting on due diligence for all other relevant human rights, not just the prohibition of modern slavery, compulsory for large businesses, with a monitoring mechanism and an enforcement procedure.' Additionally, it reported that while 'the Modern Slavery Act is undeniably an essential addition to the regulatory framework in the UK, it has been criticised for focusing only on transparency in relation to slavery, without requiring companies to address the many other human rights issues that may arise in their supply chains.' Other shortcomings listed by the Committee included: inadequate reporting requirements, no central repository of reports, lack of awareness among businesses, and the fact that public bodies were not included. These were coupled with suggestions for improvement, which included a private members bill that would subject public bodies to the same requirements.[527] The report noted that while the government should be applauded for the passing of the MSA, and had shown genuine leadership, so that the issue of modern

[525] HM Government, Good Business: Implementing the UN Guiding Principles on Business and Human Rights (Updated May 2016) (n 248), 14.

[526] Joint Committee on Human Rights, *Promoting responsibility and ensuring accountability* (n 397).

[527] On 23 May 2016, Baroness Young of Hornsey introduced a Private Member's Bill; it had its Second Reading in the House of Lords on 8 July 2016. The Modern Slavery (Transparency in Supply Chains) Bill141 seeks to amend the MSA but failed to pass.

slavery had been raised in the boardrooms of large companies, it needed a central list of companies required to report. This, coupled with the fact that the reporting requirements on transparency in supply chains were weak, made it very difficult to hold companies to account.

According to my informants in the Home Office, the report prompted a shift in the government's approach and engagement with the MSA. The Home Office established a group known as the Businesses Against Slavery Forum in October 2017, which consists of the CEOs of 30 multinational companies.[528] They represented some of the largest companies in the UK – who collectively employ over 800,000 people and have a combined turnover of more than £140 billion a year. The Forum discussed several company-led initiatives that had been undertaken in partnership with the government, including Co-op's 'Bright Future' programme, which gives survivors of modern slavery a pathway to paid employment, and HSBC's 'survivor bank accounts'.[529] As the Home Office representative said, 'collaboration is essential to tackle conditions of the poor and living wages. These issues are not easily resolved at a government level or enforcement level, and they have to be resolved with businesses engaging directly with suppliers.' It seems the government recognised the need to be more proactive.

In April 2018, however, the House of Commons Committee of Public Accounts painted a bleak picture of the MSA's performance to date. In a report entitled 'Reducing

[528] Home Office 'Leading businesses unite to tackle slavery' (*gov.uk*, 10 October 2017) <https://www.gov.uk/government/news/leading-businesses-unite-to-tackle-slavery > accessed 28 August 2022.

[529] Home Office and Victoria Atkins MP 'Victoria Atkins chairs business against slavery forum today' (*gov.uk*, 23 July 2018) https://www.gov.uk/government/news/victoria-atkins-chairs-business-against-slavery-forum-today accessed 18 November 2022.

Modern Slavery', it criticised the Home Office for not maintaining a list of the businesses that s 54 applies to, not knowing how many had produced statements to date and not monitoring whether statements complied with the legislation. The report suggested that the Home Office had been operating with a 'hands-off' approach and said it '…relies on NGOs, investors and consumers to monitor compliance, including two NGO-managed registries of statements.' The Committee did not think this was an effective approach, as compliance with the legislation had been low: with only an estimated 30 per cent of businesses required to publish a statement having done so. The Home Office was also told to publish a list of companies who have complied and not complied with the legislation, rather than relying on NGOs to police the system. In response, the Home Office agreed to reconsider its 'hands-off' approach to s 54 and stated that it was open to conversation about the government's role in monitoring and enforcing compliance. Although its preference was to encourage rather than punish, this was 'not a static position from the Home Office'. But a member of the Modern Slavery Unit at the Home Office told me in June 2018 that implementation of s 54 was deliberately loose, and people simply needed to understand that it is a different kind of law. The Public Accounts Committee concluded that the government did not fully understand modern slavery and that ministers had no idea whether the initiatives and legal measures were working.

Amidst mounting pressure, in October 2018, the Home Office wrote to the chief executives of 17,000 UK companies telling them to 'open up about modern slavery in their supply chains.' It warned that the Home Office would publish a list of non-compliant companies following an audit of statements on 31 March 2019. The recipient companies looked to law firms for reassurance that the letter was not explicitly addressed to them, but

generic. But these letters caused many companies to be concerned that they would be included on a Home Office list of 'non-compliant' companies and that this list would be published on 31 March 2019. However, the list was never published. Since then, the Home Office explained that the date was not a reporting deadline, but to indicate when the audit would commence. The audit would be conducted against the 'minimum legal requirements' stipulated in s 54 and whether statements meet the standards set out in its guidance. The Home Office did conduct an audit, but the results were never made public. Instead, NGOs assumed that the Home Office used the information to engage with non-compliant companies by threatening to name them publicly.

In July 2018, the Government commissioned Frank Field MP, Maria Miller MP and Baroness Butler-Sloss to undertake an independent review of the MSA. The aims of the review were: (1) to report on the MSA's operation and effectiveness; and (2) to understand how it was operating in practice, how effective it was, and whether it was fit for purpose now and in the future.[530] The final report of the review was submitted to the Home Secretary on 29 March 2019 and laid before parliament on 22 May 2019 ('the Independent Review').[531] With respect to s 54, its recommendations related to: (1) the application of the law, (2) the oversight or enforcement role of the Government, and (3) the public procurement requirements. A Home Office staff member also told me that he recognised that there were issues with s 54 and saw the Independent Review of the MSA as a way

[530] HM Government, *Independent Review of the Modern Slavery Act 2015* (n 315).

[531] HM Government, *Independent Review of the Modern Slavery Act 2015* (n 315).

towards improving it. The Home Office seemed to recognise the flaws, as it then commissioned another review.

The Independent Review recommended that the MSA should no longer allow companies 'to state they have taken no steps to address modern slavery in their supply chains' and that 'the six areas of reporting currently recommended in the guidance should be made mandatory'.[532] Moreover, it recommended that the Companies Act 2006 'should be amended to include a requirement for companies to refer to their modern slavery statement in their annual reports' and that failure to report 'or to act when instances of slavery are found should be an offence under the Company Directors Disqualification Act 1986.'[533]

Second, the Independent Review recommended that the Government adopt more substantive enforcements steps, instead of relying entirely on civil society organisations, the public and investors for accountability. The recommended steps listed a range from fairly modest ones, such as setting up a central repository for statements, to more proactive steps, such as active monitoring by the Independent Anti-Slavery Commissioner. It recommended more robust enforcement, including sanctions for non-compliance and establishment of an enforcement body.[534] To this end, Recommendation 30 is particularly notable:[535]

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[532] HM Government, *Independent Review of the Modern Slavery Act 2015* (n 315) para 17.

[533] HM Government, *Independent Review of the Modern Slavery Act 2015* (n 315) para 18.

[534] HM Government, *Independent Review of the Modern Slavery Act 2015* (n 315) para 17.

[535] HM Government, *Independent Review of the Modern Slavery Act 2015* (n 315), Recommendation 30.

> The Government should make the necessary legislative provisions to strengthen its approach to tackling non-compliance [with s 54 of the Act], adopting a gradual approach: initial warnings, fines (as a percentage of turnover), court summons and directors' disqualification. Sanctions should be introduced gradually over the next few years so as to give companies time to adapt to changes in the legislative requirements.

The Independent Review also recommended that 'Government extend s 54 requirements to the public sector and strengthen its public procurement processes.' The recommendations reflect Pillars one and two of the UNGPs. But in the final report, the Independent Review made no reference to the UNGPs.

The passage of the Australian MSA 2018 encouraged NGOs to press the UK government to amend s 54 to 'keep up with international standards'. They argued that the UK should 'not fall behind Australia and other jurisdictions' that were seen as having more progressive legislation, namely France, the Netherlands, and Germany. But criticisms of the Australian MSA also emerged. In particular, civil society organisations were concerned that the law suffers from a similar lack of independent oversight and sanctions as the UK MSA.[536] The Act improves on the UK Act, but as some academics argued, reporting requirements are not enough.[537] One informant from an NGO told me that while there is a role for transparency style legislations (like s 54) with its retrospective reporting, 'such an approach is inherently limited because it's backward looking and you don't actually have

[536] BIICL *Study on due diligence requirements through the supply chain* (January 2020) <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en> accessed 28 August 2022, 197.

[537] Nolan and Boersma (n 333) 136-137.

to do anything, you just have to report. So really, if the UK wants to remain in its self-presented position as a world leader, then it has to catch up with the direction of travel on HRDD across Europe.'

8.3.1 Investment in research and monitoring

In response to the criticisms, on 9 July 2019, the Government announced that a £10 million policy centre in its response to the Independent Review into the Modern Slavery Act. The Modern Slavery Policy and Evidence Centre ('MSPEC') was created when by public funding from the Strategic Priorities Fund to enhance understanding of modern slavery and transform the effectiveness of law and policies designed to overcome it.

The MSPEC was designed with the aim of bringing together academics, policymakers, businesses, civil society, survivors and the public on a scale not seen before in the UK, to collaborate on solving the global challenge. Led by the Bingham Centre for the Rule of Law and funded by the Arts and Humanities Research Council (AHRC) with support from the Economic and Social Research Council (ESRC), the Centre is a consortium of universities and independent research organisations. The partners in the consortium are the Rights Lab at Nottingham University, the Wilberforce Institute at Hull University, the Centre for the Study of International Slavery at the University of Liverpool, the Bonavero Institute of Human Rights at Oxford University and the Alan Turing Institute. The Centre focuses its research on four main areas: victim and survivor support and recovery; prevention; product supply chains; and legal enforcement measures. The research that the MSPEC conducts is supposed to be 'innovative, collaborative, and aim to drive real policy change.'

In September 2020, the government announced its commitment to several changes including: (1) mandatory reporting areas, (2) mandating organisations captured by s 54 of the Modern Slavery Act 2015 to publish their statement on the Government-run reporting service, (3) introducing a single reporting deadline, (4) amending legislation to make the current requirements on statement sign-off and group statements clearer, and (5) extending the provision to public bodies, using the budget threshold of £36 million.[538] Additionally, the government sought views on sanctions for non-compliance and, noting that it would consider enforcement options, including the development of a single enforcement body empowered to impose civil penalties, in due course.[539]

On 11 March 2021, the Home Office launched a modern slavery statement registry online to provide a platform for organisations to share the positive steps they have taken to tackle and prevent modern slavery.[540] The registry aims to enhance transparency and accessibility by bringing modern slavery statements together and making it easier to find and compare them. It is supposed to allow users, such as consumers, investors and civil society, to search for statements and scrutinise the action organisations are taking to identify and address modern slavery risks in their operations and supply chains. The registry follows a commitment from the government to strengthen the MSA reporting,

[538] Home Office and Victoria Atkins MP, 'New tough measures to tackle modern slavery in supply chains' (*Gov.uk*, 22 September 2020) <https://www.gov.uk/government/news/new-tough-measures-to-tackle-modern-slavery-in-supply-chains> accessed 3 January 2021.

[539] Home Office, *Transparency in Supply Chains Consultation: Government Response* (2020), 14 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf> accessed on 22 August 2022.

[540] Home Office, 'Government launches modern slavery statement registry' (*Home Office*, 11 May 2021) <https://www.gov.uk/government/news/government-launches-modern-slavery-statement-registry> accessed 28 August 2022.

following the Independent Review, and publication of the world's first Government Modern Slavery Statement in March 2020.[541] For now, it is voluntary to submit statements to the digital registry, but this may change with the setting of a single reporting deadline for statements and the introduction of financial penalties for commercial organisations that fail to meet their obligations under the Act's transparency provisions.

8.3.2 Matching action to words: amending s 54

By 2020, it appeared that the government was serious about implementing the changes it had promised, first with the government's first MSA statement, pushed despite the absence of any change in law.[542] It aimed to 'lead the way' for the public sector which spends £50 billion a year on procurement. The statement set out the government's efforts, its direct engagement with around 400 suppliers, and the training it had delivered to over 250 government commercial staff. The statement also included a plan and goals for ministerial departments to work towards as they prepared to publish their statements from 2021 onwards. The 29-page long document was prefaced by the Prime Minister, Boris Johnson who stated that:

> As a government, we don't have to produce this statement. But we want to. Because the brutal truth is that modern slavery will endure only as long as it is profitable for the criminals – and it will only remain profitable as long as businesses and governments are prepared to look the other way. In

[541] Home Office, Guidance: Add your modern slavery statement to the statement registry (*Home Office*, 23 February 2021) <https://www.gov.uk/guidance/add-your-modern-slavery-statement-to-the-statement-registry> accessed 28 August 2022.

[542] HM Government, *UK Government Modern Slavery Statement* (n 457).

> 2020, for millions of people around the world, the price of liberty remains eternal vigilance. And, as this statement shows, the UK government continues to lead the way in providing just that.

The statement relates to 24 ministerial government departments, which collectively spend around £50 billion with 1,748 suppliers, who earn over £36 million in turnover a year, this only includes the largest companies, the so-called 'tier one' suppliers, which are in a direct contractual relationship with the department.[543] Most companies I spoke to confirmed that second-tier suppliers are more challenging to identify.

The government's MSA statement described the first steps of its own attempt to comply with the MSA and put pressure on ministerial departments to go beyond the statutory requirements. The report declared that the government had now started to 'match words with actions.' The Prime Minister's forward stated that:

> if we are serious about tackling this increasingly pervasive evil then words alone are not enough – we have to take active steps to drive it out of our supply chains. And then we have to go out, look under the bonnet, peer into the shadows and satisfy ourselves that we have succeeded in doing so.' Showing the British people what we are doing to tackle slavery, exploitation and trafficking and letting them suggest where we could do more. And, I hope, setting an example that will be followed by governments and businesses right around the world.'

[543] HM Government, *UK Government Modern Slavery Statement* (n 457).

Interestingly, since the statement was published, there have been no articles, reports, or commentary that I could find. It would appear that the government's MSA statement has largely escaped critique. One interpretation of this might be that by exceeding the requirements of the law, the government has also escaped NGO critique for now. But when I asked my NGO informants about this, they suggested that it was because civil society have already moved on from the MSA. All their resources and energy have converged to push for HRDD. Just five years ago, the MSA was heralded as a 'world-leading provision to encourage businesses to take action to ensure their end-to-end supply chains are slavery-free', it now seems that it has fallen behind the broader movement.[544] My informants stated while the government was keen to maintain s 54's position, the focus among civil society has changed. She explained:

> If the UK wants to remain in its self-presented position as a world leader, then it has to catch up with the direction of travel on mandatory HRDD across Europe. It's not a case of introducing mandatory HRDD to build on the MSA, the MSA is one approach which has its benefits, but mostly it doesn't really work. Mandatory HRDD is distinct and separate and that's where you need to be, if you want to be a leader on responsible business. On the MSA, well, there is still mileage in it, and you know we would want to see some of the recommendations in the review implemented in some form, but really the priority for us is HRDD now.

[544] Home Office, 'Historic law to end Modern Slavery passed' (*gov.uk*, 26 March 2015) <https://www.gov.uk/government/news/historic-law-to-end-modern-slavery-passed> accessed 28 August 2022.

But the government's message in mid-2020 was clear: 'It's not enough for government and businesses to simply say they don't tolerate modern slavery. As we take stock of both the challenges faced and achievements made, we must match our words with actions.' In September 2020, it announced a change from recommended reporting categories to mandatory ones.[545] The government indicated that, when Parliamentary time permitted, the government would enact primary legislation to bring these measures into force.[546] By the start of 2021, the UK government had announced significant changes to s 54, including more mandatory requirements and tougher sanctions in the Modern Slavery Amendment Bill 2021. In March 2021, it launched a new Home Office-run modern slavery registry[547] and on 8 June 2021, it launched a new workers' watchdog to protect the rights of UK workers, including the responsibility for monitoring compliance with the MSA.[548]

On 15 June 2021, the Modern Slavery (Amendment) Bill was introduced into the House of Lords. Lord Alton, who tabled the Bill, is a Crossbench Peer in the House of Lords affiliated with the organisations, ARISE, an anti-slavery NGO, and the Inter-Parliamentary Alliance on China. The intention of the Bill is to: 'Prohibit the falsification of slavery and human trafficking statements; to establish minimum standards of transparency in supply chains in relation to modern slavery and human trafficking; to

[545] Home Office, *Transparency in Supply Chains Consultation: Government Response* (n 545).

[546] HC Deb 22 September 2020, vol 680, The Parliamentary Under-Secretary of State for the Home Department (Victoria Atkins).

[547] Home Office, 'Government launches modern slavery statement registry' (n 546).

[548] Department for Business Energy & Industrial Strategy, *Establishing a new single enforcement body for employment rights* (June 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991751/single-enforcement-body-consultation-govt-response.pdf> accessed 28 August 2022.

prohibit companies using supply chains which fail to demonstrate minimum standards of transparency; and for connected purposes.'[549]

The Private Members Bill seeks to amend the MSA 2015 (1) to make it a criminal offence to supply a false modern slavery statement, (2) to establish minimum standards of transparency in supply chains in relation to modern slavery and human trafficking; and (iii) to prohibit companies using supply chains which fail to demonstrate minimum standards of transparency.[550] The proposed Act would mandate reporting topics that statements must cover and require that they be published on a new government-run modern slavery statement registry.

The Bill proposes that a person would be responsible for a statement if they are a director (for a corporation), partner (for a partnership) or a member (of a limited liability partnership). This s would put additional pressure on them to verify the accuracy of modern slavery statements published under the Act. Similar provisions are included in the Australian MSA and proposed Canadian modern slavery legislation. There would be a defence if the responsible person can show they took all reasonable steps to ensure that the statement was correct, and if they informed the Independent Anti-slavery Commissioner as soon as practicable after becoming aware that the statement contained information that was false or incomplete in a material particular.

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[549] Modern Slavery (Amendment) Bill <https://bills.parliament.uk/publications/41860/documents/390> accessed 28 August 2022.

[550] Sam Eastwood, James Ford and Libby Reynolds, 'UK Modern Slavery – a Bill to prohibit the "falsification" of slavery and human trafficking statements' (*Lexology*, 2021) <https://www.lexology.com/library/detail.aspx?g=7e2018f0-5c57-4256-974b-fac5f5a4a7a4> accessed 28 August 2022.

A new s 41(5A) to the Act would introduce three new transparency requirements. Under this s, a subject company would be required to: 'publish and verify information about the country of origin of sourcing inputs in its supply chain; arrange for credible external inspections, external audits, and unannounced external spot-checks; and report on the use of employment agents acting on behalf of an overseas government.' These requirements go beyond existing disclosure provision and would require enhancements to many companies' modern slavery compliance programmes, similar to conducting due diligence checks.

The Bill has had its first reading in the House of Lords, with the date for the second reading still to be announced.[551] As with all Private Member's Bills, particularly under a strong majority government, its success depends on government support. The Bill would have to make its way through both Houses of Parliament. During this process, it is likely to be revised and changed. But private member's bills rarely progress successfully through both Houses, given the limited amount of parliamentary time afforded to them and difficulty with achieving cross-party support.

Despite this, the evidence presented here, as well as the conclusions drawn in Chapter 7, have shown that there is an ongoing, dynamic and recursive relationship between UNGPs and s 54. It shows that there is an open channel of dialogue between the national and international, facilitated by a range of actors with a myriad of motivations and interests, and resulted in concrete changes in the government's behaviour and in law. Writ

[551] UK Parliament, Modern Slavery (Amendment Bill): Private Members' Bill (Starting in the House of Lords) <https://bills.parliament.uk/bills/2892/stages> accessed 28 August 2022.

large, they represent the struggle between market interest and social interest. Which as Polanyi points out, is the process of embedding, an iterative movement.

8.4 Moving on from s 54

While it was surprising that NGOs have decided to abandon s 54, a provision they supported, in favour of HRDD, there is substantial evidence around to corroborate this change of tact. Parallel to the developments above and since the Joint Committee on Human Rights and Business 2017 report, which called for mandatory HRDD, [552] lobbying for mandatory HRDD on all human rights and environmental issues have gained momentum. In a 2019 report, the British Institute of International and Comparative Law/Bingham Institute ('BIICL') cited business dissatisfaction with the current lack of clarity and legal uncertainty. They suggested that given the support for due diligence requirements, the UK should adopt a new law based the 2010 Bribery Act, which includes sanctions and direct liability for company directors who fail to prevent corruption.:[553]

> We recommend that any failure to prevent legislative provision should cover companies of all sizes, including SMEs, carrying on business in the UK. Guidance should clarify the recognition that any due diligence processes should be proportionate to their size and the complexity of their operations…A duty to prevent should extend to harms which take place in the entire value chain of a company, regardless of the jurisdiction of the

[552] Joint Committee on Human Rights, *Promoting responsibility and ensuring accountability* (n 397), 42. The JCHR stated: 'We also recommend that the Government bring forward legislative proposals to make reporting on due diligence for all other relevant human rights, not just the prohibition of modern slavery, compulsory for large businesses, with a monitoring mechanism and an enforcement procedure.'

[553] Irene Pietropaoli and others, *A UK Failure to Prevent Mechanism for Corporate Human Rights Harms* (*BIICL*, 2019) <https://www.biicl.org/documents/84_failure_to_prevent_final_10_feb.pdf> accessed 29 August 2022.

harm, in accordance with the UNGPs. Guidance should elaborate on the meaning of harms in the company's own activities and those of business relationships.

If the new law is adopted, BIICL's proposal would also include a provision imposing liability on company directors who fail to prevent modern slavery in their operations.

In the Summer of 2020, a Sunday Times article exposed the appalling working conditions in garment factories in Leicester, which made clothes for the online retailer, Boohoo. When the scandal was revealed, the shares of Boohoo dropped significantly. Boohoo commissioned a review conducted by Alison Levitt QC in September 2020.[554] She found Boohoo's extraordinary commercial growth has been so fast that its governance processes had failed to keep pace. The company had concentrated on profit at the expense of the workers' well-being. She also found that as a publicly listed company, Boohoo failed in its broader responsibilities, including a failure to act in the best interests of all the shareholders. The report stated that 'there may be evidence of breaches of the United Nations Guiding Principles on Business and Human Rights.[555] In another report by Otty and Patel: 'Boohoo could have been found liable for breaches of the Guiding Principles under mandatory human rights due diligence/UK 'failure to prevent' legislation…had such legislation been in place during the relevant period of time.' They added, 'Of course, it is

[554] Levitt QC, *Independent Review into the boohoo Group PLC's Leicester supply chain* (n 62)

[555] Tim Otty QC and Naina Patel, *In the matter of the findings of a review into the Boohoo Group Plc'S Leicester supply chain and liability under a mandatory human rights due diligence/ 'failure to prevent law* <https://media.business-humanrights.org/media/documents/Boohoo_Legal_Opinion_1.pdf> accessed 28 August 2022.

difficult to speculate as to whether Boohoo might have behaved differently had such legislation been in place. However, Boohoo's story is a compelling example of a situation in which such legislation might have made a difference, either by encouraging appropriate action to be taken earlier or by providing a means of redress for those affected by the allegations found to be substantially true.' [556]

The BIICL report was not alone in calling for mandatory HRDD legislation.[557] 28 NGOs, including Corporate Justice Coalition, Amnesty International, the Business Human Rights Resource Centre, Freedom United, have called for the UK to demonstrate leadership on business and human rights.[558] Their statement, published on 1 July 2021 and sent to parliamentarians and policy aides, called for a new due diligence law with liability. This statement was formulated in terms that reflected UNGPs and they argued that a new UK law is vital to ensure the delivery of the UN Sustainable Development Goals (SDGs), and in doing so, meet G7 commitments to ensure respect for human rights. They said it would align the UK with an emerging international consensus on these issues, help deliver a meaningful 'Global Britain' vision.

Meanwhile, according to one NGO informant, the UK government was 'stubbornly focused on "modern slavery", and not seeing the bigger human rights picture.' She said

[556] Brett Mathews, 'Due diligence laws would have held Boohoo liable' (*Apparel Insider*, 22 Oct 2021) <https://apparelinsider.com/due-diligence-laws-would-have-held-boohoo-liable/> accessed 28 August 2022.

[557] UNGPs are incorporated into corporate policies, academic commentary and NGO or consultancy reports. See for example: Hetty Gittus and others, *The Sancroft-Tussell Report: Eliminating modern slavery in public procurement second edition* (2018), House of Commons Committee of Public Accounts (n 30), Modern Slavery and Human Rights All-Party Parliamentary Group on Sport (n 465), HM Government, *Independent Review of the Modern Slavery Act 2015* (n 315).

[558] Corporate Justice Coalition and others, 'UK: It is time for the UK to demonstrate leadership on business and human rights' (1 July 2021) <https://corporatejusticecoalition.org/wp-content/uploads/2021/06/CJC-UNGPs-statement-0621-2.pdf> accessed 28 August 2022.

this means that the UK will immediately fall behind the EU on human rights and environmental protections. This argument appeared to hold sway for businesses. A corporate informant said the piecemeal adoption of 'due diligence' could create confusion and uncertainty for businesses. UK companies operating in the Single Market would be obliged to follow mandatory human rights and environmental due diligence laws, while those outside it would not. I am also told by some corporate informants and external lawyers that UK businesses are keen to avoid the 'spaghetti soup' of inconsistent and unilaterally designed national legislation across numerous jurisdictions. Corporations want to minimise their workloads by persuading like-minded states to establish an international standard reflected in national legislations.[559] For this reason, businesses in the UK seem to be equally enthusiastic about HRDD proposals, because it would 'level the playing field' and avoid confusion between different jurisdictions. In October 2021, 36 companies, investors and business associations released a joint statement calling on the UK government to introduce a Human Rights and Environmental Due Diligence law. Signatories to the statement include John Lewis, Tesco, ASOS, Primark, Unilever and the British Retail Consortium. They wrote:

> We call for the UK government to urgently bring forward ambitious primary legislation to mandate companies to carry out human rights and environmental due diligence. To level the playing field in practice, the requirement needs to be accompanied by consequences that will be strong enough to ensure that businesses that fall within the scope of the

[559] Phil Bloomer, 'A year after the UK Modern Slavery Act, time for a Global Modern Slavery Agreement?' (*Thomson Reuters*, 31 March 2017) <https://news.trust.org/item/20170331091619-akvgh/> accessed 28 August 2022.

legislation carry out HRDD to a high standard and that victims have access to justice.

On 28 January 2022, the Coalition for Corporate Accountability, a group of NGOs proposed a new law, to be known as, 'Business, Human Rights and Environment Act' (BHRE). A petition in its favour has garnered over 52,635 signatures. Traidcraft Exchange, Freedom United, SumOfUs and Anti-Slavery International, are all involved. My NGO informants tell me that this move is contingent on the EU going ahead with its HRDD directive law in February (mentioned in s 8.2.2 above), which would gain media coverage and allow UK NGOs to work towards securing a cross-party MP-tabled Westminster Hall Debate in the first half of 2022. This Coalition has already appeared at the Labour Party conference to engage in advocacy to secure political commitment across parties to a new UK law.

According to some NGO informants, the UK's commitment to amend s 54 is a rejection of the UNGPs duty on corporations to prevent all human rights and environmental abuse, but by maintaining s 54, they accuse the government of permitting businesses to report on narrowly on 'modern slavery', and avoid accountability for less extreme forms of labour exploitation. This new and emerging debate contains familiar echo of critique and discontent outlined in Chapter 3, including NGO dissatisfaction and the support of large corporations for regulation. But as the movement gains momentum within the UK, it is worth asking: could we have gotten so far without s 54? An informant legal advisor, who works with large corporations did not think so. She explained:

[HRDD] is the kind of thing that you need to socialise companies to. It is a relatively new concept and for a lot of companies. I don't know how

> much longer the MSA can be effective, if you can say it's effective at the moment – in some ways yes, in some ways no,. But s 54 did a lot to socialise the business community to these ideas, buying them more time before HRDD became mandatory. Because that's where this is going, and my clients are already prepared for the next step.

One conclusion emerges from this analysis: s 54 initially merged with HRDD by calling on the spirit of the law and to go beyond the provision. Over time, with the international shift towards HRDD and such pressures came to bear on the UK government, it accepted and promised to make limited changes s 54. But rather than being satisfied with the amendments, this slight movement has also opened the conversation to new mandatory HRDD legislative proposals, with broader human rights scope. I understand this phenomenon as a bifurcation and departure from earlier attempts by NGOs and large businesses to align s 54 with international standards.

8.5 Conclusion

The key question addressed in this Chapter is whether and how did international movements affect s 54. I approached this question by looking beyond the UK and at the BHR initiatives stimulating new legislation around the world. By tracing these developments beyond the UK, it highlighted the UNGP's normative influence over s 54 and revealed that s 54 is one step in socialising UK-based corporations towards HRDD.

In Chapter 3, I introduced the frequently discussed but rarely analysed phrase: 'beyond the law' and in Chapters 4, 5 and 6, I explored what the phrase entailed. In summary, I found that it meant doing more than merely reporting, it involved a myriad of

actors, examining risks, legal, business and social, within corporations and beyond. They devised various ways to minimise perceived risks with many referring to these activities as going 'beyond compliance', including carrying out checks in supply chains, conducting heat mapping exercises and audits. With the findings in this chapter, and in practical terms, 'beyond compliance' meant conducting HRDD in line with the UNGPs. These practices, along with debates at the international level (at UN Forums and through domestic legislation), contributed to the sense of a 'paradigm shift'. The international discussion permeated and integrated with s 54 through advocacy and lobbying, which resulted in recommendations to amend s 54 following an Independent Review of the MSA in 2019.[560] Some of the recommendations from the review bore the hallmarks of HRDD, and reflected the principles of the UNGPs. It was clear that there is a recursive relationship between national law and international norms as the UK government committed to introducing a range of amendments to strengthen s 54.[561]

But this is not victory, nor the end of the journey for campaigners. In the last year, discussions around HRDD and the UNGPs have gained momentum. Standalone legislation to require mandatory HRDD has been proposed, which would require companies to conduct due diligence in respect of *all* human rights, not just for modern slavery. With the possible introduction of HRDD, the business and human rights movement will continue to evolve, generating more interaction between international norms and s 54 in years to come. And, as new legislation is being proposed with the support of businesses and civil society,

[560] HM Government, *Independent Review of the Modern Slavery Act 2015* (n 315).

[561] Home Office, *Transparency in Supply Chains Consultation: Government Response* (n 538).

it now seems to have only been the start of a bigger movement for corporate due diligence and accountability.

9. CONCLUSION

9.1 Introduction

The approach that I have taken in this thesis is radically different to the majority of existing scholarship on s 54. It was tempting to join the chorus of critique and portray s 54 as weak, a provision without 'teeth'. But the dominant perspective made assumptions about how regulations should work and failed to understand that their stance on s 54 was part of socially constructed movement. There is no doubt that s 54 is an unusual provision: it is light on requirements, contains no penalties for breach, there are no monitoring mechanisms to ensure compliance or facilitate enforcement, and it purports to govern activities beyond its borders. Its subject matter is new and 'modern slavery' is not legally defined. When it was enacted, the response was generally positive. Some commentators regarded it as a breakthrough in the fight against modern slavery.[562] The provision requires all commercial organisations operating in the UK and turning over more than £36 million a year to produce MSA statements, which must either set out the steps taken to prevent modern slavery or state that no steps have been taken. But soon after, activists, academics and NGOs began to raise concerns about s 54's inability to hold corporations accountable for exploitative labour practices hidden in their international supply chains.

In contrast to most empirical studies of s 54, which have tended to consider whether the provision is effective or ineffective, my focus was to understand the 'wider effects than

[562] Annie Kelly, 'The UK's New Slavery Laws Explained: What Do They Mean for Business?' *The Guardian* (14 December 2015) <https://www.theguardian.com/sustainable-business/2015/dec/14/modern-slavery-act-explained-business-responsibility-supply-chain> accessed 28 August 2022; Independent Anti-Slavery Commissioner, *Independent Anti-Slavery Commissioner Strategic Plan 2015-2017* (October 2015), 10.

[s 54's] purely legal outcomes'.[563] I asked, (1) what type of law is s 54? (2) How did corporations perceive and respond to s 54? (3) Who took part in its implementation? (4) What does compliance with and enforcement of s 54 reveal about light-touch and the role of law in society? (5) How have the provision and reactions to the provision developed over time? (6) How can we understand s 54 and subsequent changes and proposed reforms to it?

By analysing the responses to and development of s 54 between 2018 to 2021, through a variety of analytical and theoretical perspectives, this thesis has shown that even light-touch regulations can have wide-ranging and unforeseen consequences. Through semi-structured interviews I engaged with lawyers, corporate employees, government representatives, NGO and civil society activists, multilateral organisations, inter-governmental organisations, think-tanks, service providers, consultants, data solutions experts, and ever-increasing partnerships and hybrid organisations that have a commercial stake in the implementation of s 54. I found an extensive reaction to this provision 'without teeth', in terms of the range and number and types of individuals involved, which went beyond mere compliance. Their activities generated new thinking, vast amounts of information, new commercial practices and ethical norms.

9.2 Primary findings

My findings indicated that the UK government had intended the provision to be a light touch minor intervention, and not too onerous for businesses to comply with. But in practice, the provision caused a range of actors to respond in complex ways. Beyond

[563] McBarnet, Voiculescu and Campbell (n 57) 175.

compliance with the basic requirements, company employees and their advisors were generally motivated and guided by strong moral norms, informed by years of working in CSR. Moreover, corporate employees felt a legal and moral obligation go 'beyond compliance'. To merely comply was regarded as a lack of sincerity and commitment to the modern slavery problem and the 'spirit' of s 54. To do so was often met with derision and accused of doing no more than 'ticking the box'. The struggle between commercial interests and ethical values was a constant theme across different levels and organisations, but commercial gain was not an obvious winner in every case. Instead, a process of careful consideration and negotiation was undertaken to work out the competing interests, one that is both practical and aspirational.

Significantly, s 54 echoed CSR values, but it was shrouded in a formal garb. It had become law through a formal Parliamentary process, and it looked like other forms of corporate disclosure regulation, such as the non-financial reporting requirements of the UK Companies Act 2006. It also closely resembled regulations such as the UK Bribery Act 2010, and the CA-TISC, which had extraterritorial effects. 'Modern slavery' as law was perceived as legal risk. To lawyers and corporate counsels, who worked in a changing regulatory landscape, s 54 as part of a movement from corporate responsibility to corporate liability. They responded to it seriously and perceived the provision as a 'hardening' of soft standards, despite the lack of sanctions and mandatory requirements, it signalled a move toward corporate legal liability. Symbolically and practically, the provision and responses to it certainly went further than the UK government had imagined they might.

This thesis both describes and explains these findings. In doing so it explored the context of the broader CSR movement, the social concerns and commercial interests at

stake, the actors involved, their interactions and collaborations, and a burgeoning movement in business and human rights.

My findings were presented chronologically in five parts. First, I set the scene in Chapter 2 with a discussion of the origins of s 54 and the nature of modern slavery in supply chains. I suggested that s 54 could be seen as part of existing social movements in CSR, and the legal mechanism was justified by deregulation and light touch disclosure, a form of regulation familiar to many businesses already. Chapter 3 described the reactions of civil society and corporations to s 54, especially how corporations 'scrambled to comply', which demonstrated a public and private side of each actor/organisation, including those normally classed as 'social'. In Chapter 4, I delved into the world of corporate employees, which explored the complex negotiations that took place behind polished and legalistic MSA statements. In doing so, I considered how 'beyond compliance' had a temporal effect to social 'embeddedness'. In Chapters 5 and 6, I explored the role of legal advisors and actors working with corporations to facilitate 'beyond compliance', fuelling a market for advice, driven by concepts of 'risk', which was at least in part, informed by social values. The 'market' was constituted by 'social actors' after all. Finally, in Chapters 7 and 8, I focused on the international and transnational reach of s 54 and suggested that the provision was becoming an instrument of foreign policy, with transnational actors, including transnational NGOs, IGOs and think-tanks, who sought to reconcile s 54 with a new social movement in business and human rights and mandatory 'human rights due diligence'. Taken together, 'beyond compliance' can be regarded as 'pre-emptive compliance'.

9.2.1 Overlapping fields and networks

Initially, corporations did little more than comply with the bare minimum. This bought them time in which to figure out a coherent approach. When I delved deeper, behind the glossy MSA statements, I found that within large businesses, employees formed working groups, developed innovative strategies, hired new staff, engaged with experts and attended conferences to learn about s 54. This was far from the minimal impact described by critical NGOs.

I uncovered unexpected collaborations between a vast range of individuals, organisations and professional networks. Within corporations, the departments most involved with s 54 compliance were: compliance, legal, procurement and sustainability. Outside of corporate entities, the relevant actors mirrored the internal functions and the different interests they represent: legal advisors, specialist technical advisors, business consultants, NGOs, academics, public authorities, media, think tanks, IGOs and government. At conferences where actors presented a public image that aligned with the principles of their professions, one might have concluded that these groups worked in opposition to one another: lawyers advised on legal risk, NGOs criticised corporations, and corporations sought to persuade governments to regulate less, in favour of voluntary measures.

The groups provide a helpful starting point in understanding the regulatory space, but in practice, there were no bright lines between these actors or their disciplines. Behind the scenes, the picture is much more complex and interactive: there were extensive collaborations, solutions were negotiated, compromises worked out, and roles were fluid.

NGOs functioned as consultants, lawyers became moral compasses and corporations led the way with 'beyond compliance' solutions. My findings demonstrate how they interrelate, relying on organic and intuitive personal networks based on trust and shared understandings. My thesis provides a sense of the interactions and separateness of different actors and groups, by describing who some of them are and how they interact.

One of the effects of overlapping 'fields' includes how new laws are received by organisations. According to Edelman, one effect is known as 'legal endogeneity', which can occur when law is adopted by organisations and changed by 'managerial' practices, for example, when s 54 is reinterpreted by corporations to fit commercial values and reframed by lawyers as business risk. McBarnet suggested that compliance can become evasive through 'creative' legal interpretations. Alternatively, Lange and Haines suggest that social actors can exert pressure and encourage interpretations that correspond with social values and moral norms. As my research showed, social actors worked closely with companies to encourage 'a race to the top'. They published annual rankings, 'naming and shaming' those companies who have not engaged with s 54. NGOs also warned corporations that their brand would be at risk if 'modern slavery' was found, which could include different forms of exploitation, from passport confiscation to paying less than the living wage. The scrutiny and participation of civil society, NGOs, lawyers, consultants, academics, policy makers and activists collectively pushed corporations to go 'beyond compliance' to minimise foreseeable, long-term risk. My research identified a novel effect of the complex interaction between actors, 'fields' and 'systems' in the s 54 regulatory space: that the light touch regulation can encourage change beyond compliance, including pre-emptive compliance.

9.2.2 Internal struggles

Within most large multinational corporations, s 54 attracted the attention of procurement officers on the business or profit-making side of operations, and administrative employees, such as general counsels, compliance officers, human resources managers, sustainability officers, and human rights directors. The employees committed to leading their companies towards 'doing the right thing' understood the limits of corporate governance structures and corporate priorities. They noted tension between doing the right thing and doing what is commercially viable. At the opposite end of the scale, there were also employees who disowned parts of the MSA compliance requirements on the basis that 'it's not my job'. My research revealed that s 54 challenged these relationships and existing structures, as it requires close coordination and cooperation and key understanding of each other's role and the mutual dependencies.

General counsels and compliance officers were the first responders. They functioned as 'gatekeepers and strategic officers' in relation to s 54.[564] These specialists have been described as 'businesspeople who happen to know the law'. Their remit include 'compliance, monitoring, and business development'.[565]

The compliance officers I met had a similarly difficult task of formulating coherent judgements based on a range of external and internal values, including ethics. In Sampson's research, he observed that beyond mere compliance, there is also a normative aspect of ethics, which is often invoked as 'doing the right thing'. The sustainability officers are

[564] Morse, Wang and Wu (n 356, 357).

[565] Morse, Wang and Wu (n 356, 357).

'therefore not seen as just having a job but an ethical mission: they are the moral watchdogs of their companies, ensuring that employees, managers, board members follow both internal codes and external regulations, that potential abuse is detected before the company is subject to investigation or its office raided.'[566] I found this to be true among my informants as they try to formulate the 'business case for compliance', which incorporate methods for risk mitigation, and long-term benefits for the business.

Compliance with s 54 involved more work and involved more people than many had anticipated. CSR professionals represented a new breed of corporate employees needed to navigate the laws, regulations and codes. Instead of being wholly profit-focused, CSR officers had business sense backed by strong morals. They acted as knowledge brokers. For example, they educated procurement officers about how s 54 could be incorporated into due diligence assessments for new suppliers. CSR has thus been described as a 'collaborative occupation' for its goals to generate solidarity, collegiality and cooperation,[567] unlike other professionals and traditional view of professions as 'self-interested cartels' in the sociology of professions.[568]

For some of my corporate informants, compliance with s 54 was not about profitability, or avoiding financial or reputational risk, but for a range of other reasons, such as to improve the workplace climate, attract good candidates, prevent loss of grants or contracts and minimise potential for litigation by disgruntled employees, clients, or other

[566] Sampson (n 368) 122.

[567] Mosonyi (n 327) 257.

[568] Johnson (n 328).

groups who might feel mistreated or abused – these are 'social' bonds, the kind of reciprocal social and behavioural trait described by Polanyi. But the reality inside the firm is that compliance officers and CSR professionals are often without sufficient resources to ensure their programmes will actually work.[569]

My research revealed that corporate employees can act as 'agent[s] of moralisation', and their actions can 'insert a culture of compliance into the company's DNA'.[570] In contrast to economic view that firms operate with singular ambition to profit, I found that s 54 has created the potential for internal frictions, not visible to the public. Internal movements and conflicts are worked out with smaller 'coalitions' of individuals, who, despite their persistent differences, work together to adopt strategies that will produce a 'win-win' scenario for the business and the world at large.[571] This is done through an ongoing and dynamic process of asserting and negating new and shared values, drawing on a range of influences and motives to persuade and reframe ideas in ways that can be understood from a range of perspectives.

9.2.3 External advisors

Monitoring, record keeping, training and updating of employees on the latest laws, standards, codes or regulations – the policies and procedures – can be costly in employee time and operating expenses. Changes in one single area, such as 'modern slavery' need to be transmitted and translated down to front line employees in all the branches of a firm that

[569] Sampson (n 360) 79.

[570] Sampson (n 360) 83-84.

[571] Mithani and O'Brien (n 339).

may have thousands of employees and hundreds of contractors. Experts are needed to help explain the 'beyond compliance' approach. Many corporate employees were led to believe that they needed to know exactly who their suppliers were, which caused the extensive exercise of 'mapping' supply chains. But these practices are not technically required by s 54. I observed that most large corporations have adopted these practices. S 54 has been interpreted to incorporate ethical norms and principles in CSR and law, which promoted and generated new norms for the international movement in business and human rights. There are now ethical courses, certification systems, and software support companies conducting 'due diligence investigations'.[572]

Commercial interest and public welfare are again at the heart of this 'market for advice' made up of lawyers, consultants, NGOs, auditors, data specialists, investigators and policy brokers who provided advice to corporations with commercial interests, promoting 'beyond compliance' approaches to s 54. To find favour with inhouse lawyers and compliance officers, private law firms closely mirror corporate structures and concerns. The lawyers I spoke to established new practice 'streams' to reflect the demand for advice on s 54. I observed that external lawyers played the role of assuring corporations of risk mitigation, similar to Robert Eli Rosen's observation that lawyers acted like insurers, to safeguard against potential risks. But I had concerns about the independence of external lawyers. External law firms have taken to mimic the corporate structure and lawyers mirror the activities of their clients.[573] Vaughan and Oakley found that 'corporate

[572] Sampson (n 360) 77.

[573] Rosen (n 354) 681.

lawyers are, by and large, ethically apathetic…the 'standard conception' of legal ethics…is to do that which the client asks of them (provided such is within the bounds of the law).' Rosen noted the lawyer-client relationships are precarious and unstable, which can drive some lawyers to say what their clients want to hear. These findings raised questions about whether the legal profession can be relied on to provide advice on s 54 and address social issues, such as modern slavery. During my research, I hypothesised that apathy in legal ethics might even cause lawyers to advise corporations to disclose less to avoid legal risk.

But I found that most external lawyers considered such strategies to be counterproductive and more likely to *increase* legal risk because they regarded s 54 as part of a broader legal movement towards corporate accountability. They cited international standards and domestic obligations, and risk of strategic litigation as key reasons for going 'beyond compliance'. Most lawyers, who translated s 54's requirements into the context of corporate law, know about CSR and saw s 54 as part of a global movement towards corporate liability. It was easy to persuade corporations to examine their supply chain processes as a long-term risk mitigation exercise. They considered the policies already in place, to eliminate dodgy suppliers and divested from countries with they reviewed and examined existing corporate regulations and legal obligations arising in contract, tort, company law and emerging standards such as the UNGPs. Some lawyers recommended superficial strategies, but on the whole, most lawyers admitted that 'beyond compliance' was the safest option for their clients, and it was good for business. The corporation has become an arena for intense competition not only for legal specialists, but also an array of consultants, who seek a foothold in the market for advice. Consultants, such as auditors, business and human rights advisors and even NGOs, have also contributed to the idea of s

54 as risk – unlike lawyers, they present s 54 as reputational risk, which opens the door to normative moral and public interest values, such as human rights, and welfare of workers to percolate through corporations.[574]

Scholars such as Edelman, Lange and Haines, Braithwaite and Halliday have all noted the importance of social actors as agents of normative control beyond formal state law. A key contribution of my research, is the revelation that 'social' actors are not limited to activists or NGOs or individuals in certain professions. This is unlike some existing research, which tends to group actors according to profession, and which fails to consider the financial needs of public interest actors; or the moral values held by commercial actors. The reality is that all individual actors have the capacity for social concerns, despite their labels. Hence, s 54 challenges conventional public-private distinctions, which underpin command and control style regulations, and raises questions about the pure economic perspectives of regulatory interventions. My findings tell us that human agency can be constrained by assumptions of social structures and how agency and social norms can together produce unintended effects of the law.

S 54 does not define risk, which allows the problem of modern slavery to be interpreted – validly – in several different ways. Throughout this thesis, it was shown that some regarded s 54 risk as loss in reputation, litigation exposure and falling short of social norms. More interestingly, I noted a temporal aspect to risk. That is, s 54 was not an immediate legal risk, but more of a sign of things to come, as the problem became reinterpreted as part of the movement in business and human rights. Therefore, s 54

[574] Baldwin and others (n 451).

represented a long-term risk, almost as if it was a warning shot to corporations to start thinking about putting their supply chain affairs in order.

9.2.4 Context and influence

The normative values I found which drive the corporations to go 'beyond compliance' can be found in existing social movements in CSR, and human rights law. The new terminology and regulation of 'modern slavery' was perceived as a new problem with ties to the injustices of the historical Atlantic slave-trade, which is universally condemned. This 'new' problem was a violation of human dignity. As McBarnet and Schmidt pointed out, most people and most corporations do not want to be seen to be '[a]rguing on the legal technicalities against the principle of accountability for forced labour, rape, murder, and genocide…'[575]

CSR was immediately seen as a solution to this new problem. Initially, most corporations simply reported their existing CSR measures, which were already in place before s 54 was enacted. CSR was a realistic starting point because there were light touch but clever mechanisms, such as the requirement for directors to sign, the annual cycle for reporting, publication on websites, which have allowed strong social involvement with normative, public interest values, extensive and existing networks, recognisable or demonstrable strategies. To understand the reaction to s 54, my thesis considered the context, and the existing and emerging social movements in CSR. All the actors used the progress of CSR as baseline for assessing s 54's effectiveness. This helps to explain the dissatisfaction when the first MSA statements were published, and the lack of transparency

[575] McBarnet and Schmidt (n 71), 175.

that many NGOs criticised. This is because the information presented did not produce anything more than what they already knew. Because s 54 was regarded as a continuation of voluntary CSR, it was simultaneously seen as a breakthrough and a failure.

9.2.5 Beyond borders

S 54 has had an effect internationally because the problem it addresses exists transnationally, within global supply chains. Campaigners and lawmakers, NGOs and think tanks assumed that it would have a 'trickle down' effect. But any effect it did have was not automatic. In fact, s 54 was mobilised through social and corporate actors, including IGOs like the ILO, UNGC, think tanks like the Institute for Human Rights and Business and public agencies such as the Modern Slavery Policy and Evidence Centre and the Commonwealth Parliamentary Association. They are an important part of a network of actors facilitating dialogue between s 54 and international standards. In summary, s 54 had vertical and horizontal effects: vertical diffusion, represented by a trickle down of standards to suppliers in other countries, and horizontal diffusion which is the cross-border spread of s 54 to other national regulators.

The international dynamics of s 54 can also be attributed to CSR, which provided an important foundation for early compliance as noted above, but even before my research began, there were clear signs that the CSR movement was morphing into a new legal movement in 'business and human rights', which Nolan called a 'hardening' of soft law[576]

[576] Justine Nolan, 'Hardening Soft Law: Are the Emerging Corporate Social Disclosure Laws Capable of Generating Substantive Compliance with Human Rights' (2018) Brazilian Journal of International Law, UNSW Law Research Paper 18.

or as Aseeva described, a move from 'corporate responsibility to corporate liability'.[577] This new movement gained prominence in 2011 with the introduction of the UN Guiding Principles in Business and Human Rights. It added that nation states would implement this in domestic statutes, giving effect to the UNGP obligations. Thus, 'soft' principles acquired domestic legal force and became potentially enforceable. Reading s 54 in light of the UNGPs encouraged many external advisors and internal corporate officers to regard s 54 as part of an increasing drive towards corporate liability for human rights harm. Following s 54, process-driven approaches such as 'human rights due diligence' (HRDD) have gained momentum in the EU, with a number of new initiatives introduced. In the UK, these activities have resonated, and in 2021, the government promised to strengthen s 54, while civil society and some large corporations have launched a new campaign for a legislative proposal, which would correspond with the EU's requirement for mandatory HRDD.

9.2.6 The role of the state

Initially, the government was heavily criticised for being hands-off – for all the reasons set out above, that it did little to advance CSR. My informant from the Home Office said they felt under pressure to do more, and even though he argued that the law was meant to be monitored by CSOs, they did so anyway. The Home Office conducted an audit of MSA statements, wrote to companies, and commissioned the Independent Review of the MSA. These interactions were a little reluctant, haphazard, but they addressed NGO criticisms, business interests, and engagement with the international BHR movement. By January 2021, the government had published its own MSA statement, announced that

[577] Aseeva (n 68).

sanctions would be added to s 54, a modern slavery registry had been set up. An amendment bill was introduced and a dedicated research centre has been established. In practice, s 54 was widely promoted by the UK government, and many other countries replicated the model, helped along by IGOs. Along with the UK government, IGOs played an important role in raising awareness of modern slavery in supply chains globally, using s 54 in conjunction with international law instruments to strengthen disclosure and transparency. The changes are fuelled by political rhetoric rather than necessity because the government found foreign policy advantages to implementing the changes. These initiatives respond directly to the allegations of human rights abuse in Qatar, Russia and China. S 54 has, over time, become a political tool, and a symbol of the UK's stance on labour exploitation.

These activities challenge traditional perceptions of the government as the all-knowing 'regulator'. Just as Braithwaite and Drahos, Snidal and Abbott explained, my research found diverse social actors working transnationally, navigating a complex web of domestic and international law, public and private standards. They evaluated the pros and cons of these competing requirements to work out strategies that fit their particular agenda and interpret them to challenge traditional state regulators and influence other actors who may or may not share the same interests. The most successful actors can identify the underlying commercial, political or personal interest of their audience, and construct different narratives based on the same set of information. With s 54, the most consistent and persuasive narrative is that the provision formed part of, or gave domestic effect to, the business and human rights movement. But this was not the case, because as I pointed out early in my thesis, s 54 and the MSA do not refer to the UNGPs or any law which impose obligations on businesses to uphold international human rights.

Over the course of my research, s 54 has been instrumentalised to enhance, symbolise and reflect normative values, which already existed in CSR. The participation of transnational actors in s 54 have introduced to diverse social, political, legal values which contribute to a complex and cyclical process of mutual influence and negotiation between domestic and supra-national norms. Halliday and Carruthers refer to this as a 'recursive' form of law-making. Seen in this way, the effects of s 54 not only reflect the drive for corporate accountability, they also form part of a broader and ongoing continuum of a series of social movements to standard and formalise corporate accountability for human rights breaches, wherever they may have been committed.

9.2.7 Polanyi and the 'Double Movement'

Polanyi's theory of the 'Double Movement' is a useful metaphor for aspects of my thesis. The question at the heart of my enquiry is: how can we understand s 54? The light touch requirements were unusual but in practice, the evidence did not stack up. In recognition that disruption and impact are not the same, my investigations revealed that s 54 not only disrupted business-as-usual, it had varying degrees of impact. As an act of social intervention., s 54 cannot be described as being wholly ineffective. S 54 is as an example of 'creative compliance' described by Doreen McBarnet and resonates with Edelman's description of 'legal endogeneity'. The literature acknowledges that ambiguity in legislation can be strategy to encourage business firms to push 'beyond compliance' to limit unspecified risks. In the case of s 54, there was sufficient clarity from the UK government about how the law *should* work that the findings laid out in this thesis can be framed as unintended consequences.

This thesis has used a range of mid-level theories of regulation. While my thesis is a more natural contribution to that body of literature, I have sought engagement with macro-level theories, in particular, I used Polanyi's work as a useful metaphor for understanding the role that s 54 plays.

Polanyi believed that market societies have become constituted by two opposing movements: the *laissez-faire* movement to expand the scope of the market, and the protective 'countermovement' that seeks to restore social values. Polanyi called this struggle the 'Double Movement'. According to this worldview, the rise of a political and industrial working-class movement in the 19th Century was an attempt to 're-embed' social values. At the time, new factory laws and social legislation played a central role in the resistance to a capitalist and market-driven economy.[578] Drawing from these historical lessons, Polanyi suggested that decommodification can be achieved through laws and regulations, and noted that an absence of regulation can also be a powerful endorsement of market rationales.

By looking at s 54 through a Polanyian lens, the global supply chain, driven by market demand, unconcerned with social values and uncurbed by law, may represent the values of a *laissez-faire* economy. De-regulation initiatives in the UK though 1980s and 1990s, have allowed private contracts to proliferate[579] and since global supply chains today are formed entirely based on a series of contracts, sub-contracts, the social relationships of mutual support and trust that encourage loyalty and commitment are completely removed.

[578] Polanyi (n 83) 87

[579] Polanyi (n 83) 155-156.

In such a dis-embedded state, small suppliers are squeezed by the terms of their contract to provide goods or services to larger client firms, competitive pressures trickle up and down supply chains.[580] According to this analysis, s 54 can be seen as a very small step or incremental movement away from free market principles and towards social protection. The provision's lack of enforcement mechanisms and light touch requirements have allowed it to fit the free market framework but as the rapturous applause from the floor of the UN Forum on Business and Human Rights to the news that the Australian Modern Slavery Bill had passed into law demonstrated, s 54 is an illustration of the countermovement.

There is also a temporal element to Polanyi's Double Movement, which is relevant to my analysis of s 54. Polayni suggested that the struggle to de-commodify labour and efforts to re-embed social and moral values into the commercially driven market is an ongoing momentum. There are ebbs and flows in this development and small interventions can have significant impact on the overall trajectory. Furthermore, market regulations alone cannot curb economic tendencies. Polanyi's theory notes the contribution of a range of actors as 'actors in the countermovement'.[581] According to Polanyian scholar, Guy Standing, professionals are an underappreciated barrier to commodification, meaning that such characters have the ability to re-embed. He explained that professionals can act as groups and communities, and together, they can develop a sense of culture. In my thesis, the social concern and desire to prevent modern slavery underpin and motivate different

[580] Polanyi (n 83) 197.

[581] Polanyi (n 83) Xxviii

groups including lawyers, CSR professionals and even procurement officers. My contribution has been to show that at the same time, the actors also exhibited commercial tendencies, offering services and products that foster consumption and the reproduction of commodities.[582]

While I have attempted to engage with Polanyi, I also acknowledge that there are other theorists and ideas I could also have used to describe and understand s 54. The work of Antonio Gramsci, for instance, also decentres the role for law and from this perspective would regard s 54 as an element of an ideological struggle to manufacture mass consent in civil society, which constitutes a key dimension for his concept of 'hegemony'. Like Polanyi, Gramsci's ideas are said to have contemporary relevance, and 'transcend' its historical context. In particular, McNally argued that Gramsci's ideas do not need to be 'scaled-up' from the 'national' to 'the international' due to his inherent interest in the intertwining of the relations of force across different territorial and geographic scales of uneven development.[583] I do not attempt to provide further discussion of Gramsci's ideas here, except to note, very briefly, that future analysis of s 54 could adopt a Gramscian frame to further explore arguments about the degree of corporate responsibility, and ongoing debates about how s 54 should be enforced or how it must be changed to reflect and sufficiently reflect the appropriate allocation of commercial priorities and social concern.

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[582] Guy Standing, 'Labor Recommodification in the Global Transformation' in *Reading Karl Polanyi for the Twenty-First Century* (Palgrave Macmillan 2007), 84-85.

[583] Andreas Bieler , Ian Bruff and Adam David Morton, 'Gramsci and 'the International': Past, Present and Future' in McNally, Mark. *Antonio Gramsci*. Critical Explorations in Contemporary Political Thought Series. (Palgrave Macmillan 2015), 137-138.

9.2.8 Policy contribution

This thesis analysed s 54 in terms of the impact it had to find socio-legal explanations for the activities and responses to the provisions. Beyond that, the empirical evidence presented can inform regulators about how to make effective and thoughtful legislation. S 54 is seen as a continuation of CSR as a social movement and the beginning of BHR, s 54 may be regarded as a form of responsive regulation, which considers regulations to be ongoing processes, rather than static and final outcomes. The idea is that regulations 'respond' to social changes, it requires regulators to pay close attention to information acquired through monitoring, and responses, in order to decide the most appropriate form of enforcement mechanisms can become more serious overtime.

A 'new governance' approach would suggest that s 54 is the product of many actors, rather than the output of politicians and lawmakers in Parliament. It casts a wide net and However we choose to label s 54, it is clear that s 54 is more than a weak or ineffective piece of corporate regulation. Rather, it is a form of market intervention, a tool for social change, a symbol of collective values and a rallying force, which reminds us that law does not and cannot exist in a vacuum.

9.3 Limitations and future lines of enquiry

The approach that I have taken in this thesis is radically different to the majority of existing scholarship on s 54. Most of the literature assumes that s 54 is defective in some way, and should be made more effective with tougher sanctions. Therefore, discussions have primarily focused on how to improve it. While it is likely that sanctions can encourage compliance, it is no guarantee that the s 54 would be more effective at holding corporations

accountable or preventing modern slavery in supply chains. My thesis stands apart because I have undertaken a different enquiry. My research considers how s 54 has worked in practice. By focusing on the effects of s 54, my research has helped us understand the provision as a unique style of regulation with benefits and disadvantages, which represents a social movement and encourages greater corporate accountability. Even if we are concerned about legal effectiveness, we need to understand the context and ideas that inform our expectations. However, more work lies in capturing the continuing evolution of s 54. Further empirical work could also be done to compare and contrast s 54 with similar regulation, in a different social context, such as a different country, with or without a robust civil society.

Other avenues for future research include delving further into the jigsaw puzzle of theoretical approaches taken to analyse my findings. Many of these theories resonate and speak to each other, for instance the recursive law framework works in sync with 'legal endogeneity'. By focusing on the empirical findings, my thesis has only been able to identify some of these motifs: 'recursivity' reminds us that the 'double movement' is indeed in motion. Social and economic interests 'overlap' just as much as 'spheres', 'systems' and 'fields'. McBarnet, Edelman did not regard legal ambiguity or uncertainty as a negative trait, and as McBarnet and Whelan described in 'Creative Accounting and the Cross-Eyed Javelin Thrower' gaps and uncertainties, like the ambiguous requirements of s 54 can be quite a useful entry point for social actors to effect change and influence.[584] Halliday and Carruthers portray this feature in a more neutral way, but in effect, they are

[584] McBarnet and Whelan (n 135)

all talking about the same thing. Theoretically, it may be possible to consolidate these theories or to explain the interactions between them. It also raises the question: can these theories continue to explain how s 54 develops in the future? I believe my empirical findings add nuance and complexity, but the jigsaw puzzle approach seems to lack coherency. Theoretically, not one theory satisfactorily explained the full effects of s 54 and the ripple effects it had on different institutions, actors, both domestic and international, commercial and social. Perhaps a new framework can be found, or identified, which consolidates and makes sense of this complexity in the future.

There are also practical limitations to my thesis. For instance, I would like to have had more access to more multistakeholder organisations to explore the ways they balance competing interests. Though it was outside the scope of this thesis, I would have liked to understand the effects of s 54 among small to medium sized businesses, suppliers within the UK and beyond. It would have also been interesting to explore how s 54 affected public procurement contracts. Not addressing certain topics because they are beyond the scope, I was not able to do more because these issues were only starting to emerge during my fieldwork, and not enough time has passed to examine these issues in depth.

I have chosen to study the provision at a particular point in its development and history. S 54 is unlikely to be 'light touch' for much longer as new amendments are introduced in the near future. But similar questions can be asked about the new developments. How will the new s 54 operate, and what are its effects from 2021 onwards? Will Parliament continue to 'respond' by moving up the sanctions pyramid as Braithwaite and Parker predicts with their theory of responsive regulation? This, of course, remains to be seen, and will provide a fertile plain for future research.

In the *Great Transformation*, Polanyi said the prevailing of private interests over justice is often regarded as a certain sign of the ineffectiveness of legislation, and the victory of the vainly obstructed trend is subsequently adduced as conclusive evidence of the alleged futility of 'a reactionary interventionism.' Yet, he said, such a view seems to miss the point altogether. A trend cannot be taken as proof of ineffectiveness, for why should the purpose of counter measure be seen as ineffectual. Importantly, he pointed out that the rate of change is often of no less importance than the direction of change itself. Polanyi's words resonate with this thesis. Just because s 54 appears toothless, this does not mean that it did not have an effect as a stepping stone or a period of socialisation towards business and human rights due diligence, and greater corporate accountability.

Annex I: List of interviewees

Interviewee	Role	Initial classification	Date of interview
1.	Founder and CEO of UK-based	NGO	11/12/2018
2.	House of Lords peer	Legislature	13/11/2018
3.	Manager of Modern slavery repository	NGO	18/01/2019
4.	Parliamentary assistant	Legislature	14/12/2018
5.	Home Office modern slavery manager	Government	14/12/2018
6.	Head of global government affairs	Corporate	21/03/2019
7.	Senior Associate of international law firm	Advisor	21/03/2019
8.	Senior Associate of international law firm	Advisor	01/04/2019
9.	Advisor at UK-based NGO	NGO	03/04/2019
10	Partner of international law firm	Advisor	10/04/2019
11	Associate of boutique law firm	Advisor	10/04/2019
12	CEO of business and human rights think tank	NGO	25/06/2019
13	General counsel of social enterprise	Corporate	26/05/2019
14	Policy advisor of ethical trade association	Advisor	03/05/2019
15	Private consultant	Advisor	03/06/2019
16	UK sustainability policy and global human rights lead	Corporate	24/07/2019
17	Responsible sourcing manager	Corporate	01/08/2019
18	Director of global business initiative on human rights	NGO	30/05/2019
19	Director of UK civil society coalition on corporate accountability	NGO	12/06/2019
20	Compliance counsel	Corporate	05/07/2019
21	Senior consultant on labour and human rights	Advisor	15/07/2019
22	Private consultant on business and human rights	Advisor	01/07/2019
23	Compliance counsel	Corporate	05/07/2019
24	Compliance counsel	Corporate	22/07/2019
25	Partner at international law firm	Advisor	27/09/2019
26	Compliance counsel	Corporate	14/08/2019
27	Business and human rights lead	Corporate	15/08/2019
28	Director of modern slavery project	Government	09/08/2019
29	Head of ethics	NGO	05/08/2019
30	Business and human rights manager	Advisor	21/08/2019
31	Anti-slavery policy lead	Advisor	23/08/2019
32	Senior practice manager	Advisor	29/08/2019
33	Head of global supply chains	Corporate	05/09/2019

34	Practice manager	Advisor	10/09/2019
35	Sustainability development leader	Corporate	05/09/2019
36	Senior director of advisory services	Advisor	06/09/2019
37	Senior manager of responsible procurement	Corporate	13/11/2019
38	Founder and CEO of NGO	NGO	17/09/2019
39	Senior researcher	NGO	08/10/2019
40	Head of labour rights	NGO	24/09/2019
41	Anti-slavery commissioner	Government	31/09/2019
42	Senior researcher of international law	NGO	05/11/2019
43	Senior buyer	Corporate	15/11/2019
44	Founder of UK-based NGO	NGO	Written answers
45	Head of social issues	NGO	10/01/2020
46	Compliance counsel	Corporate	17/01/2021
47	Technical services manager	NGO	23/12/2019

Annex II: List of conferences attended

Organiser	**Date**	**Event (location)**
Innovation Forum	7 & 8 March 2018	How business can tackle modern slavery and forced labour (London, UK)
All Party Parliamentary Groups	19 March 2018	All-Party Parliamentary Group on Sport, Modern Slavery & Human Rights - The Workers Cup
Front Group	19 & 20 April 2018	The 3rd Modern Slavery & Human Rights in Supply Chain Conference (London, UK)
Norton Rose/Bingham Institute	17 May 2018	Human Rights Due Diligence in Supply Chains Forum (London, UK)
Bonavero Institute/Faculty of Law	5 June 2018	Symposium on Reporting and Redress (Oxford, UK)
Oxford Union	24 October 2018	Modern Slavery: Hiding in Plain Sight, Full Panel Discussion (Oxford, UK)
United Nations	26-28 Nov 2018	UN Forum on Business and Human Rights (Geneva, Switzerland)
World Law Forum	22 March 2019	Conference on Arbitration of Business & Human Rights Disputes (London, UK)
University of New South Wales, Institute of Human Rights	14-16 May 2019	Innovate Rights 2019 Academic Workshop and Conference (Sydney, Australia)
All Party Parliamentary Groups	8 July 2019	All-Party Parliamentary Group on Sport, Modern Slavery & Human Rights - Fourth Session (London, UK)
University College London, Faculty of Law	1 July 2019	Moving the Business and Human Rights Agenda Forward: Beyond the Treaty (London, UK)

University of Essex	12 September 2019	Global Business and Human Rights Scholars Association and the Teaching Business and Human Rights workshops
Thomson Reuters	13-14 November 2019	Trust Conference (London, UK)
King's College Conference	29 November 2019	Workshop on Public Procurement and Modern Slavery (London, UK)
Bonavero Institute	22 January 2020	Slaves Among Us: Book Launch (Oxford, UK)
Doughty Street Chambers	13 July 2020	The new EU human rights due diligence law and the Modern Slavery Act 2015 (online)
Ardea International	13 October 2020	The Modern Slavery Act 5 years on – what effective strategies have we seen in UK businesses and other sectors to address modern slavery? (online)
Modern Slavery Policy and Evidence Centre	19 October 2020	Building new collaborations in modern slavery research (online)
All Party Parliamentary Groups	21 November 2020	All-Party Parliamentary Group on Sport, Modern Slavery and Human Rights (online)

Bibliography

Abbott K and Snidal D, 'Taking Responsive Regulation Transnational: Strategies for International Organizations' (2013) 7 Regulation & Governance 95.

Abolafia M Y, Markets as cultures: an ethnographic approach in Michel Callon (ed), *The laws of the Markets* (Blackwell Publishers 1998).

Aguilera-Caracuel J, Guerrero-Villegas J and García-Sánchez E, 'Reputation of multinational companies: Corporate social responsibility and internationalization' (2017) 26 European Journal of Management and Business Economics 329.

Ahlgrim C, 'Kanye West says the music industry and the NBA are 'modern day slave ships' in new tweets: "I'm the new Moses"' (The Insider, 15 September 2020) <https://www.insider.com/kanye-west-music-industry-nba-modern-day-slave-ships-twitter-2020-9> accessed 21 August 2022.

Allen & Overy, 'Modern slavery: Directors can be personally liable for employee exploitation' (Allen & Overy, 25 March 2019) <https://www.allenovery.com/en-gb/global/news-and-insights/publications/modern-slavery-directors-can-be-personally-liable-for-employee-exploitation> accessed 27 August 2022.

American Apparel & Footwear Association, Tools and Resources <https://www.aafaglobal.org/AAFA/Solutions/Tools_Research_Nav/AAFA/Solutions_Pages/Tools_Research.aspx?hkey=15779e99-86fe-435f-b154-a6723544e8e9> accessed 28 August 2022.

Ammeter A.P. and others, 'Toward a Political Theory of Leadership' (2002) 13 The Leadership Quarterly 751.

Amnesty International, 'Creating a paradigm shift: Legal solutions to improve access to remedy for corporate human rights abuse' (Amnesty International, 4 September 2017) < https://www.amnesty.org/en/documents/pol30/7037/2017/en/> accessed 28 August 2022.

Andersen M and Skjoett-Larsen T, 'Corporate social responsibility in global supply chains' (2009) 14 Supply Chain Management: An International Journal 75.

Argyrou A, 'Making the Case for Case Studies in Empirical Legal Research' (2017) 13 Utrecht Law Review 95.

Armour H O and Teece D J, 'Organizational Structure and Economic Performance: A Test of the Multidivisional Hypothesis' (1978) 9 The Bell Journal of Economics 106.

Arora S and Cason T N, 'Why Do Firms Volunteer to Exceed Environmental Regulations? Understanding Participation in EPA's 33/50 Program' (1996) 72 Land Economics 413.

Arvesen A, ‘Kathmandu focuses on combatting modern slavery in sustainability report’ (Outside Business Journal, 24 October 2019) <https://www.outsidebusinessjournal.com/issues /kathmandu-focuses-on-modern-slavery-sustainability-report/> accessed 28 August 2022.

Aseeva A, *From Corporate Social Responsibility to Corporate Social Liability: A Socio-Legal Study of Corporate Liability in Global Value Chains* (1st edn, Hart Publishing 2021).

Australian Human Rights Institute and Australian Human Rights Commission, At the Crossroads: 10 years of implementing the UN Guiding Principles on Business and Human Rights in Australia (2021) <https://humanrights.gov.au/sites/default/files/document/publicatio n/ungps_in_australia_report_september_2021_final_.pdf> accessed 28 August 2022.

Ayres I and Braithwaite J, Responsive Regulation: Transcending the Deregulation Debate (Oxford University Press 1992).

Bacharach S B and Lawler E J, *Power and Politics in Organizations* (JosseyBass Inc 1980).

Balch A, *Immigration and the State: Fear, Greed and Hospitality* (1st edn, Palgrave Macmillan 2016) 164.

Baldwin R and others, ‘Risk management and Business Regulation’ (London School of Economics and Political Science 2000).

Bales K, *Disposal People: New Slavery in the Global Economy* (3rd edn, University of California Press 2012) 37.

Bansal P and Song HC, ‘Similar but not the same: Differentiating Corporate Sustainability from Corporate Responsibility’ (2017) 11 Academy of Management Annals 105.

Bantekas I, “Business and Human Rights: Foundations and Linkages” in Bantekas, Ilias, and Michael Ashley Stein. *The Cambridge Companion to Business & Human Rights Law*. Cambridge Companions to Law. Cambridge University Press 2021.

Barros A and Taylor S, ‘Think Tanks, Business and Civil Society: The Ethics of Promoting Pro-corporate Ideologies’ (2018) 162 Journal of business ethics 505.

Baumann-Pauly D and others, ‘Setting and Enforcing Industry-Specific Standards for Human Rights: The Role of Multi-Stakeholder Initiatives in Regulating Corporate Conduct’, Business and Human Rights: From Principles to Practice (Routledge 2016) 108.

Baumann-Pauly D, *Managing Corporate Legitimacy: A Toolkit* (Routledge 2013).

Ben-Shahar O and Schneider C E, '"Whatever": the Psychology of Mandated Disclosure' in More than you want to know: the Failure of Mandated Disclosure (Princeton University Press, 2014).

Benford R D and Snow D A, 'Framing Processes and Social Movements: An Overview and Assessment' 26 Annual Review of Sociology 611.

Bérastégui P, 'EU proposal to ban products made by forced labour, European Trade Union Institute' (ETUI, 29 September 2021) <https://etui.org/news/eu-proposal-ban-products-made-forced-labour> accessed 28 August 2022.

Berghe L V D and Louche C, 'The Link Between Corporate Governance and Corporate Social Responsibility in Insurance', (2005) 30(3) The Geneva Papers on Risk and Insurance. Issues and Practice 425.

BHRRC, 'First Year of FTSE 100 Reports under the UK Modern Slavery Act: Towards Elimination? (BHRRC, 2017) <https://media.business-humanrights.org/media/documents/files/FTSE_100_Report_FINAL_0021Dec2017.pdf> accessed 21 August 2022

——, 'FTSE 100 At the Starting Line – An analysis of company statements under the UK Modern Slavery Act' (BHRRC, 16 November 2016) <https://www.business-humanrights.org/en/from-us/briefings/ftse-100-at-the-starting-line-an-analysis-of-company-statements-under-the-uk-modern-slavery-act/> accessed 21 August 2022.

——, 'Open letter to the New Zealand Government to commence an inquiry into a Modern Slavery Act for the country' (BHRRC, 17 March 2021) <https://www.business-humanrights.org/en/latest-news/open-letter-to-the-new-zealand-government-to-commence-an-inquiry-into-a-modern-slavery-act-for-the-country/> accessed 29 August 2022.

——, 'Swedish mandatory due diligence campaign launched, with support from 42 companies' (BHRRC, 29 September 2020) <https://www.business-humanrights.org/en/latest-news/swedish-mandatory-due-diligence-campaign-launched-with-support-from-42-companies/> accessed 28 August 2022.

——, 'Trade and corporate accountability' <https://www.business-humanrights.org/en/big-issues/trade-and-corporate-accountability/> accessed 27 August 2022.

——, FTSE 100 & the UK Modern Slavery Act: From Disclosure to Action (2018) <https://media.business-humanrights.org/media/documents/files/FTSE_100_Briefing_2018.pdf> accessed 27 August 2022.

BIICL Study on due diligence requirements through the supply chain (January 2020) < https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed
71a1/language-en> accessed 28 August 2022.

Black J and Baldwin R, 'Really Responsive Risk-Based Regulation' (2010) 32 Law and Policy 181.

Black J, Hopper M and Band C, 'Making a Success of Principles-Based Regulation' (2007) 1 Law and Financial Markets Review 191.

Bloomer P, 'A year after the UK Modern Slavery Act, time for a Global Modern Slavery Agreement?' (Thomson Reuters, 31 March 2017) <https://news.trust.org/item/20170331091619-akvgh/> accessed 28 August 2022.

Boddy W, 'The Modern Slavery Act is Toothless' (The Sunday Times, 15 November 2018), <https://www.thetimes.co.uk/article/the-modern-slavery-act-is-toothless-c99sdl22p> accessed 21 August 2022.

Bowen H, *Social Responsibilities of the Businessman* (Harper and Row 1953).

Brainthwaite J and Drahos P, Global Business Regulation (Cambridge University Press, 2000) 7.

Bueno N and Kaufmann C, The Swiss Human Rights Due Diligence Legislation: Between Law and Politics (2021) 6 Business and Human Rights Journal 542.

Bunting A and Quirk J, *Contemporary Slavery: The Rhetoric of Global Human Rights Campaigns* (Cornell University Press 2017).

Búrca G and Scott J (eds), *Law and New Governance in the EU and the US* (Hart Publishing 2006) 2.

Burns P and others, 'UK, US and Canadian Governments Announce New Measures Over Alleged Xinjiang, China Human Rights Concerns' (Baker McKenzie Blog, 18 February 2021) <https://supplychaincompliance.bakermckenzie.com/2021/02/18/uk-us-and-canadian-govern
ments-announce-new-measures-over-alleged-xinjiang-china-human-rights-concerns/#:~:text=
On%20January%2012%2C%202021%2C%20the,be%20produced%20using%20forced%20labor.> accessed 27 August 2022.

Business, Energy and Industrial Strategy Committee, 'Uyghur forced labour in Xinjiang and UK value chains' (17 March 2021) <https://publications.parliament.uk/pa/cm5801/cmselect/

cmbeis/1272/127206.htm> accessed 27 August 2022.

Butler S, 'Boohoo severs ties with hundreds of UK manufacturers after critical review' (The Guardian, 25 March 2021) <https://www.theguardian.com/business/2021/mar/25/boohoo-severs-ties-with-hundreds-of-uk-manufacturers-after-critical-review> accessed 21 August 2022.

Cabinet Office, 'Red Tape Challenge' (gov.uk, 7 April 2011) <https://www.gov.uk/governmen
t/news/red-tape-challenge>.

California Department of Justice, 'The California Transparency in Supply Chains Act: A Resource Guide' (2015) <https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf> accessed 21 August 2022.

Campbell K and Vick D, 'Disclosure Law and the Market for Corporate Social Responsibility' in McBarnet D, Voiculescu A and Campbell T, *The new corporate accountability: Corporate Social Responsibility and the Law* (1st edn, Cambridge University Press, 2007).

Cangiani M, 'Karl Polanyi's Institutional Theory: Market Society and its "Disembedded" Economy' (2011) 45 Journal of Economic Issues 177.

Cann C N and DeMeulenaere E J, The Activist Academic: Engaged Scholarship for Resistance, Hope and Social Change (Myers Education Press 2020).

Cardwell M and Smith F, 'Contemporary Problems of Climate Change and the TBT Agreement: Moving Beyond Eco-labelling' in Tracy Epps, Chapman Tripp and Michael J Trebilcock (eds), *Research Handbook on the WTO and Technical Barriers to Trade* (Edward Edgar 2013) 391.

Carroll A B and Shabana K M, 'The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice' (2010) 12 International Journal of Management Reviews 85.

Carroll A B, 'The Pyramid of Corporate Social Responsibility: Toward Moral Management of Organizational Stakeholders', (1991) 34 (4), Business Horizons 39.

Carter P, 'G3 Briefing with Peter Carter QC: The Modern Slavery Act 2015' (2017).

Centre for Social Justice, It Happens Here: Equipping the United Kingdom to fight modern slavery (Slavery Working Group, 2013) <https://www.antislaverycommissioner.co.uk/media/
1070/csj_slavery_full_report_web-5.pdf> accessed 27 August 2022.

Coglianese C, ‘Social Movements, Law, and Society: The Institutionalization of the Environmental Movement’ (2001) 150 University of Pennsylvania Law Review 85.

Collins H, ‘The Weakest Link: Legal Implications of the Network Architecture of Supply Chains’, in Amstutz M and Teubner G (eds), *Networks: Legal Issues of Multilateral Co-operation* (Hart Publishing, 2009) 187-210, 193.

Collins H, *Regulating Contracts* (Oxford University Press 1999).

Commonwealth Parliamentary Association UK, ‘New Australian modern slavery legislation "is due in no small part to CPA UK" - Senator Linda Reynolds’ (10 December 2018) < https://www.uk-cpa.org/news-and-views/new-australian-modern-slavery-legislation-is-due-in-no-small-part-to-cpa-uk-senator-linda-reynolds/> accessed 28 August 2022.

Consultancy.uk, ‘Market segments’ <https://www.consultancy.uk/consulting-industry/market-segments> accessed 28 August 2022.

Coombs W T and Holladay S J, ‘The pseudo-panopticon: the illusion created by CSR-related transparency and the internet’ (2013) 18 Corporate Communications: An International Journal 212.

CORE Coalition, ‘Beyond Compliance: Effective Reporting under the Modern Slavery Act’ (2016) < https://corporatejusticecoalition.org/wp-content/uploads/2016/03/CSO_TISC_guidance_final_digitalversion_16.03.16.pdf> accessed 27 August 2022.

——, ‘Recommended Content for a Modern Slavery Statement’ (June 2017) < https://corporatejusticecoalition.org/wp-content/uploads/2017/06/Core_RecommendedcontentFINAL-1.pdf> accessed 28 August 2022.

Corporate Justice Coalition and others, ‘UK: It is time for the UK to demonstrate leadership on business and human rights’ (1 July 2021) <https://corporatejusticecoalition.org/wp-content/uploads/2021/06/CJC-UNGPs-statement-0621-2.pdf> accessed 28 August 2022.

Corporate Justice Coalition, ‘We used to be the CORE Coalition’ (Corporate Justice Coalition, 7 April 2021) <https://corporatejusticecoalition.org/news/we-used-to-be-the-core-coalition/> accessed 27 August 2022.

Cox J, ‘Reshaping and empowering the procurement role’ (Reconteur: content for decision-makers, 29 April 2020) <https://www.raconteur.net/supply-chain/role-procurement-function/> accessed 27 August 2022.

Craft J and Howlett M, ‘Policy formulation, governance shifts and policy influence: location and content in policy advisory systems’ (2012) 32 Journal of Public Policy 79.

Cromwell Truck Sales, 'Are truck drivers classed as key workers?' <https://cromwelltrucks.com/are-truck-drivers-classed-as-key-workers> accessed 21 August 2022.

Croser M, 'The State of Play in Business and Modern Slavery: Who's Leading and Who's Lagging?' (Innovation Forum Conference: How Business Can Tackle Modern Slavery and Forced Labour, 7 March 2018).

Cross J, 'Detachment as a Corporate Ethic: Materializing CSR in the Diamond Supply Chain' (2011) Journal of Global and Historical Anthropology 34.

Deloitte, 'New Horizons: Compliance 2020 and beyond' (2020) <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/risk/deloitte-uk-compliance-thought-leadership-16.pdf> accessed 27 August 2022.

Department for Business Energy & Industrial Strategy, Establishing a new single enforcement body for employment rights (June 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991751/single-enforcement-body-consultation-govt-response.pdf> accessed 28 August 2022.

Department for Environment Food & Rural Affairs, Due diligence on forest risk commodities – Consultation document (August 2020) <https://consult.defra.gov.uk/eu/due-diligence-on-forest-risk-commodities/supporting_documents/duediligenceconsultationdocument.pdf> accessed 28 August 2022

Department for Environment, Food & Rural Affairs and The Rt Hon Lord Goldsmith, 'Government sets out plans to clean up the UK's supply chains to help protect forests' (*gov.uk*, 3 December 2021) <https://www.gov.uk/government/news/government-sets-out-plans-to-clean-up-the-uks-supply-chains-to-help-protect-forests> accessed 28 August 2022.

Department for International Trade, 'New Zealand and Free Trade Agreement: chapter explainers <https://www.gov.uk/government/publications/uk-new-zealand-fta-summary-of-chapters/uk-new-zealand-free-trade-agreement-chapter-explainers#labour> accessed 28 August 2022.

Development International 'Corporate Compliance with the California Transparency in Supply Chains Act of 2010' (2 November 2015) <http://media.wix.com/ugd/f0f801_0276d7c94ebe453f8648b91dd35898ba.pdf> accessed 27 August 2022.

DiMaggio P J and Powell W W, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields' (1983) 48 American Sociological Review 147.

Dlouhy J A, 'Trump Gives Businesses Deregulation Whether They Want It or Not' (Bloomberg, 30 August 2019) <https://www.bloomberg.com/news/articles/2019-08-30/trump-gives-businesses-deregulation-whether-they-want-it-or-not#xj4y7vzkg> accessed 27 August 2022.

Doherty B, Haugh H and Lyon F, 'Social Enterprises as Hybrid Organizations: A Review and Research Agenda' (2014) 16 International Journal of Management Reviews 417.
Doorey D J, 'The Transparent Supply Chain: From Resistance to Implementation at Nike and Levi-Strauss', (2011) 103 Journal of Business Ethics 587.

Dottridge M, 'Eight reasons why we shouldn't use the term "modern slavery"' (openDemocracy, 2017) <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/eight-reasons-why-we-shouldn-t-use-term-modern-slavery/> accessed 21 August 2022.

'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries', Report of the International Law Commission, 48th Session (International Law Commission 2001) 85 <http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf> accessed 21 August 2022.

Dunn M, 'Almost Half of FTSE 100 Firms Fail to Comply with the UK Modern Slavery Act' (LexisNexis, 10 October 2019) < https://bis.lexisnexis.co.uk/blog/categories/governance-risk-and-compliance/56-of-ftse-100-firms-fail-uk-modern-slavery-act> accessed 21 August 2022.

Eastwood S, Ford J and Reynolds L, 'UK Modern Slavery – a Bill to prohibit the "falsification" of slavery and human trafficking statements' (Lexology, 2021) <https://www.lexology.com/library/detail.aspx?g=7e2018f0-5c57-4256-974b-fac5f5a4a7a4> accessed 28 August 2022.

Ebner A, 'Transnational Markets and the Polanyi Problem' in Joerges C and Falke J (eds) *Karl Polanyi, Globalisation and the Potential of Law in Transnational Markets* (Hart Publishing 2010).

Edelman L B and Petterson S, 'Symbols and Substance in Organisational Response to Civil Rights Law (1999) 17 Research in Social Stratification and Mobility 107.

Edelman L B, Fuller S R and Mara-Drita I, 'Diversity Rhetoric and the Managerialization of Law' (2001) 106 American Journal of Sociology 1589.

Edelman L B, Leachman G and McAdam D, On Law, Organisations, and Social Movements (2010) 6 Annual Review of Law and Social Science 653.

Edelman L B, Uggen C and Erlanger H, 'The endogeneity of legal regulation: Grievance procedures as rational myth' (1999) 105 The American Journal of Sociology 406.

Edelman L B, *Working law: Courts, Corporations and Symbolic Civil Rights* (University of Chicago Press, 2016).

Edelman L M and others, 'When Organizations Rule: Judicial Deference to Institutionalized Employment Structures' (2011) 117 The American Journal of Sociology 888.

Enrile A V, *Ending Human Trafficking and Modern Day Slavery: Freedom's Journey* (1st edn, Sage 2017).

Enriques L and Gilotta S, 'Disclosure and Financial Market Regulation' in Moloney N, Ferran E and Payne J (eds), *The Oxford Handbook on Financial Regulation* (Oxford University Press 2015).

Ergon Associates, 'Modern Slavery Statements: One Year On' (Ergon, April 2017) < https://ergonassociates.net/wp-content/uploads/2016/03/MSA_One_year_on_April_2017.pdf ern%20day%20slavery%20often%20plays,to%20increase%20widespread%20public%20 awareness> accessed 21 August 2022.

Ethical Trading Initiative, 'About ETI' <https://www.ethicaltrade.org/about-eti> accessed 28 August 2022.

——, 'Audits and Beyond' <https://www.ethicaltrade.org/issues/auditing-working-conditions> accessed 28 August 2022.

——, 'Modern slavery statements evaluation framework' <https://www.ethicaltrade.org/issues modern-slavery/modern-slavery-statements-evaluation-framework> accessed 28 August 2022.

——, ETI Base Code Guidance: Modern Slavery (3 July 2017) <https://www.ethicaltrade.org/resources/base-code-guidance-modern-slavery> accessed 28 August 2022.

European Coalition of Corporate Justice, 'French Corporate Duty of Vigilance Law (English Translation)' (European Coalition of Corporate Justice, 2016) <https://respect.international/french-corporate-duty-of-vigilance-law-english-translation'/> accessed 28 August 2022.

European Commission, *Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937*, (2022) <https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf> accessed 28 August 2022.

European Court of Auditors, 'The EU System for certification of sustainable biofuels' <https://www.eca.europa.eu/Lists/ECADocuments/SR16_18/SR_BIOFUELS_EN.pdf> accessed 27 August 2022.

Finance Against Slavery and Trafficking, 'Insight 5: Due diligence, disclosure and risk metrics relating to modern slavery and human trafficking' <https://www.fastinitiative.org/resources/insight_5/> accessed 28 August 2022.

——, <https://www.fastinitiative.org/> accessed 28 August 2022.

First Delegated Legislation Committee, Draft Modern Slavery Act 2015 (Transparency in Supply Chains Regulations 2015) (House of Commons, 19 October 2015).

Fisher E, 'Risk Regulatory Concepts and the Law', OECD (ed) Risk and Regulatory Policy: Improving the Governance of Risk (OECD Publishing 2010).

Fisman R, Heal G and Nair V B, 'A model of corporate philanthropy', (2006) Wharton School, University of Pennsylvania research paper <http://d1c25a6gwz7q5e.cloudfront.net/papers/1331.pdf> accessed 21 August 2022.

Flood J, 'Transnational Lawyering: Clients, Ethics, and Regulation' in Leslie C Levin and Lynn M Mather (eds) *Lawyers in practice : ethical decision making in context* (University of Chicago Press 2012).

Foale E and Theron C, 'All that glitters is not gold: Shining a light on supply chain disclosure in the jewellery sector' (Ardea International 2017).

Ford J and Nolan J, 'Regulating transparency on human rights and modern slavery in corporate supply chains: the discrepancy between human rights due diligence and the social audit' (2020) 26 Australian Journal of human rights 27.

Foreign & Common Wealth Office, Foreign, Commonwealth & Development Office, Guidance: Overseas Business Risk: China <https://www.gov.uk/government/publications/overseas-business-risk-china/overseas-busines
s-risk-china#business-and-human-rights> accessed 29 August 2022.

Fraussen B and Halpin D, 'Think tanks and strategic policy-making: the contribution of think tanks to policy advisory systems' (2017) 50 Policy Sciences 105.

Free the Slaves Global Strategic Plan, <https://www.freetheslaves.net/our-work/strategic-plan/> accessed 21 August 2022.

Friedman M, 'A Friedman Doctrine: The Social Responsibility of Business is to Increase Its Profits' (The New York Times Magazine, 13 September 1970).

Frowein J A, 'Ius Cogens', *Max Planck Encyclopaedia of Public International Law* (2013).

Fudge J, 'Why Labour Lawyers Should Care About the Modern Slavery Act 2015' (2015) 29 King's Law Journal 377.

Ganeshan R and Boone T, 'How the war in Ukraine impacts global supply chains' (IPS Journal, 26 April 2022), <https://www.ips-journal.eu/topics/economy-and-ecology/how-the-war-in-ukraine-impacts-global-suppy-chains-5894/#:~:text=Ukraine's%20economy%20is%20in%20disarray,significantly%20impacting%20the%20Russian%20economy> accessed 21 August 2022.

Garbers K, TedxExeter 'Modern slavery, hidden in plain sight' (1 June 2018) <https://www.youtube.com/watch?v=xYQdZWj5G0g> accessed 21 August 2022.

Genevieve L, Lister J, and Dauvergne P, 'Governing Global Supply Chain Sustainability through the Ethical Audit Regime' (2017) 14 Globalizations 958.

Ghadiri D P, Gond J P and Brès L, 'Identity work of corporate social responsibility consultants: Managing discursively the tensions between profit and social responsibility', (2015) 9 Discourse & Communication 593.

Gilad S, 'Beyond Endogeneity: How Firms and Regulators Co-Construct the Meaning of Regulation' 36 Law & Policy 134 (administration bodies also play a role in translation).

——, 'It Runs in the Family: Meta-Regulation and Its Siblings' (2010) 4 Regulation & Governance 485.

Gittus H and others, The Sancroft-Tussell Report: Eliminating modern slavery in public procurement second edition (2018).

Gond JP and Brès L, 'Designing the Tools of the Trade: How corporate social responsibility consultants and their tool-based practices created market shifts' (2020) 41 Organisation Studies 703.

Guan D and others, 'Global supply-chain effects of COVID-19 control measures', (2020) 4 Nature Human Behaviour 577.

Guilbert K, 'UK anti-slavery drive 'thwarted' by failure to replace commissioner: sources' (Thomson Reuters Foundation, 12 December 2018)

<https://www.reuters.com/article/britain-slavery-government-idUKL8N1YG5F6> accessed 29 August 2022.

Halliday S and Schmidt P D, *Conducting law and society research: reflections on methods and practices* (Cambridge University Press 2009).

——, Human rights Brought Home: Socio-legal Perspectives on Human Rights in the National Context (Hart Publishing 2004).

Halliday T C and Carruthers B G, 'The Recursivity of Law: Global Norm Making and National Lawmaking in the Globalization of Corporate Insolvency Regimes' (January 2007) 112(4) American Journal of Sociology 1135.

——, Bankrupt: Global Lawmaking and Systemic Financial Crisis (Stanford University Press, 2009) 363.

Halliday T C and Shaffer G C, 'Introduction: Transnational Legal Orders' in Halliday T C and Shaffer G C (eds) *Transnational Legal Orders* (Cambridge University Press, 2015).

Halliday T C, 'Crossing Oceans, Spanning Continents: Exporting Edelman to Global Lawmaking and Market-Building' (2004) 38 Law & Society Review 213.

Hampton D B, 'Modern Slavery in Global Supply Chains: Can National Action Plans on Business and Human Rights Close the Governance Gap?' (2019) 4 Business and Human Rights Journal 239.

Harre T, 'Does New Zealand really need a Modern Slavery Act?' (Law Aid international chambers, 10 October 2018) <https://www.lawaid.co.nz/lawaidblog/does-new-zealand-really-need-a-modern-slavery-act> accessed 28 August 2022.

Haughey C, 'The Modern Slavery Act Review' (31 July 2016), 3 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/542047/2016_07_31_Haughey_Review_of_Modern_Slavery_Act_-_final_1.0.pdf> accessed 27 August 2022.

HC Deb 22 September 2020, vol 680, The Parliamentary Under-Secretary of State for the Home Department (Victoria Atkins).

HC Deb 4 November 2014, vol 587.

HC Deb 8 July 2014, Second reading of the Modern Slavery Bill.

Hellmann R, Transnational Control of Multinational Corporations (Marianne Grund Freidberg tr, Praeger Publishers 1977).

Hemingway C A, 'Personal Values as a Catalyst for Corporate Social Entrepreneurship' (2005) 60 Journal of Business Ethics 233.

Hinrich Foundation, Trade and Modern day Slavery (12 February 2020) <https://www.hinrichfoundation.com/research/article/sustainable/trade-and-modern-day-slavery/> accessed 27 August 2022.

HL Deb 26 October 2015 vol 765, Monday 26 October 2015.

HM Government, 'One-In, One-Out (OIOO) Methodology (2011) <https://www.regulation.org.uk/library/2011_oioo_methodology.pdf> accessed 27 August 2022.

——, 'Good Business: Implementing the UN Guiding Principles on Business and Human Rights' (September 2013) <https://media.business-humanrights.org/media/documents/files/media/documents/uk-national-action-plan-sep-2013.pdf> accessed 27 August 2022.

——, 'Good Business: Implementing the UN Guiding Principles on Business and Human Rights' (Updated May 2016) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522868/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_print_version.PDF>.

——, 'The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 HL Paper 166 / HC 1019: Draft Modern Slavery Bill (June 2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/318771/CM8889DraftModernSlaveryBill.pdf> accessed 27 August 2022.

——, 'UK Government announces business measures over Xinjiang human rights abuses' (*gov.uk*, 12 January 2021) <https://www.gov.uk/government/news/uk-government-announces-business-measures-over-xinjiang-human-rights-abuses#:~:text=UK%20Government%20announces%20business%20measures%20over%20Xinjiang%20human%20rights%20abuses,-English&text=Foreign%20Secretary%20announces%20measures%20to,human%20rights%20violations%20in%20Xinjiang> accessed 21 August 2022.

——, Independent Review of the Modern Slavery Act 2015: Final Report (May 2019) CP100 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf> accessed 28 August 2022.

——, UK Government Modern Slavery Statement, Prime Minister Foreword (18 March 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875800/UK_Government_Modern_Slavery_Statement.pdf> accessed 28 August 2022.

Hodgson G M, 'Karl Polanyi on economy and society: a critical analysis of core concepts' (2017) 75 Review of social economy 1.

Hogan Lovells, The Implications of the UK Supreme Court's Decision in Vedanta for the Management of Human Rights Risk in Overseas Operations and Supply Chains' (University of Oxford Business Law Blog, 30 May 2019) <https://www.law.ox.ac.uk/business-law-blog/blog/2019/05/implications-uk-supreme-courts-decision-vedanta-management-human> accessed 27 August 2022.

Home Office 'Leading businesses unite to tackle slavery' (gov.uk, 10 October 2017) <https://www.gov.uk/government/news/leading-businesses-unite-to-tackle-slavery > accessed 28 August 2022.

Home Office and Victoria Atkins MP 'Victoria Atkins chairs business against slavery forum today' (gov.uk, 23 July 2018) <https://www.gov.uk/government/news/victoria-atkins-chairs-business-against-slavery-forum-today> accessed 18 November 2022.

——, 'New tough measures to tackle modern slavery in supply chains' (Gov.uk, 22 September 2020) <https://www.gov.uk/government/news/new-tough-measures-to-tackle-modern-slavery-in-supply-chains> accessed 3 January 2021.

Home Office, 'Government launches modern slavery statement registry' (Home Office, 11 May 2021) <https://www.gov.uk/government/news/government-launches-modern-slavery-statement-registry> accessed 28 August 2022.

——, 'Historic law to end Modern Slavery passed' (gov.uk, 26 March 2015) <https://www.gov.uk/government/news/historic-law-to-end-modern-slavery-passed> accessed 28 August 2022.

——, 'Modern Slavery and Supply Chains Government Response - Summary of consultation responses and next steps' (Home Office, 2015).

——, Guidance: Add your modern slavery statement to the statement registry (Home Office, 23 February 2021) <https://www.gov.uk/guidance/add-your-modern-slavery-statement-to-the-statement-registry> accessed 28 August 2022.

——, Modern Slavery and Supply Chains Consultation: Consultation on the transparency in supply chains clause in the Modern Slavery Bill (Home Office, 2015).

——, Transparency in Supply Chains Consultation: Government Response (2020), 14 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf> accessed on 22 August 2022.

——, Transparency in supply chains: a practical guide (gov.uk, 13 December 2021) < https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide/transparency-in-supply-chains-a-practical-guide> accessed 21 August 2022.

House of Commons Committee of Public Accounts, Reducing Modern Slavery, Thirty-Sixth Report of Session 2017-19 (2017-19, HC 886).

House of Lords and House of Commons Joint Committee on Human Rights, Any of our business? Human rights and the UK private sector: Report and Formal Minutes (2009-10, HL 5-I, HC 64-I).

House of Lords and House of Commons Joint Committee on the Draft Modern Slavery Bill, Report on the Draft Modern Slavery Bill (2013-14, HL 166, HC 1019).

Hsin L KE and others, Accountability, Monitoring and the Effectiveness of S 54 of the Modern Slavery Act: Evidence and Comparative Analysis (2021).

Hsin L KE, 'Modern slavery in law: towards continuums of exploitation' (2020) 26 Australian Journal of Human Rights 165.

Hutter B and Power M, Risk management and Business Regulation (Financial Times Mastering Risk Series, 2000).

ILO, 'ILO Standards on Forced Labour: The New Protocol and Recommendation at a Glance' (2016) < https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_508317.pdf> accessed 27 August 2022.

——, About the ILO <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm> accessed 29 August 2022.

——, 'Global Estimates of Modern Slavery: Forced Labour and Forced Marriage' (International Labour Organisation, 2017) <https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf> accessed 21 August 2022.

——, 'The Rana Plaza Accident and its Aftermath' <https://www.ilo.org/global/topics/geip/WCMS_614394/lang--en/index.htm> accessed 21 August 2022.

Impactt, Annual External Compliance Report of the Supreme Committee for Delivery and Legacy's Worker Welfare Standards (2018).

Inclusive Law <https://www.inclusivelaw.com/about>, Brick Court: <https://www.brickcourt.co.uk/our-people/profile/professor-robert-mccorquodale>.

Independent Anti-Slavery Commissioner, Annual Report for the period 1 August 2015 to 30 September 2016, presented to Parliament pursuant to s 42(10)(b) of the Modern Slavery Act 2015 (Independent Anti-Slavery Commissioner, 2016).

——, Independent Anti-Slavery Commissioner Strategic Plan 2015-2017 (October 2015).

Innovation Forum webinar, 'Can audits work to tackle human rights violations?' (3 December 2019).

International Organisation of Employers, 'Key developments in mandatory human rights due diligence and supply chain law: Considerations for employers' (September 2021) <https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=156042&token=ee1bad43bfa8dbf9756245780a572ff4877a86d5> accessed 27 August 2022.

JÄGers N, 'UN Guiding Principles at 10: Permeating Narratives or Yet Another Silo?' (2021) 6 Business and Human Rights Journal 198.

James S, 'The Idea Brokers: The Impact of Think Tanks on British Government' (1993) 71 Public Administration 491.

Janada R, 'Note: An Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries (Bill C-300): Anatomy of a Failed Initiative' (2010) 6 McGill International Journal of Sustainable Development Law and Policy 97.

Joachim J and Schneiker A, 'Humanitarian NGOs as Businesses and Managers: Theoretical Reflection on an Under-Explored Phenomenon' (2018) 19 International Studies Perspective 170.

Johnson T J, *Professions and Power* (1st edn, Macmillan 1972).

Johnstone O, 'First ever framework for writing good modern slavery statements produced' (Ethical Trading Initiative, 7 November 2018) <https://www.ethicaltrade.org/blog/first-ever-framework-writing-good-modern-slavery-statements-produced> accessed 28 August 2022.

Joint Committee on Human Rights, Good Business Implementing the UN Guiding Principles on Business and Human Rights (September 2013) Cm 8695.

Kamalnath A 'Transnational corporations and modern slavery: Nevsun and beyond' (2021) 21 Journal of Corporate Law Studies 491.

Katzenstein M F, *Faithful and fearless: moving feminist protest inside the church and military* (Princeton University Press 1998).

Kelly A, 'Nestlé admits slavery in Thailand while fighting child labour lawsuit in Ivory Coast' (The Guardian, 1 February 2016) <https://www.theguardian.com/sustainable-business/2016/
feb/01/nestle-slavery-thailand-fighting-child-labour-lawsuit-ivory-coast> accessed 21 August 2022.

Kelly A, 'The UK's New Slavery Laws Explained: What Do They Mean for Business?' The Guardian (14 December 2015) <https://www.theguardian.com/sustainable-business/2015/dec/
14/modern-slavery-act-explained-business-responsibility-supply-chain> accessed 28 August 2022.

Kim Y, Park M S and Wier B, 'Is Earnings Quality Associated with Corporate Social Responsibility?' (2012) 87 The Accounting Review 761.

Know the Chain, 'Insights Brief: Five Years of the California Transparency in Supply Chains Act' (30 September 2015) <https://knowthechain.org/wp-content/uploads/2015/10/KnowThe
Chain_InsightsBrief_093015.pdf> accessed, 27 August 2022.

Krajewski M, Tonstad K and Wohltmann F, 'Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?' (2021) 6 Business and Human Rights Journal 550.

Krawiec K, 'Cosmetic Compliance and the Failure of Negotiated Governance, (2003) 81 Washington University Law Quarterly 487

Kurkchiyan M, 'Corporate social responsibility through contractual control?: global supply chains and "other regulation"' in McBarnet D J, Voiculescu A and Campbell T, *The new corporate accountability: corporate social responsibility and the law* (Cambridge University Press, 2007).

Lake, Quentin, et. al., 'Corporate Leadership on Modern Slavery: How Have Companies Responded to the UK Modern Slavery Act One Year On?' (Hult Research in Partnership with the Ethical Trading Initiative, 2016).

Lange B and Haines F, Regulatory Transformations – Rethinking Economy-Society Interactions (Hart Publishing 2015).

Lange B, ‘Compliance Construction in the Context of Environmental Regulation’ (1999) 8(4) Social & Legal Studies 549.

Lange B, Haines F and Thomas D, Regulatory transformations: rethinking economy-society interactions (Hart Publishing 2015).

Law Commission, Corporate Criminal Liability <https://www.lawcom.gov.uk/project/corporate-criminal-liability/> accessed 29 August 2022.

LeBaron G and Rühmkorf A, ‘Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance’ (2017) 8 Global Policy 15.

LeBaron G, Combatting Modern Slavery: Why Labour Governance Is Failing and What We Can Do About It (Polity Press 2020).

Levitt A QC, Independent Review into the boohoo Group PLC’s Leceister supply chain (24 September 2020), <https://www.boohooplc.com/sites/boohoo-corp/files/final-report-open-version-24.9.2020.pdf> accessed 21 August 2022.

Lindsay R, Kirkpatrick A and Low J E, ‘Hardly Soft Law: The Modern Slavery Act 2015 and the Trend Towards Mandatory Reporting on Human Rights’ (2017) 18 Business Law International 29.

Lobel O, 'New Governance as Regulatory Governance' in David Levi-Faur (ed), The Oxford Handbook of Governance (Oxford University Press 2012).

Lowie R, ‘Social Organisation’, *Encyclopedia of the Social Sciences* vol. xiv.

Lyles M A and Thomas H, ‘Strategic Problem Formulation: Biases And Assumptions Embedded In Alternative Decision-Making Models‘ (1988) 25 Journal of Management Studies 131.

Maak T and Pless N M, *Corporate Social Responsibility (CSR): Bringing Society Back In, The Routledge Companion to Corporate Social Responsibility* (1st edn Routledge 2021).

MacLean L M and Brass J N, ‘Foreign Aid, NGOs and the Private Sector: New Forms of Hybridity in Renewable Energy Provision in Kenya and Uganda’ (2015) 62 Africa Today 57.

Mantouvalou V, ‘The UK Modern Slavery Act 2015 Three Years On’ (2018) 81 The Modern Law Review 1017.

Mark M, *Antonio Gramsci*. Critical Explorations in Contemporary Political Thought Series. (Palgrave Macmillan 2015).

Martin I W, ‘Reading The Great Transformation’ 44 Contemporary Sociology: A Journal Of Reviews 163.

Mathews B, ‘Due diligence laws would have held Boohoo liable’ (Apparel Insider, 22 Oct 2021) <https://apparelinsider.com/due-diligence-laws-would-have-held-boohoo-liable/> accessed 28 August 2022.

Matten D and Moon J, ‘“Implicit” and “Explicit” CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility” (2008) 33 Academy of Management Review 424.

May T ‘PM speech to UNGA on modern slavery: “behind these numbers are real people”’ (gov.uk, 20 September 2017) <https://www.gov.uk/government/speeches/pm-speech-to-unga-on-modern-slavery-behind-these-numbers-are-real-people> accessed 28 August 2022.

——, ‘Defeating modern slavery: article by Theresa May’ (gov.uk, 31 July 2016) <https://www.gov.uk/government/speeches/defeating-modern-slavery-theresa-may-article> accessed 21 August 2022.

Mayes BT and Allen RW, ‘Towards a Definition of Organisational Polities’ (1977) 2 The Academy of Management Review 672.

McBarnet D and Schmidt P, ‘Corporate Accountability through Creative Enforcement: Human Rights, the Alien Tort Claims Act and the Limits of Legal Impunity’ in McBarnet D, Voiculescu A and Campbell T, *The new corporate accountability: Corporate Social Responsibility and the Law* (1st edn, Cambridge University Press, 2007).

McBarnet D and Whelan C, *Creative Accounting and the Cross-eyed Javelin Thrower*. Chichester (J. Wiley, 1999).

McBarnet D J, Voiculescu A and Campbell T, *The new corporate accountability: Corporate Social Responsibility and the Law* (1st edn, Cambridge University Press, 2007).

McBarnet D, ‘Financial Engineering or Legal Engineering? Legal Work, Legal Integrity and the Banking Crisis’ in Ian MacNeil and Justin O’Brien (eds) *The Future of Financial Regulation* (Hart Publishing 2010).

——, ‘Transnational Transactions: Legal Work, Cross-Border Commerce and Global Regulation’ in Antoine Masson and Mary J. Shariff (eds) *Legal Strategies* (Springer 2009).

——, Corporate Social Responsibility Beyond Law, Through Law, for Law, U. of Edinburgh School of Law Working Paper No. 2009/03.

McCorquodale R and others. 'Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises' (2017) 2 Business and Human Rights Journal 195.

McNeece IV JB, 'The Ethical Conflicts of the Hybrid General Counsel and Chief Compliance Officer (2012) 25 Georgetown Journal of Legal Ethics 677.

McVeigh K, 'Home Office under fire over "muddled" strategy on slavery that fails victims' (The Guardian, 23 May 2018) <https://www.theguardian.com/global-development/2018/may/23/home-office-muddled-strategy-modern-slavery-kevin-hyland> accessed 29 August 2022.

McWilliams A and others (eds), *The Oxford Handbook of Corporate Social Responsibility: Psychological and Organisational Perspectives* (Oxford University Press 2019), 264.

McWilliams A and Siegel D, 'Corporate Social Responsibility: A Theory of the Firm Perspective' (2001) 26 The Academy of Management Review 117.

McWilliams A, Siegel D and Wright P M, 'Corporate Social Responsibility: Strategic Implications' (2006) 43 Journal of Management Studies 1.

Meidinger E, 'The Administrative Law of Global Private-Public Regulation: the Case of Forestry' 17 European Journal of International Law 47.

Mende J, 'The Concept of Modern Slavery: Definition, Critique, and the Human Rights Frame' (2019) 20 Human Rights Review 229.

Minkoff D C, 'The Emergence of Hybrid Organizational Forms: Combining Identity-Based Service Provision and Political Action' (2002) 31 Nonprofit and Voluntary Sector Quarterly 377.

Mithani M A and P.O'Brien J, 'So What Exactly Is a "Coalition" Within an Organisation? A Review and Organising Framework' (2021) 47 Journal of Management 171.

Modern Slavery and Human Rights All-Party Parliamentary Group on Sport, Interim Report (July 2019) <https://www.ihrb.org/uploads/meeting-reports/APPG_Interim_Report_July_2019.pdf>

Monciardini D, Bernaz N and Andhov A, 'The Organizational Dynamics of Compliance with the UK Modern Slavery Act in the Food and Tobacco Sector' (2021) 60 Business & Society 288.

Moon J, 'Government as a Driver of Corporate Social Responsibility', (2004) 20 ICCSR Research Paper Series ISSN 1479-5124.

Mooney A, ‘Jobs bonanza in stewardship and sustainable investing teams’ <https://www.ft.com/content/2714da14-c12d-46b2-8ecf-9aba3f665fdf> (The Financial Times, 8 March 2020) accessed 27 August 2022.

Morgan B and Yeung K, An Introduction to Law and Regulation: Text and Materials (Cambridge University Press 2007) 53.

Morgan B, The Intersection of Rights and Regulation: New Directions in Socio-Legal Scholarship (Ashgate Publishing 2007).

Morse A, Wang W and Wu S, ‘Executive lawyers: Gatekeepers or Strategic Officers?’ (National Bureau of Economic Research Working Paper 2016) <https://www.nber.org/papers/w22597> accessed 27 August 2022.

——, ‘Executive lawyers: Gatekeepers or Strategic Officers? (2016) 59 The Journal of Law and Economics 847.

Mosonyi and others, ‘Rethinking professionalization: A generative dialogue on CSR practitioners’ (2019) 6 Journal of Professions and Organization 246.

Moura-Leite R C and Padgett R C, ‘Historical Background of Corporate Social Responsibility’ (2011) 70 Social Responsibility Journal 528.

Moyo J, ‘New Report and Survey Finds Modern Slavery Act Is Galvanising Leadership Action in Progressive Companies’ (Ethical Trading Initiative, 27 October 2016) <https://www.ethicaltrade.org/blog/new-report-and-survey-finds-modern-slavery-act-galvanis
ing-leadership-action-progressive> accessed 21 August 2022.

Muchlinski P, ‘The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights’ (2021) 6 Business and Human Rights Journal 212.

National Action Plans on Business and Human Rights ‘Guiding Principle 19’ <https://globalnaps.org/ungp/guiding-principle-19/>

Nebehay S, ‘U.N. says it has credible reports that China holds million Uighurs in secret camps’ (Thomson Reuters, 10 August 2018) <https://www.reuters.com/article/us-china-rights-un-idUSKBN1KV1SU> accessed 28 August 2022.

Neil DT, and Kagan RA, 2005. ‘Motivating Management: Corporate Compliance in Environmental Protection’ (2005) 27 Law & Policy 289
Nestlé, ‘Cocoa Plan: Tackling Child Labour 2019 Report’ (2019) <https://www.nestle.com/sites/default/files/2019-12/nestle-tackling-child-labor-report-2019-en.pdf> accessed 27 August 2022.

New S J, 'Modern Slavery and the Supply Chain: The Limits of Corporate Social Responsibility' (2015) 20 Supply Chain Management 697.

New Zealand Foreign Affairs & Trade, 'Combatting. Modern slavery' <https://www.mfat.govt.nz/en/trade/nz-trade-policy/combatting-modern-slavery/> accessed 28 August 2022.

New Zealand Ministry of Innovation & Business Development, 'Consultation on Modern Slavery and Worker Exploitation' <https://www.mbie.govt.nz/have-your-say/modern-slavery/> accessed 28 August 2022.

New Zealand Office of the Speaker of the House of Representatives, 'Commonwealth nations combine forces to combat modern slavery' (New Zealand Parliament, 24 April 2017) <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/office-of-the-speaker/
press-releases/commonwealth-nations-combine-forces-to-combat-modern-slavery/> accessed 28 August 2022.

Newton A, *The Business of Human Rights: Best Practice and the UN Guiding Principles* (1st edn, Routledge 2019).

Nielsen V L and Parker C, 'Testing responsive regulation in regulatory enforcement' (2009) 3 Regulation & Governance 376.

Nolan J and Boersma M, Addressing Modern Slavery (UNSW Press, September 2019).

Nolan J and Bott G, 'Global supply chains and human rights: spotlight on forced labour and modern slavery practices' (2018) 24 Australian Journal of Human Rights 44.

Nolan J, 'Hardening Soft Law: Are the Emerging Corporate Social Disclosure Laws Capable of Generating Substantive Compliance with Human Rights' (2018) Brazilian Journal of International Law, UNSW Law Research Paper 18.

Nordic Ecolabelling, <https://www.nordic-ecolabel.org/> accessed 27 August 2022.

Norton Rose Fulbright, Modern slavery legislation – Canada may follow the global trend (Norton Rose Fulbright, December 2018) <https://www.nortonrosefulbright.com/en/knowledg
e/publications/ee653db4/modern-slavery-legislation---canada-may-follow-the-global-trend> accessed 28 August 2022.

Office of the Independent Antislavery Commissioner and Themis, 'Preventing Modern Slavery and Human Trafficking: An Agenda for Action across the Financial Services Sector' (2021), 25 <https://static1.squarespace.com/static/5c12a68fc258b4c36480afb6/t/6000daf6cc011647
5

9cbf4cb/1610668806780/Preventing-MSHT-Full-Report.pdf> accessed 21 August 2022

OHCHR, 7th UN Form on Business and Human Rights (27-29 November 2018) <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2018ForumBHR.aspx> accessed 28 August 2022.

——, Government Statements <https://www.ohchr.org/en/events/forums/2018/7th-un-forum-business-and-human-rights#submissions> accessed 28 August 2022.

——, *Legally Binding Instrument to Regulate in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises* <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf> accessed 28 August 2022.

Otty T QC and Patel N, In the matter of the findings of a review into the Boohoo Group Plc'S Leicester supply chain and liability under a mandatory human rights due diliegence/ 'failure to prevent law <https://media.business-humanrights.org/media/documents/Boohoo_Legal_Opinion_1.pdf> accessed 28 August 2022.

'Over 70 fashion companies sign new accord for safer factories' (YarnsandFibers News Bureau, 2 September 2021) <https://www.yarnsandfibers.com/news/textile-news/over-70-fashion-companies-signs-new-accord-for-safer-factories/> accessed 21 August 2022.

Pattisson P and others, 'Revealed: 6,500 migrant workers have died in Qatar since World Cup awarded' (The Guardian, 23 February 2021) <https://www.theguardian.com/global-development/2021/feb/23/revealed-migrant-worker-deaths-qatar-fifa-world-cup-2022> accessed 29 August 2022.

PBC Deb, 11th sitting 14 October 2014.

Pendleton A and others, 'Behind the mask: the real face of corporate social responsibility' (Christian Aid, 2004). <https://baierle.files.wordpress.com/2007/11/behind-mask.pdf> accessed 21 August 2022.

Peters D, 'Dream job 2.0: As companies get serious about the environment, sustainability consultants are in demand' (The Globe and Mail, 3 May 2021), <https://www.theglobeandmail.com/business/careers/article-dream-job-20-as-companies-get-serious-about-the-environment/> accessed 27 August 2022.

Petriepoli I, Johnstone O and Balch A, Policy brief: effectiveness of forced labour import bans (Modern Slavery & Human Rights Policy & Evidence Centre, July 2021) <https://modernslaverypec.org/assets/downloads/PEC-Policy-Brief-Effectiveness-Forced-Labour-Import-Bans.pdf> accessed 27 August 2022.

Pietropaoli I, et. al. A UK Failure to Prevent Mechanism for Corporate Human Rights Harms (BIICL, 2019) <https://www.biicl.org/documents/84_failure_to_prevent_final_10_feb .pdf> accessed 29 August 2022.

Plant R, 'Modern slavery: The Concepts and their Practical Implications', (ILO, 2014) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/--- declaration/documents/publicatio n/wcms_355052.pdf> accessed 29 August 2022.

Polanyi K, The Great Transformation: *The Political and Economic Origins of Our Time* (2nd edn, Beacon Press 2002), 137

Porter M E and Kramer M R, 'Strategy and Society: The Link Between Competitive Advantage and Corporate Social Responsibility' (Harvard Business Review, December 2006) <https://hbr.org/2006/12/strategy-and-society-the-link-between-competitive-advantage-and-corporate-social-responsibility> accessed 21 August 2022.

Posner C, 'So Long to Shareholder Primacy' (Harvard Law School Forum on Corporate Governance, 22 August 2019) <https://corpgov.law.harvard.edu/2019/08/22/so-long-to-shareholder-primacy/> accessed 27 August 2022.

Power M, 'Risk Management of Nothing' (2009) 34 Accounting, Organisations and Society 849.

PRI, The UN Guiding Principles: an engagement framework (PRI, 1 July 2015) <https://www.unpri.org/social-issues/why-are-pri-investors-using-the-un-guiding-principles-as-a-framework-for-engagement/453.article> accessed 28 August 2022.

Pritchard S, 'Top five compliance concerns for UK business in 2020' (Computer Weekly, 31 March 2020) < https://www.computerweekly.com/feature/Top-five-compliance-concerns-for-UK-business-in-2020> accessed 27 August 2022.

PSCI <https://pscinitiative.org/about> accessed 27 August 2022.

——, 'What we do: the principles' <https://pscinitiative.org/principles> accessed 27 August 2022.

'Q&A - If the Government won't enforce the law, what's the role of business associations and groups to persuade them to do so more effectively and with more resources' Modern Slavery Forum, the Business Case Beyond Compliance, 18-19 October 2018 <https://www.innovationforum.co.uk/conferences/modern-slavery-human-rights/agenda/112 >.

Ramasastry A, 'Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability' (2015) 14 Journal of Human Rights 237, 242.

Renfree R, 'New legislation announced in Queen's Speech' (Mills & Reeve LLP, June 2014) <https://www.lexology.com/library/detail.aspx?g=2a71fb0e-d78d-4045-92a0-a69159d7ae85
> accessed 27 August 2022.

Reynolds F, 'What institutional investors need to know about the "S" in ESG' (PRI, 22 October 2020) <https://www.unpri.org/pri-blog/what-institutional-investors-need-to-know-about-the-s-in-esg/6635.article> accessed 28 August 2022.

Rosen R E, '"We're all Consultants Now": How Change in Client Organisational Strategies Influences Change in the Organisation of Corporate Legal Services' (2002) 44 Arizona Law Review 637.

Rt Hon Baroness Butler-Sloss, Rt Hon Frank Field MP and Rt Hon Sir John Randall MP, Establishing Britain as a world leader in the fight against modern slavery (Modern Slavery Bill Evidence Review, 2013).

Ruggie J, 'Global Governance and "New Governance Theory": Lessons from Business and Human Rights' (2014) 20 Global Governance 5.

——, 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order' (1982) 36 International Organisation 379.

——, 'Protect, Respect and Remedy: A Framework for Business and Human Rights' (7 April 2008) A/HRC/8/5.

——, 'Reconstituting the Global Public Domain – Issues, Actors, and Practices' (2004) 10 European Journal of International Relations 499.

——, 'Taking Embedded Liberalism Global: The Corporate Connection' (2003) International Law and Justice Working Papers 2003/2.

——, 'What Makes the World Hang together? Neo-utilitarianism and social constructivist challenge' (1998) 52 International Organisation 855.

Rühmkorf A, Corporate social responsibility, private law and global supply chains (Edward Elgar Publishing 2015).

Ryngaert C, 'Public International Law Approaches to Jurisdiction', Jurisdiction in International Law (Oxford University Press 2008) 23.

Sako M, ‘Globalization and the Changing Role of General Counsel: Current Trends and Future Scenarios’ (2017) Liquid Legal 33.

Sampson S, ‘Good People Doing Bad Things: Compliance Regimes in Organisations’ 5 Journal of legal Anthropology 110.

Sampson S, ‘The “Right Way”: Moral Capitalism and the Emergence of the Corporate Ethics and Compliance Officer’ 2 Journal of Business Anthropology 65.

Sancroft, ‘The Sancroft-Tussell Report: Eliminating Modern Slavery in Public Procurement’ (2018) <https://sancroft.com/2018/03/22/the-sancroft-tussell-report-eliminating-modern-slavery-in-public-procurement-2/> accessed 27 August 2022.

Sarfaty G, 'Corporate actors as translators in transnational lawmaking' (2021) 115 The Anthropology of International Law 278.

——, ‘Shining Light on Global Supply Chains’ (2015) 56 Harvard International Law Journal 419, 421.

——, ‘Translating Modern Slavery into Management Practice’, (2020) 45 Law & Social Inquiry 1027.

Sarvaiya H, Arrowsmith J and Eweje G, ‘Exploring HRM involvement in CSR: variation of Ulrich’s HR roles by organisational context’ (2021) 32 The International Journal of Human Resource Management 4429.

Scherer A G and Palazzo G, ‘The New Political Role of Business in a Globalized World – A Review of a New Perspective on CSR and Its Implications for the Firm, Governance, and Democracy’ (2011) 48 Journal of Management Studies 899.

Schmidt P, ‘Let's (Not) Kill All the Lawyers: Corporate Regulatory Compliance and Attorneys' Divided Roles’ Business and Society Review (1974) 105.2 (2000): 269-87.

——, ‘The ethical lives of securities lawyers' in Leslie C. Levin & Lynn M. Mather (eds.), *Lawyers in Practice: Ethical Decision Making in Context* (University of Chicago Press 2012) pp. 221.

Schwartz A, Keynote Address: Modern Supply Chains and Outmoded Contract Law, (2019) 68 American University Law Review 1503.

Scott M, ‘EU corporate Disclosure Law will Enhance Supply Chain Efficiency’, Supply Chain Management [website], <https://www.cips.org/supply-management/opinion/2015/august/eu-corporate-disclosure-law-will-enhance-supply-chain-efficiency> accessed on 28 November 2016.

‘Second-Tier Supplier Definition from Financial Times Lexicon’ <http://lexicon.ft.com/Term?term=second_tier-supplier> accessed 22 September 2018.

Secretary-General proposes global compact on human rights, labour, environment, in address to world economic forum in Davos, Press Release SG/SM/6881, 1 February 1999, <https://www.un.org/press/en/1999/19990201.sgsm6881.html> accessed 18 November 2022.

Sen A K, ‘Rational Fools: A Critique of the Behavioral Foundations of Economic Theory’ (1977) 6 Philosophy & Public Affairs 4, 336.

Shamir R, ‘The age of responsiblization: on market-embedded morality’ (2008) 37 Economy and Society 1.

Simic A and Blitz B K, ‘The modern slavery regime: a critical evaluation’ 7 (s1) Journal of the British Academy 1.

Simma B and Müller A T, 'Exercise and limits of jurisdiction' in The Cambridge Companion to International Law (Cambridge University Press 2012).

Simons P and Macklin A, The governance gap : extractive industries, human rights, and the home state advantage (Routledge 2014).

Simpson D and others, ‘The role of psychological distance in organizational responses to modern slavery risk in supply chains’ (2021) 67 Journal of Operations Management 989.

Skrivankova K, ‘Analysis of Modern Slavery Act’ (Anti-slavery International Blog, 27 March 2015) <https://www.antislavery.org/analysis-modern-slavery-act> accessed 27 August 2022.

Slavery Convention (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253.

Smit L, ‘Making sense of managing human rights issues in supply chains’ (British Institute of International Comparative Law, 1 January 2018), <https://www.biicl.org/publications/making-sense-of-managing-human-rights-issues-in-supply-chains>.

Smith J, The Idea Brokers: Think Tanks and the Rise of the New Policy Elite (Free Press 1993).

Social Responsibility Alliance, Slavery & Trafficking Risk Template <https://www.socialresponsibilityalliance.org/strt/> accessed 29 August 2022.

Standing G, *Labor Recommodification in the Global Transformation’ in Reading Karl Polanyi for the Twenty-First Century* (Palgrave Macmillan 2007).

Stephenson W, ‘Have 1,200 World Cup workers really died in Qatar?’ (BBC, 6 June 2015) <https://www.bbc.co.uk/news/magazine-33019838>

Stevenson M and Cole R, ‘Modern slavery in supply chains: a secondary data analysis of detection, remediation and disclosure’ (2018) 12 Supply Chain Management 81

Stringer C and others, ‘Toward a Modern Slavery Act in New Zealand - Legislative landscape and steps forward’ (September 2021) <https://cdn.auckland.ac.nz/assets/business/about/our-research/research-institutes-and-centres/CReMS/CRMS%20Toward%20a%20Modern%20Slavery%20Act%20v1.1%20WEB.pdf> accessed 29 August 2022.

Sung Hui K “The ethics of in-house practice” in Levin LC and Mather L M (eds.), *Lawyers in Practice: Ethical Decision Making in Context* (University of Chicago Press 2012)

Swan N, ‘Modern slavery risk rising for New Zealand business’ (Chapman Tripp, 16 October 2021) <https://chapmantripp.com/trends-insights/modern-slavery-rising-risk-for-nz-business/#:~:text=So%20far%2C%202%2C500%20Statements%20have,provided%20a%20Modern%20Slavery%20Statement> accessed 28 August 2022.

Tabuena J A and Smith J L, ‘The Chief Compliance Officer versus the General Counsel: Friends or Foes? Part II’ (2006) 8 Journal of Health Care Compliance 13.

Taylor H, ‘New Research: Compliance up but quality down – the concerning lack of engagement in modern slavery reporting from the UK agricultural sector’ (University of Nottingham Rights Lab Blog, 30 October 2019) <https://blogs.nottingham.ac.uk/rights/2019/10/30/new-research-compliance-up-but-quality-down-the-concerning-lack-of-engagement-in-modern-slavery-reporting-from-the-uk-agricultural-sector/> accessed 21 August 2022.

The New York Times ‘“Absolutely No Mercy”: Leaked Files Expose How China Organised Mass Detentions of Muslims’ <https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html> accessed 28 August 2022.

‘Transforming Our World: The 2030 Agenda for Sustainable Development’ (United Nations General Assembly, 2015) Resolution A/RES/70/1, 20 <https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 21 August 2022.

Trilateral Research <https://www.T-Research research.com/about/> accessed 28 August 2022.

Tsagas G, ‘S 172 of the UK Companies Act 2006: Desperate Times Call for Soft Law Measures – A Post-Scriptum (University of Oxford Business Law Blog, 22 September

2017) <https://www.law.ox.ac.uk/business-law-blog/blog/2017/09/s-172-uk-companies-act-2006-desperate-times-call-soft-law-0> accessed 21 August 2022.

UK Government and Parliament, 'Under the immigration plan, treat HGV Drivers as skilled workers' <https://petition.parliament.uk/petitions/588566> accessed 21 August 2022.

UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities (September 2020)

UK Modern Slavery Act Transparency in Supply Chains: the Second Year of Reporting by Universities (June 2018).

UK Parliament, Modern Slavery (Amendment Bill): Private Members' Bill (Starting in the House of Lords) <https://bills.parliament.uk/bills/2892/stages> accessed 28 August 2022.

UNGA, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences (UNGA, 2017) UN Doc A/HRC/36/43.

——, Working Group on the issue of human rights and transnational corporations and other business enterprises (73rd session, 16 July 2018) UN Doc A/73/163.

UNGC, 'Our Mission' <https://www.unglobalcompact.org/what-is-gc/mission> accessed 28 August 2022.

——, 'The Ten Principles of the United Nations Global Compact' <https://www.unglobalcompact.org/what-is-gc/mission/principles> accessed 27 August 2022.

United Nations Department of Economic and Social Affairs, 'Do you know all 17 SDGs?' <https://sdgs.un.org/goals> accessed 28 August 2022.

United Nations Human Rights Council, (6 July 2011) A/HRC/Res 17/4.

——, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights (26th session, 25 June 2014) UN Doc A/HRC/26/L.22/Rev.1

——, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (21 March 2011) A/HRC/17/31.

United Nations Office of the High Commissioner for Human Rights ('OHCHR'), Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (2011) HR/PUB/11/04.

University of Greenwich, Protecting human rights in supply chains: a guide for public procurement practitioners (May 2017).

University of Hull, 'New study: Brits are blind to the signs of modern day slavery' <https://www.hull.ac.uk/work-with-us/more/media-centre/hidden-in-plain-sight#:~:text=Mod
US Department of State, Trafficking in Persons Report <https://www.state.gov/trafficking-in-persons-report/> accessed 28 August 2022.

University of Nottingham <https://www.nottingham.ac.uk/news/expertiseguide/law/professor-robert-mccorquodale-.aspx> accessed 28 August 2022.

Verite, 'A Verité Assessment of Recruitment Practices and Migrant Labor Conditions in Nestlé's Thai Shrimp Supply Chain' (2016) <https://www.verite.org/wp-content/uploads/2016/11/NestleReport-ThaiShrimp_prepared-by-Verite.pdf> accessed 27 August 2022.

Verney P, 'Modern slavery in the spotlight: UN to back new blueprint, UK investors call for mandatory rules and Swiss firms face pressure' (Responsible Investor, 13 September 2019) <https://www.responsible-investor.com/investors-urge-support-ms/> accessed 21 August 2022.

Vidican P 'Eradicating forced labor in electronics: What do company statements under the UK Modern Slavery Act tell us?' (Know the Chain, 7 July 2020) < https://knowthechain.org/company_post/eradicating-forced-labor-in-electronics-what-do-company-statements-under-the-uk-modern-slavery-act-tell-us/> accessed 21 August 2022.

Voegtlin C and Greenwood M, 'Corporate social responsibility and human resource management: A systematic review and conceptual analysis' (2016) 26 Human Resource Management Review 181.

Vogel D, The Market for Virtue: The Potential and Limits of Corporate Social Responsibility (Brookings Institution Press 2006).

Vogt J, 'Efforts to clean up global supply chains so far come up short' (Open Democracy, 22 March 2017) <https://www.opendemocracy.net/beyondslavery/jeffrey-vogt/efforts-to-clean-up-global-supply-chains-so-far-come-up-short> accessed 27 August 2022.

Voss H and others, 'International supply chains: compliance and engagement with the Modern Slavery Act' (2019) 7 Journal of the British Academy 61.

Waitsman E, 'Deregulation: Government Policy since 1997' (House of Lords Library Briefing, 2017) < https://researchbriefings.files.parliament.uk/documents/LLN-2017-0041/LLN-2017-0041.pdf> accessed 27 August 2022.

Walk Free Foundation, 'The Global Slavery Index 2016' <https://downloads.globalslaveryindex.org/ephemeral/GSI-2016-Full-Report-1661637060.pdf>.

——, 'Tackling Modern Slavery in Supply Chains: A Guide 1.0' < https://respect.international /wp-content/uploads/2017/11/Tackling-Modern-Slavery-in-Supply-Chains.pdf> accessed 28 August 2022.

Walliman N, *Social research methods* (Sage 2006).

Walton C C, *The Ethics of Corporate Conduct* (Englewood Cliffs 1976).

Wazier B, 'Nike accused of tolerating sweatshops' (The Guardian, 20 May 2001) <https://www.theguardian.com/world/2001/may/20/burhanwazir.theobserver> accessed 21 August 2022.

Webb P and Garciandia R, 'State Responsibility for Modern Slavery: Uncovering and Bridging the Gap' (2019) 68 International & Comparative Law Quarterly 539.

Weekes J, 'Sham marriages, crippling debt and broken dreams: Modern slavery abuses targeted (New Zealand Herald, 8 April 2022) <https://www.nzherald.co.nz/nz/sham-marriages-crippling-debt-and-broken-dreams-modern-slavery-abuses-targeted/HSPAAJMCC C2TVS7C6FZA7GXCJE/> accessed 28 August 2022.

Wettstein F, 'Business and Human Rights: Overcoming Old Paradigms, Pushing for New Frontiers' (E-international Relations, 9 January 2022) <https://www.e-ir.info/2022/01/09/business-and-human-rights-overcoming-old-paradigms-pushing-for-new-frontiers/> accessed 28 August 2022.

Wickert C and Risi D, *Corporate social responsibility* (Cambridge University Press 2019).

Wilde M, 'Extraterritorial liability of parent company for the torts of its subsidiary: Okpabi and others v Royal Dutch Shell' (2021) 37 Journal of Professional Negligence 142.

Wood J P and Jon H, 'Update on the Modern Slavery Bill - consultation on the transparency in supply chains clause' (Norton Rose Fulbright, 27 February 2015) <https://www.lexology.com/library/detail.aspx?g=1d9fc7c9-28b9-4405-8280-6b6aa860f46a> accessed 27 August 2022.

Wood S and others, 'The interactive dynamics of transnational business governance: A challenge for transnational legal theory' (2015) 6 Transnational Legal Theory 333.

World Benchmarking Alliance, Corporate Human Rights Benchmark <https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/> accessed 28 August 2022.

Wowak A J, Busenbark J R and Hambrick D C, ‘How Do Employees React When Their CEO Speaks Out? Intra-and Extra-Firm Implications of CEO Sociopolitical Activism’ (2022) 67 Administrative Science Quarterly 553.

Young D R and Salamon L M, ‘Commercialization, Social Ventures, and For-Profit Competition’ in Lester M. Salamon (ed) *The State of America's Nonprofit Sector Project* (Brookings Institution Press 2002).

Zamfir I, ‘Towards a mandatory EU system of due diligence for supply chains’ (European Parliament Briefing, October 2020) <https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI(2020)659299_EN.pdf> accessed 21 August 2022.