Conflict, Resources and the Responsibility of Corporations

What responsibility do natural resources corporations that operate in conflict risk areas have to ensure that human rights are respected?

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Abstract

The thesis aims at analyzing the responsibility corporations, which are extracting valuable minerals from conflict risk and conflict affected areas, have in terms of respecting human rights. The thesis analyzes corporate responsibility mostly from a moral but also a legal perspective. In terms of the moral responsibility, the thesis has strategically chosen to examine the moral responsibility of corporations to respect human rights through the moral responsibility of their employees. The stance, that the thesis launches, is that the moral responsibility of the employees as individuals does transcend upon corporations making the business enterprise responsible for respecting human rights. The legal obligation of corporations in this matter is referred to domestic court decisions, which have ruled that corporations through business decisions have violated the human rights of affected individuals.

The theoretical framework is based on the principle of due diligence, which has proven to be crucial when incorporating management policies and risk-assessment mechanisms within the structure of corporations. Through the analysis of the Kimberley Certification Scheme, which is a state-to-state agreement with the aim to hinder conflict-diamonds from entering into the international market, a lack of due diligence framework suitable for corporations has been revealed. The scheme is flawed as it does not provide corporations extracting diamonds from conflict risk and conflict affected areas with a due diligence framework. The thesis draws the conclusion that corporations are both morally and legally responsible to respect human rights. In addition, the Kimberley Certification Scheme is a step to hinder conflict diamonds from entering into the international market. However, the scheme must be re-examined and elaborated into a framework where due diligence is included. These measures will allow corporations to operate with clear guidelines on how to extract valuable minerals in conflict risk and conflict affected areas whilst performing due diligence. Such an adjustment will allow corporations to avoid either directly or indirectly to finance actions, which could lead to human rights abuses.

Key words
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Chapter 1 Introduction

Chapter one starts by introducing the research environment in terms of how the perception of war has changed the international community after the Cold War, how diamonds have been used to finance activities which have led to human rights violations and which voluntary initiatives have been established to facilitate corporations to take their responsibility in respecting human rights. Chapter one continues by describing the purpose of the research and the research questions, which the paper aims to answer. To conclude, chapter one presents the method of analysis, which the research thesis will be using, previous research and why this research is necessary to conduct.

1.1 Introduction

Since the Cold War, the international community has had to change its perception of peace and security. Previously, the involvement in peace and security issues has been resting on the states as principle actors. Today, peace and security are no longer simply a matter of state involvement but also of non-state actors. The global peace is today threatened by state failure, unlawful and irresponsible behavior of non-state actors such as terrorist groups, rebel groups and even corporations. Valuable mineral extractions by corporations from weak states have shown to be, if not dealt with caution, a triggering factor for conflict outbreak or a result of conflict escalation as real groups may use these minerals as a source of revenue in order to finance war waging.1

The environment is rich on natural resources such as water, timber, gold and minerals. If these resources are used in a responsible manner these can be a valuable source for development opportunities in our societies. However, if poorly managed, several security threats will instantly become visible as tensions and conflicts will become prone to arise between conflicting parties.2 To extract natural resources in raw material form is not a source of conflict, however, in combination with underlying grievances natural resources can become a dominant part in conflict escalation and as a mean to finance conflict continuation. According to the United States Agency for International Development (USAID), "valuable minerals become conflict minerals when their control, exploitation, trade, taxation or protection contributes to, or benefits from, armed conflicts."3 As the demand for

1 United Nations Environmental Programme: From Conflict to Peace Building: The Role of Natural Resources and the Environment. Published by the United Nations Environmental Programme, 2009, p.6

2 Ibid, p.6

3 United States Agency International Development: Minerals and Conflict, A Toolkit for Intervention, p. 3
natural resources has increased and conflicts have become more complex due to the involvement of several parties including non-state actors conflict management and peace building has become more perplexed.  

Due to historical events, diamonds are associated with violent conflicts, which have occurred mainly in Africa. As a result of underlying grievances, personal greed and the thirst to acquire political power have resulted in rebel groups using the diamond trade as a means to finance civil wars against legitimized governments. It is the states failure in upholding a solid legislative framework and regulations concerning the exportation, importation and taxation of natural resources, which will make it difficult to establish a sustainable and responsible manner of natural resource extraction. Therefore, in these circumstances non-state actors play a crucial role in determining the course of the conflict as it is through the supply chain of the mining corporations that several rebel groups gain access to revenue opportunities. During recent years, the UN has developed several voluntary initiatives such as *The Global Compact*, *Guiding Principles on Business and Human Rights* and *Guidelines on Due Diligence* with the aim to assist corporations to apply due diligence in their management policies and throughout their supply chain. In addition to the UN initiatives, which were launched to guide corporations to apply due diligence within their supply chain concerning conflict diamonds, the Kimberley Certification Scheme was elaborated. The purpose of the Kimberley Certification is to certify conflict-free diamonds in order to sole out the conflict-diamonds from the international diamond market. The pursuit of hindering conflict diamonds from entering into the international diamond market has therefore become not only a political but also a corporate issue and responsibility.

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4 United States Institute of Peace: *Natural Resources, Conflict, and Conflict Resolution*. Published 2007, p.12

5 United Nations: *The Ten Principles of the UN Global Compact*.


7 United Nations: *Due diligence guidelines for the responsible supply chain of minerals from red flag locations to mitigate the risk of providing direct or indirect support for conflict in the eastern part of the Democratic Republic of the Congo*. 
1.2 Purpose of the Essay and Research Question

The purpose of the thesis is to analyze the responsibility of mining corporations that extract natural resources from conflict risk and conflict areas, to ensure that they do not either directly or indirectly contribute to human rights violations. Due to the high risk in these areas that the trade of natural resources will be used as a source of revenue to finance both civil war and actions which will result in human rights violations it is interesting to review what responsibility corporations have to avoid taking part in these activities. The thesis will first analyze the corporate responsibility to respect human rights from a business ethics approach. The research question for the thesis is therefore as follows: "What responsibility in terms of due diligence, do mining corporations have to ensure that the extraction of diamonds from conflict risk and conflict areas does not serve either, directly or indirectly, as a means of financing activities that results in the violation of human rights?"

To obtain a means of analyzing the corporate responsibility in term of diamonds the paper will therefore go further and analyze the Kimberley Certification Scheme which aims to hinder conflict diamonds from entering into the international market and sub-consequently cutting off means of financing civil war and human rights violations. In order to narrow the analysis in terms of the Kimberley Certification Scheme the thesis will search to answer the following sub-question: "Is corporate due diligence possible to acquire with the use of the Kimberley Certification Scheme concerning conflict diamonds? If any weaknesses are found which are they and how could the Certification Scheme be improved?"

1.3 Problem

After the Second World War, the Universal Bill of Human Rights was developed by the United Nations with the purpose to attribute citizens’ human rights and to give states the responsibility to protect these rights from being violated. Due to the political situation at the time and the present actors, which would influence peace and security, corporations were not defined as a holder of responsibility. Today, both the political and economical areas have undergone considerable changes including the emerging of an additional actor which can influence peace and security, being non-state actors. Due to the power of influence corporations have both on peace and security but also regarding the development of host states, it is imperative that the international community acknowledges the shift in power. In addition, the international community must find a sustainable solution to hold corpora-
Corporations have been involved either directly or indirectly in human rights violations through the past decades. To respond to the human rights violations the United Nations have endorsed numerous voluntary initiatives directed towards corporations and their responsibility towards human rights. The initiatives are milestones towards the right direction as through their establishment they institute a social norm that corporations do have a responsibility to respect human rights. There are different initiatives, which aims at offering corporations operating in different sectors guidelines on how to operate in order to avoid contributing to human rights violations. The Kimberley Certification Scheme is an initiative created through the collaboration of several actors including the diamond industry, mining corporations, civil society and states. The scheme aims to hinder conflict-diamonds from entering into the international market by requiring diamonds to be conflict free certified. The first problem is that this is a voluntary initiative, which does not oblige corporations to implement the scheme into their business practices and adapt the corporations’ ethical codes to correspond. Secondly, the scheme is a state-to-state initiative, which does not offer corporations a developed implementation strategy, which creates loopholes for both corporations and a third-party whom will benefit from conflict diamonds being certified as conflict free diamonds. The purpose of the initiative is well established however there are weaknesses which must be adjusted in order to fight against organized crime and corruption which is directly associated to conflict diamonds.

1.4 Previous Research

The topic of the research of this thesis is broad in the sense that it includes several dilemmas concerning corporate responsibility to respect human rights and the extraction of high-valued natural resources. In 2005 Professor John Ruggie of Harvard University was appointed as the UN Specialist Representative for Business and Human Rights. The purpose of his mandate was to conduct research on and analyze the responsibility corporations have towards human rights. In 2011, Ruggie submitted his report in which he came to the conclusion that states and non-state actors in this case being corporations and transnational companies have different responsibilities towards human rights. States have, due to their sovereign status, the responsibility to protect human rights from being accountable for any human rights violations, which can be associated with both their business decisions and supply chains.\(^8\)

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\(^8\) Survya, Deva: *UN Human rights norms for transnational corporations and other business enterprises: an imperfect step in the right direction?* Published 2004, p. 494-495

\(^9\) Institute for Human Rights and Business: *John Ruggie*. 

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8
ing violated both by their own power and by a third-party. Corporations on the other hand, hold the obligation to respect human rights when making business decisions and conducting overseas operations. John Ruggie, pointed out that it is essential for corporations to apply due diligence in their management policies and when operating overseas in order to avoid becoming liable for human rights. One reason for which due diligence is essential to use is because when operating overseas the legislative framework of host states may differ from the ones in their home state. A weak national legislation does not only put the citizens in danger from having their human rights violated it also puts the corporations at risks from becoming liable for human rights violations which might have occurred along their supply chain.¹⁰

Several reports and studies, which have been used in this thesis, have focused on the involvement of natural resources in conflicts. According to Rustad and Binningsbo, the presence of high-valuable natural resources can contribute to conflicts through three mechanisms.¹¹ In combination with underlying factors and grievances, natural resources have become the subject of dispute where several parties wish to obtain control. The presence of high-valuable natural resources can be a source for development. However, in circumstances where underlying factors exit these resources can quickly become the reason for and means to financing brutal civil wars and actions resulting in human rights violations.¹² Nevertheless, the analysis of corporate responsibility towards human rights through an individual perspective based on business ethics is needed. Therefore, this thesis aims at analyzing the connection between individual ethics in terms of employees and how this ethical behavior is reflected upon the corporation. In addition, business ethics will then be analyzed through a due diligence approach regarding the Kimberley Certification Scheme. If weaknesses are found in the Kimberley Certification Scheme the research will offer suggestions on how the scheme can be improved through the results of the analysis conducted on business ethics and by using the guidelines offered in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.


¹² Ibid, p.13
1.5 Research Methodology

The research will analyze corporate responsibility towards human rights firstly through the theoretical approach of due diligence explained in chapter two. Several methodologies have been used when conducting the research on corporate responsibility and the level of success regarding the Kimberley Certification Scheme. The first methodology used in this thesis is a descriptive methodology used in several sections with the purpose of understanding the research context. The second methodology used is the analysis of ideas and theories especially applied on corporate responsibility and business ethics. In order to both understand and analyze what responsibility corporations have towards human rights it is important to deepen the research and explore what drives corporations to taking unethical or ethical business decisions. Therefore, it has been crucial to focus on the moral obligations of individuals, in this thesis referred to as the employees of a corporation and what influences their perception of ethical behavior. Business decisions are made my employees who have their own ethical codes and also are guided by corporate ethical codes. It is for this reason that the thesis will critically analyze theories and previous research conducted on business ethics of employees and corporations. This methodology is specifically used when analyzing literature and previous researched concerning business ethics. The third methodology used is a critical comparison between the two frameworks (i) Kimberley Certification Scheme (which aims at hindering conflict diamonds into the international market), and (ii) The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (a framework on how mining corporations can implement due diligence management policies in order to avoid being involved in business related human rights violations). The reason for which these two frameworks have been selected for the thesis is because they both aim at reducing the risk of corporate involvement in business related human rights violations. The Kimberley Certification Scheme focuses only on conflict diamonds whilst the OECD focus on conflict minerals and is more specific on the measures corporations can take in terms of business decisions and management policies. An additional reason for which these two initiatives have been selected is because the Kimberley Certification Scheme is a state-to-state agreement whilst the OECD focuses directly on corporations and responsible extraction methods of high-valuable minerals.

1.6 Limitations

The purpose of the thesis as previously explained in section 1.2 is to analyze the corporate responsibility to respect human rights whilst conducting business decisions, specifically related to the extraction of high-valuable minerals from conflict risk and conflict affected areas. In order to narrow
down the analysis the thesis focused on analyzing business ethics at an individual level (employee) and finding a correlation between the responsibility of individuals to respect human rights and the responsibility of corporations to respect human rights. After the thesis has answered the first research question the analysis will turn its focus towards the second research question of the thesis and in order to be able to answer the question the thesis will analyze the two frameworks (i) The Kimberley Certification Scheme, and (ii) The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. The analysis critically compares the two frameworks, evaluates how due diligence is used in terms of the Kimberley Certification Scheme and what weaknesses the scheme have in terms of taking into account corporate responsibility towards human rights specifically regarding due diligence in the supply chain.

Chapter 2 Theoretical Framework

The purpose of chapter two is to present the theoretical framework of the research paper and operationalize the definition of due diligence which will be used for the research in this thesis. Chapter two starts by explaining in 2.1 how various the definitions of due diligence can be depending on the context in which the definition is used and depending on the author’s perception of the terminology. Through this the chapter explains why a universal definition of due diligence has not been reached and the dilemmas this has resulted in. Chapter two continues by operationalizing due diligence in order to create both an understanding of the terminology specifically in this research paper and to create an analytical tool adjusted specifically towards the Kimberley Certification Scheme.

2.1 Defining Due Diligence

The strive for a universally established definition of due diligence has proven to be challenging due to the simple fact that a universal definition not yet has been established. Instead, several definitions of due diligence are offered depending on which scope the terminology is being perceived from. According to Sherman and Amy, the concept of due diligence can be interpreted differently both in the context of law and business. However, applied in the context of business practices due diligence is referred to as a business tool allowing corporations to assess potential business and liability risks within their own supply chain. In the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, due diligence is referring to the responsibility in terms of how corporations establish their global supply chain management principles concerning mineral extractions in conflict risk and conflict affected areas. These management

13 Sherman and Lehr: Human Rights Due Diligence: Is it Too Risky? Harvard University, February 2010, p.3
principles aim at extracting minerals in a both sustainable and responsible manner.\[^{14}\] When referring to responsible manner, the OECD refers to a way of practice which is sustainable under a longer time period, does not contribute to human rights violations and contributes to sustainable development in the shape of suppliers in the supply chain adopting due diligence management policies.\[^{15}\] As mentioned in section 1.4, John Ruggie was appointed in 2005 by the United Nations as the UN Specialist Representative for Business and Human Rights. In 2008, Professor Ruggie releases his report *Protect, Respect, Remedy*, which was the results of his research regarding what responsibility towards human rights states and corporations have. The conclusions of the report were that states and corporations, even though different, both have a responsibility towards human rights. The report is designed to be used as a framework allowing the distinction between the responsibilities of corporations to be clearly separated from the responsibilities of states. According to the report, states have the responsibility to protect human rights from being violated both by the state itself and by a third party. Whilst corporations have the responsibility to respect human rights and to do so they must eliminate business related risks which are both directly and indirectly connected to their supply chain. The report defines corporate due diligence as "...a comprehensive, proactive attempt to uncover human rights risks, actual and potential, over the entire life cycle of a project or business activity, with the aim of avoiding and mitigating those risks."\[^{16}\] To summarize the offered definition of due diligence is that it is a business method applied on business management policies aiming at avoiding business activities and practices which risks to violate human rights.

The *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, offers a concrete five steps guideline specifically for corporations dealing with mineral extractions in conflict risk and conflict affected areas on how to incorporate due diligence in their business methods and practices. The guideline recognizes the risks involved when extracting minerals from conflict risk and conflict affected areas because these areas have a high level of corruption, violence, rebel groups and paramilitaries which can jeopardize the ethical codes of the supply chain. The guideline stresses for example on the importance of transparency concerning both the auditing processes and the transportation routes, which both easily can if not dealt with prudence become tempered by an external party. Transparency in auditing falls directly under due diligence as it allows corporations to assess the risks of their business activities especially their

\[^{14}\text{OECD: OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. OECD Publication 2013, p.12}\]

\[^{15}\text{Ibid, p.14}\]

\[^{16}\text{Ibid}\]
supply chain to become involved with human rights violations activities. The OECD has in addition been used as a model for national and regional legislation in terms of the standards, which mineral extractions must uphold. The OECD is directly aimed at corporations and has the purpose of being a framework which corporations can use in order to establish due diligence management principles to facilitate their efforts to avoid that their supply chain be part of or in activities resulting in human rights violations.\textsuperscript{17}

2.2 Operationalization of Due Diligence

The theoretical approach of the research for this thesis is based on the idea that corporations have a moral responsibility to conduct business in an ethical manner in order to respect human rights. The idea is based on the hypothesis that the moral responsibility of the employees of corporations does transcend upon the responsibility of the corporation. Beyond the corporate management policies and laws, corporations consists of their employees who are carriers of moral responsibility to act with good intentions and under law can be persecuted for violating human rights. The moral responsibility of individuals to act with good intentions can be traced to several disciplines and platforms such as religions, traditions, cultural norms, social norms and philosophy.

The research paper offers the following definition of due diligence for mining corporations operating in conflict risks and conflict areas: "Due diligence is business method used to evaluate and eliminate risks within the supply chain which can either directly or indirectly contribute to human rights violations. Due diligence is implemented within the corporate management policies and throughout the supply chain. The principle serves as an ethical code of conduct both for the corporation and the supplier within the supply chain and aims at establishing a common standard for ethical business practices." The definition of due diligence is based on the interpretation of the concept by the OECD guidelines because the OECD guidelines focuses on giving corporations extracting valuable minerals from conflict risk and conflict affected areas. Therefore, the interpretation of due diligence is consistent with the focus of the thesis. In addition, it is the only definition which I have found that associates corporations with a responsibility to both ensure that the suppliers involved in the supply chain must adopt similar if not the same method of practices concerning due diligence.

\textsuperscript{17} OECD: OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. OECD Publication 2013, p.14-15
Chapter 3 Armed Conflicts, Natural Resources and Diamonds

The purpose of chapter three is to discuss the involvement of natural resources in armed conflicts and how natural resources are used as a means to finance activities which violates human rights. Chapter three starts by defining armed conflicts and what criteria are required for a situation to be defined as an armed conflict. Chapter two continues by describing the potential of natural resources in terms of development opportunities and when minerals become conflict minerals. In addition, the chapter describes the involvement of natural resources in conflicts and discusses if natural resources in terms of raw materials triggers conflicts to arise or not. Furthermore, the chapter describes three mechanisms, which offers explanations on the connection between natural resources and war. Chapter two ends by discussing the reasons for which it is difficult to resolve armed conflicts where natural resources are involved.

3.1 Defining Armed Conflicts

According to the report From Conflict to Peace Building: The Role of Natural Resources and the Environment, published by the United Nations Environmental Program, peace and security can no longer be interpreted the same way as it had been before the Cold War. The report gives two reasons for the change in the interpretation of peace and security. The first reason for the change in interpretation is due to the increase of actors involved in armed conflicts. Today, war is no longer exclusively waged between two or several nations because non-state actors are now present on the scene, which includes terrorist groups, organized crime, human and drug traffickers, warlords and rebel groups. These non-state actors operate and wages war in different ways than states and seldom take any consideration towards human rights or the international humanitarian law systems. Therefore, today wars can both be waged in a conventional and asymmetrical manner. To clarify the distinction between states and non-state actors involved in asymmetrical wars the Peace and Conflict Research Institution defines governments as “the party controlling the capital of the...”

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18 United Nations Environmental Program: From Conflict to Peace Building: The Role of Natural Resources and the Environment. UNEP 2009, p.6

19 Ibid

20 Department of Peace and Conflict Research: Definition of Armed Conflict
state.”\textsuperscript{21} whilst the opposition organization is defined as ”any non-governmental group of people having announced a name for their group and using force.”\textsuperscript{22}

According to the Peace and Conflict Research Institute at Uppsala University, a situation is categorized as being an armed conflict when ”… a contested incompatibility which concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths.”\textsuperscript{23} The situation must result in a minimum of 25 battle-related deaths per year.\textsuperscript{24} The institution defines armed forces as the ”use of arms in order to promote the parties general position in the conflict, resulting in deaths. \textit{Arms}: any material means, e.g. manufactured weapons but also sticks, stones, fire, water, etc.”\textsuperscript{25}

\subsection*{3.2 Natural Resources}

Natural resources in terms of raw materials present an enormous development opportunity for states. For many states, high-valued natural resources are the sole source of revenue. In these situations, where natural resources are the sole income source states must implement both a strict and sustainable management policy. The reason for why this is vital is because high-valued resources can contribute to development, however, external actors can want to control these resources for another purpose than for development. The purpose of establishing management policies is also to avoid the involvement of corruption and criminal activities in the trade of the resource in question. Unfortunately, in situations where state failure is present the management policies regarding natural resources will be poorly if at all implemented creating opportunities for external parties to involve the natural resources in illicit trade. The illicit trade of natural resources is uncontrolled and often involves a high level of violence and human rights abuses.\textsuperscript{26}

\begin{thebibliography}{9}
\bibitem{21} Department of Peace and Conflict Research: \textit{Definition of Armed Conflict}
\bibitem{22} Ibid
\bibitem{23} Ibid
\bibitem{24} Ibid
\bibitem{25} Ibid
\bibitem{26} United Nations Environmental Program: \textit{From Conflict to Peace Building: The Role of Natural Resources and the Environment}. UNEP 2009, p.6
\end{thebibliography}
Natural resources as raw materials do not trigger armed conflicts and disputes to occur. Instead, it is the underlying factors such as poverty, unequal distribution of the natural resource, thirst for political power and other existing grievances that will trigger conflicts to arise over natural resources.

Table 1, shows the different types of natural resources, which have been involved, in armed conflicts.

Table 1

<table>
<thead>
<tr>
<th>Country</th>
<th>Duration</th>
<th>Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>1975-2002</td>
<td>Oil, diamonds</td>
</tr>
<tr>
<td></td>
<td>2003-2008</td>
<td>timber, tin</td>
</tr>
<tr>
<td>Liberia</td>
<td>1989-2003</td>
<td>Timber, diamonds, iron, palm oil, cocoa,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>coffee, rubber, gold</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>1991-2000</td>
<td>Diamonds, cocoa, coffee</td>
</tr>
</tbody>
</table>

The table 1, shows the involvement of different natural resources which have been used as either a method of financing civil war, have become a reason for conflicts to continue or been a reason for why parties have undermined peace negotiations and agreements. In table 1, diamond is the natural resource that appears in several of conflicts that have been fought in Africa. There are two factors, which I believe, explains the use of diamonds in conflicts. The first reason is because this natural resource is highly valued on the international market not because it is a rare natural resource but because of the strategically method De Beers have used to hick up the prices of diamonds on the international market. De Beers almost holds a monopoly over the diamonds on the international market and puts diamonds for sell on the market only a few times a year. This causes the value of diamonds to increase as they become harder to obtain. The second reason why diamonds often are involved in conflicts is because they are not rare in the sense that they can be found around several kimberlitical pipelines across the globe.

According to Rusted and Binningsbo, three mechanisms can explain the connection between valuable natural resources and conflicts. The first mechanisms is the “…disagreement over natural re-

27 United Nations Environmental Program: From Conflict to Peace Building: The Role of Natural Resources and the Environment. UNEP 2009, p.11

28 Ibid, p.13
sources (revenue) distribution may motivate rebellion”\textsuperscript{29}, the second mechanism is the ”revenues from natural resources may create funding opportunities for rebels”\textsuperscript{30}, and the third mechanism is that ”natural resources may aggravate ongoing conflict acting either as motivation or opportunity for rebels, but through other roles than distribution claims or as funding resources.”\textsuperscript{31} To interpret the mechanisms, natural resources in terms of raw materials do not create conflicts. However, it is the either uneven distribution of the natural resources or underlying factors and grievances that are reasons for which conflicts arises and natural resources become used as a source of revenue to either start the conflict or prolong its duration. Therefore, the thesis argues that it is the mere existence of inequality and grievances that allows a connection between natural resources and conflicts.

According to the report \textit{From Conflict to Peace Building: The Role of Natural Resources and the Environment} the first reason for which natural resources are involved in conflicts is due to the lust of acquiring the full control over them. The dispute over natural resources is more likely to occur when state failure is visible. The difficulty with state failure is that either the state is trying to trade their natural resources with the aim to invest in their own development or due to corruption the income of the trade will be swallowed by corruption. For these two reasons, conflicts will most likely be waged over the uneven distribution of high-valuable natural resources.\textsuperscript{32} The second reason for which natural resources are involved in conflicts is due to their high-value on the international market and they become a source for financing war waging and the prolongation of armed conflicts. To control the trade of high-valued natural resources, gives actors the opportunity to establish a stable source of income for their ”war waging mission”. In several armed conflicts, the control of high-valuable resources has financed both armed forces and weapons which has been used in activities that have violated human rights. The use of natural resources as a source to finance war waging has proven to prolong the time span of the war that had been much shorter if the access to natural resources had not existed. The problem with natural resources in conflict risk and conflict affected areas is that the underlying factors which resulted into the rise of the conflict became forgotten and

\textsuperscript{29} S.A Rustad and H.M. Binningsbo: \textit{A price worth fighting for? Natural resources and conflict recurrence.} Journal of Peace Research, Saga Publications Ltd 2012. p. 532

\textsuperscript{30} Ibid, p.532

\textsuperscript{31} Ibid, p.532

\textsuperscript{32} United Nations Environmental Program: \textit{From Conflict to Peace Building: The Role of Natural Resources and the Environment.} UNEP 2009, p.17
instead the focus shifted towards the control over the resource-rich areas.\textsuperscript{33} This is, where I believe, that corporations must be prudent when extracting natural resources. In a conflict risk and conflict zone corruption is high and rebel groups will use methods such as for example smuggling diamonds both across boarders and into conflict free mines in order to sell their conflict minerals. Therefore, when corporations are operating in high-risk areas they must use due diligence management policies and strategies in order to avoid purchasing conflict minerals and indirectly financing war waging and activities which contributes to human rights violations. The third situation in which natural resources are involved is in relation to peace negotiations and agreements. According to the report, natural resources are seldom mentioned during peace negotiations because the focus often lies upon other underlying factors such as ethnical or political factors. States and non-states actors can therefore undermine peace efforts because they wish to remain in control of the natural resources and cannot accept the idea of sharing them with the opposite party. The report estimates that less than one quarter of all peace negotiations conducted in areas where natural resources play a crucial part in the conflict does not even mention natural resources. This is essential for peace negotiations mention because in these areas resource management mechanisms must be established in order to both solve the dispute and avoid a conflict relapse.\textsuperscript{34} After a conflict situation and a failure of state it is important for states to invest into boosting their development. Nevertheless, a rapid launch into the international market without having incorporated elaborated management mechanisms can lead to a sudden uncontrolled exploitation of these resources creating two dilemmas either a lack of attention towards environmental sustainability or a lack of distribution equality. If these two scenarios occur there is a risk that conflict might relapse.\textsuperscript{35} Therefore resource management policies and strategies are vital to elaborate and, I believe that, even a marketing plan must be elaborated in order to avoid a rapid and uncontrolled exportation resulting into the misusage of these resources. However, it is essential that parties disputing over natural resources both obtain a share of the resources in order to avoid new grievances to arise. The subject of negotiation, distribution of natural resources in comparison to political power is a topic for extensive research, which will not be explored further in this thesis.

\textsuperscript{33} United Nations Environmental Program: \textit{From Conflict to Peace Building: The Role of Natural Resources and the Environment}. UNEP 2009, p.19

\textsuperscript{34} Ibid

\textsuperscript{35} Ibid
3.3 Conflict Diamonds

During recent years, diamonds have received increasing attention from both the international community, NGOs, consumers and mining corporations. The reason for the increasing attention given to this particular mineral is because rebel groups have used it to finance civil wars especially in Central and Western African regions.36 Diamonds are a high-valued natural resource on the international market and holds great development potential. Instead of having been used as a means to finance the development of national infrastructure, educational and health systems, these natural resources have been used in combination with war waging.37

According to the United Nations, conflict diamonds are defined as follows: ”…diamonds that originates from areas controlled by forces and factions opposed to legitimate and international governments and are used to fund military actions in opportune to those governments, or in contravention of the decisions of the Security Council.”38 The definition, which the United Nations provides concerning conflict diamonds, is poorly developed for two reasons. The first reason is because the definition does not mention any human rights violations or which actions that are financed by the trade in conflict diamonds do result in. The second reason is because the definition uses the words armed forces but do not explain or give examples of the different groups that can be included in this category. The definition of conflict diamonds is not enough developed and therefore the thesis suggests that the definition should be reviewed. An example of how conflict could be defined is as follows: …conflict diamonds are diamonds, which have been used to finance war waging by an armed force (rebel groups, paramilitary force or terrorist group) against legitimized governments. Whilst extracting diamonds for illicit trade, human rights violations have been inflicted upon the civil population under the form of for example forced labor, child soldiers, rape, murder, kidnapping or threats.

According to Global Witness, conflict diamonds has claimed the lives of millions of civilians but exact statistical data has been impossible to obtain.39 Conflict diamonds and the activities associated with the illicit trade of the natural resource has had damaging effects on both human lives, the environment and has hindered economical development to occur in affected states. To obtain statistical

37 Ibid
38 Diamond World: Blood Diamonds
figures on the amount of illicit diamonds which have entered into the international market has been impossible to obtain for two reasons. Firstly, due to state failure leading to weak legislative and trade systems, conflict diamonds often enter into the international market being smuggled across borders and traded as conflict free diamonds. Secondly, even though the Kimberley Certification Scheme has been established, parties have found ways to falsify diamond certifications and therefore conflict diamonds have entered the international market with a false certification of being conflict free diamonds. However, Global Witness estimates that around twenty percent of the diamonds currently on the international market are no less than conflict diamonds. 40 In addition, Global Witness points to the fact that it is the lack of willingness from the diamond industry and poor due diligence mechanisms that are contributing factors for why the illicit trade of conflict diamonds is still possible on the international market. 41

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, is a five step guideline which aims at helping mining corporations operating in conflict risk and conflict affected areas to establish due diligence policies and strategies. The guideline targets the management of the supply chain on how to operate in order to avoid becoming involved in human rights violations whilst operating in these areas. The guideline acknowledges the challenges corporations face when operating in these areas because non-state actors such as rebel groups and paramilitaries often will target the supply chain because these areas are high in corruption and violence. The guideline therefore stresses on the importance of corporations to acquire a level of transparency regarding the transportation routes used to transport the diamonds from the mine into the international market. In addition, the auditing of both the amount of diamonds acquired and the revenues are vital in order to avoid becoming involved with conflict diamonds. Transparency in auditing falls directly under due diligence as it allows to assess the risks for human rights violations at all levels of both the upstream and downstream suppliers. The guideline has been used as a model for both national and regional legislation regarding mineral extraction standards, which points to the fact that the model is of a higher quality.

Whilst the OECD guideline was established to avoid the connection between mineral extraction and human rights violations, the Kimberley Certification Scheme was established with the aim of dissolving the connection between mineral extraction and rebel groups financing of civil war. The certification is designed to trace the origin of each diamond being traded, and guarantees that only conflict free diamonds enters into the international market. The difference between these two fram-


41 Ibid
eworks is that the OECD gives corporations a clear guideline on how to implement due diligence within their supply chain in order to avoid corporations from becoming liable for human rights violations. Whilst the Kimberley Certification Scheme is a state-to-state agreement where trade cannot be made with a state that either has not complied with the scheme or implemented the relevant regulations to control the flow of conflict diamonds into the international market. These differences and their implications will be brought up for further discussion in section 6.3.

Chapter 4 Corporate Responsibility and Business Ethics

Chapter four discusses the responsibility of corporations to respect human rights when extracting minerals from high conflict risk or conflict areas. The chapter starts by examining the power balance between states and corporations on the international market. The chapter continues by discussing business ethics and morality, which is then followed by an analysis of corporate culture and how this influences the level of responsibility, which corporations feel that they have towards respecting human rights in relation to their business operations. The chapter ends by discussing the legal responsibility of corporations in terms of hard and soft law where a grey zone exists. As it can be difficult to determine what responsibilities corporations have towards human rights the chapter discusses the importance of corporations to use due diligence mechanisms and policies within their supply chains based on the previous findings in this chapter.

4.1 Power Confusion: States and Corporations on the International Market

Globalization, also referred to by several authors as the golden age, has shaped the national market into becoming closely interlinked and depending on the international market. The rapid evolution of technology, communication strategies and methods, the lowering of taxation regarding the import and export of goods has together created a new trade practice, which can be referred to as free trade. Globalization has been profitable for both developed and underdeveloped states because it has offered countless business and employment opportunities to the global population.

According to John Ruggie, globalization has given corporations the opportunity to obtain a wider business margin of opportunities, which has resulted in corporations to obtain a considerable political and economical leverage power both on their home and host states. The capacity of corporations to put both political and economical leverage on host states has been proven during the negotiations of the terms of the establishment of overseas operations. Negotiations have been held concerning

the level of legal obligations that corporations have to obey when established in host countries. Negotiations have often been conducted regarding a reduction in the minimum wages corporations are expected to pay their outsourced workers as well as taxation rates. The substantial both political and economical leverage corporations can apply upon host states can both have a negative and positive effect. Elaborated legislations and laws such as the investment laws protect corporations. In addition, through the World Trade Organization (WTO), the TRIPPS agreement offers corporations protection from any infringement on their patent rights for example and even regarding changes in the regulations of states which can become economically unfavorable for corporations having established overseas within the states boarders. According to the TRIPPS agreement corporations have the right to file a lawsuit against the host states if a change in the legislative regulations is conducted which turns out to be unfavorable towards the corporation. These types of agreements give corporations power over the host countries and hinder them from improving their legislative capacity to protect their own civilians and their human rights from being abused by corporations. The fact that corporations are able to establish their operations overseas in developing countries where national legislations are weak allows corporations to both make profit on cheap labor due to poor labor regulations and can conduct unethical business behavior without persecutions.43

The mere fact that corporation has gained considerable economical and political power to negotiate directly with states around the terms of the establishment of their overseas operations baffles me. In addition, the fact that corporations are protected by several international laws and through the TRIPPS agreement that allows them to file a law suit against a host country for trying to improve the national legislation for example regarding minimum wage or improving labor rights is hard to grasp. If corporations can hinder host states from improving their legislative framework, which would provide additional protection for human rights, then corporations are undermining not only development but also the sovereignty of states. If corporations have reached the point of being able to undermine the sovereignty of states then they are no longer only corporations but can be perceived as semi-states and with power comes responsibilities. For the economical development of states business opportunities are crucial. Therefore, if a corporation do not take its responsibility towards human rights but instead uses the development level and need for economical development of a host state this can ultimately result in human rights not receiving the appropriate protection acquired. As previously mentioned corporations are trespassing on both the sovereignty of states but undermining their responsibility to protect human rights. Then it is fair to say that corporations must com-

pensate human rights in terms of establishing due diligence management policies and strategies in order to assure that their business activities do not harm human rights. To shift the responsibility to protect human rights from states to corporations would be to take away the sovereignty of states. Nevertheless, corporations which negotiate the terms of their business activities and in addition files a law suit against a state which improves their legislative framework is to disrespect the sovereignty of states.

According to Ruggie, the rapid expansion of the national market becoming interlinked with the international market has been challenging for both home and host states. Home states do not have jurisdiction within host states borders and as a result of the lack of corporate transparency it is difficult for home states to monitor the actions of corporations operating overseas. Therefore, the international market has created a grey zone, where the power of actors and responsibilities of corporations are difficult to determine.

4.2 Corporate Responsibility, Business Ethics and Ethical Code of Conduct

"As management problems become more complex, they become more ethical. As management problems become more ethical, they become more complex"44 Mark Pastin

The study of ethics can be traced to both religions, cultural values, social values, philosophical beliefs and studies.45 In recent years, the study concerning business ethics has been desired both by the academic world and the corporate community because a universal definition of business ethics is still lacking. To conduct research on business ethics and the factors which influences the perception of business ethics has been difficult.46 The first reason for which research has been difficult to achieve is the reluctance by corporate managers and supervisors to allow an external party to examine the corporate culture and level of business ethics. Corporate managers and supervisors have been concerned about the consequences such research might have on their image in case of weaknesses or ethical business misconduct would be discovered. The second reason for which there is a reluctance in allowing an external party to examine the corporation from an ethical business percep-


45 Lewis: Defining ´Business Ethics´: Like Nailing Jello to a Wall, Lewis. Published 1985, p.377

tive is due to previous experiences of the researcher already having drawn a conclusion on the level of business ethics existing within the corporation before having started to conduct interviews. These two reasons can explain the reluctance in corporations to allow studies on business ethics to be conducted on their management policies and managers and why the study on corporate business ethics has not revealed further findings.47

The mere definition of business ethics has been the topic for several debates and studies, however a universal definition of business ethics does not yet exist. Several studies have offered explanations on how business ethics could be defined such as: "(1) sound ethic is good business, (2) profit is not the sole motive of business, (3) pressure to compromise personal standards is felt most keenly at the middle and lower management levels, (4) competition can cause persons to ignore ethical considerations, (5) the person most likely to act ethically is one with a well-defined personal code, (6) persons with an ethical superior are likely to behave ethically, (7) ethics tends to be highest with the youngest and with those in the final decade of their careers, (8) pressure from superiors to achieve results can cause unethical behavior, (9) the more employees and managers are taught to identify with their companies and have loyalty to the same the more they are encouraged to abdicate personal responsibility for their actions, and (10) interpersonal communication is related to personal ethics in organizations."48

As previously mentioned, to conduct studies on business ethics through examining executives and managers of corporations has been proven to be difficult to gain access to for several reasons. Another reason, which would explain the reluctance of allowing an external party to examine the business ethics of corporations, can be the mere fact that executives and managers themselves do not quite understand the definition and consistency of business ethics. According to Baumhart, studies conducted on the practices of executives and managers has revealed that there is a general confusion on how to interpret business ethics and that several corporations have shown little interest in establishing and incorporating ethical policies.49 I believe that one reason, which could explain this lack of interest, is the fact that if corporations would examine their own business ethics it could reveal that the way they operate is in fact unethical. Another reason could be the fact that the


48 Lewis: Defining 'Business Ethics': Like Nailing Jello to a Wall, Lewis. Published 1985, p.377-378

49 Ibid, p.378
establishment of a set of ethical codes could be perceived as putting limits on what business decisions can be made from an ethical perspective. Ultimately this could mean that corporations will have to review their way of conducting business, which would become costly.

So, what factors does influence business ethics? Studies on business ethics have been easier to conduct by interviewing subjects enrolled in business courses. One study on business ethics was conducted on the relationship between business ethics and cross-culture where the results showed that culture does not influence business ethics as much as gender does. The conclusions of the study were that the female interview subjects were more prone to take ethical business decisions in comparison to the male interview subjects. In addition, culture did influence the interpretation of ethics as the interview subjects originating from the United Kingdom and United States. The interview subjects originating from the United Kingdom were less prone to take ethical business decisions in comparison to the interview subjects originating from the United States. The study offered two explanations for these results, the first one being that the difference in the tendency of conducting ethical business decisions was due to the political and educational system in each state which has influenced the interview subjects perception of morals and what actions are considered to be ethical in terms of business. To elaborate on this explanation the thesis argues that societies, which highly values mutual respect and national solidarity, will influence individuals when making business decisions to think about the effect of these decisions has on others. Individuals from a state where both the political and educational system are more conservative, I believe, leads individuals to become focused on their own well being rather than the common well being. From that perspective, I believe this can explain why individuals from states which does not value the common well-being of the population tends to make unethical business decisions which will be economically profitable for the corporation but not profitable and even in some situations harmful for those affected by these decisions on grass-root level.

The second reason, which the study offers to explain concerning the differences in terms of ethical business decisions between the interview subjects, is the connection between themselves and both their cultural and ethnical origins. Cultural values and norms influence the perception of individuals.

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51 Ibid, p. 672

52 Ibid, p.676
on morality and what moral responsibilities one have as an individual when making decisions. The thesis goes further into explaining the differences between the results of the interview subjects. Several religions highly value moral decisions and the importance that individuals act with kindness towards others. A culture, which is strongly influenced by religion and highly values mutual respect towards each other, will influence individuals towards conducting ethical business decisions. The norms and values that exist within a culture will often become a part of the individual’s personality and the way an individual feel is good or bad. In cultures, where one is raised to show respect and care for others, these values will be reflected in the employees’ ways of conducting business decisions due to the simple fact that ethical business decisions will not feel wrong. On the other hand, individuals which are brought up in a culture where religion does not play an important role in society and where individuals live more on the principle of self well-being it will be easier for these employees to make unethical business decisions as they do not feel that it is wrong.

To illustrate the argument of the thesis regarding the influence of cultural norms in regards to a collective well-being perceptive which leads individuals into making ethical business decisions diagram 1, shows how these factors influences ethical business decisions:

Diagram 1.

In the study Differences in Ethical Perceptions Between Male and Female Managers: Myth or Reality?, Kidwell, Stevens and Bethke found that gender does influence the level of ethical behavior and practices of business managers. One example which illustrates the difference in the perception of ethics between the female and male interview subjects was when they were asked if they would conceal having committed an error at work. The majority of the female respondents answered that

they would not indulge in such actions whilst the majority of the male respondents answered that they would.\textsuperscript{54} Through the answers of the interview subjects, which where based on what actions would be taken based on fictive scenarios it became clear that gender is a factor which influences the level of ethical business decisions.\textsuperscript{55} The results of the study are similar to the previous study mentioned earlier, however, it could have been interesting if the study had incorporated factors such as culture, religion, political systems and origin in order to conclude if gender is an influencing factor or if it was the combination of other factors which led the study to obtain these results.

The factors which can influence the perception of ethical business decisions have now been both described and discussed. The questions which the thesis now wishes to obtain an answer to is if executives and managers find themselves confused over what business ethics is and how does this influence the level of ethics within the corporation? The lack of a universal definition regarding business ethics does pose severe problems in terms of the established ethical codes within corporate management policies. Without clear definitions it becomes easier for corporations to justify misconduct in relation to their business decisions. As a result, the lack of ethical codes within corporations can lead to the normalization of unethical business decisions and conduct. The development of a corporate culture which prioritizes business decisions which gives results in revenue before decisions which respects human rights puts the corporation at risk of becoming liable for human rights violations.

According to Vitell and Festervan, it is common that corporate employees find themselves struggling with associating themselves with the ethical codes of corporations because they are very different from the individuals’ personal ethical codes.\textsuperscript{56} The reason for which employees sometimes struggle to assimilate themselves with the ethical codes of corporations is because the interpretation of ethics is influenced by several factors which does not mean that two individuals will have the same perception on what is morally right and wrong. In addition, corporate employees often feel that the corporate code of ethics is forced upon them. Employees often experience that ethical standards transcends from their superiors and that the employees’ personal ethical codes is pushed aside. The pressure felt to follow these ethical standards and in combination with unrealistic goals can quickly result in employees suddenly making unethical business decisions because they need to

\textsuperscript{54} Bethke, L. Art, Kidwell, M. Jeaneen & Stevens, Robert E: \textit{Differences in Ethical Perception Between Male and Female Managers: Myth or Reality?}, p.490

\textsuperscript{55} Ibid, p.490

meet unrealistic goals and fear the consequences if they do not achieve these goals. The same principle applies to the entire corporation. According to a study conducted by Carroll, the business ethics of business executives occupying hierarchical positions in a set industry, transcended through the corporation and resulted in lower positioned executives feeling pressured from higher positions executives to achieve corporate goals which could only be achieved if their personal standards were put aside. As a result, these lower positioned executives put considerable pressure on their subordinates to achieve results despite if unethical business decisions are taken. In addition, Newsroom and Ruch, come to similar conclusions that the ethical standards of higher positions executives served as a model for lower positions executives despite if this contradicts their own personal ethical standards. In some cases, employees change their perception of what is morally right and wrong when they enter into the perimeters of their offices. The conclusions from these studies clearly shows that several factors influence the perception of ethical business decisions including pressure put upon employees by their superiors to meet unrealistic goals. These goals and ethical standards which are transcending from the superiors upon their employees creates a corporate culture which holds a dominant view on what ethical business implies and means. I believe that a corporate culture both can be positive in terms of what ethical behavior will be accepted as to business decisions. Nevertheless, it can become negative if the corporate culture encourages employees to take unethical business decisions as long as it a means to achieve a specific goal. This type of corporate culture can easily lead to unethical business decisions resulting in human rights violations. Therefore, it is essential that corporations implement ethical code of conducts within their management policies and review these on a regular basis. These ethical codes of conducts must be transparent so that external parties can evaluate them from another perspective. Employees shall be given training regarding ethical business decisions and behavior to be compatible with the corporations’ ethical codes, to avoid misconduct and unethical business decisions to occur. However, in circumstances when managers and employees doubt over what is ethical and not, on what do they lean on? According to Steiner and Steiner, as there is no universally accepted definition of business ethics, employees and managers much therefore lean upon cultural consensus, their religion or philosophical believes in order to determine what is morally acceptable when making a business decision. This explanation


58 Ibid, p.112-113

59 Ibid, p.113

60 Ibid, p.378
on how corporate managers and their employees comes to a conclusion about what is morally right when taking a business decision shows the lack of a universal understanding of what business ethics consists of. It becomes clear how vital it is for corporations to implement clear ethical codes in their management policies and how important it is to implement due diligence management policies depending on the sector which the corporation operates in. According to Lewis, business ethics can be explained in the following ways; "business ethics are rules, standards, codes or principles that provide guidelines for morally right behavior and truthfulness in specific situations."61 Lewis offers other alternatives to define business ethics that includes: (1) Social responsibility, (2) Golden rule, (3) Values that are socially accepted or in accordance to ones’ religious believes, and (4) the consciences of individuals and/or legal systems.62 As Lewis says, business ethics are the "application of one’s understanding of what is morally right and truthful at a time of ethical dilemma."63

The thesis has reached the conclusion that business ethics is difficult to define due the fact that the perception of ethics of individuals can differ. The reason for which they differ is because factors such as gender, religion, culture and political systems will influence how individuals prioritize when making a business decision. In addition, depending on the goals set out by the superiors of corporations ethical codes will develop and transcend throughout the corporation. Unrealistic goals and the fear of the consequences if employees do not meet the set goals will be a contributing factor for why employees will make unethical business decisions. Therefore, as previously mentioned it becomes necessary to incorporate code of ethics and due diligence management policies within corporations in order to avoid unethical business behavior. In addition, depending upon which sector corporations and smaller businesses are operating in, corporations should establish a directive on how to use due diligence regarding specific human rights issues. For example in the textile industries the human rights that are exposed are often workers rights, the human right to health and safety. Corporations working with mineral extractions are exposed to human rights in terms of working rights, the human right to heath, safety and freedom.

According to Holmes it is impossible to establish business ethics because of the following two reasons: "(a) "morality has no application to corporations since corporations are not person and only

61 Lewis: Defining ‘Business Ethics’: Like Nailing Jello to a Wall, Lewis. Published 1985, p.377

62 Ibid, p.382

63 Ibid, p.383
persons can be held morally responsible”, and (b) "persons within corporations cannot have moral obligations given the position of the individual in the corporation”". The argument which Holmes puts forward, that individuals do not have moral obligations when taking business decisions due to their position within the corporation does not stand. The argument which Holmes puts forward would be solid if corporations hired machines perhaps without having been programmed to operate from an ethical perspective however all corporations today at least are employing human beings who holds moral and ethical interpretations as previously discussed. An individual does not become free from their responsibility to obey the law, from the consequences and responsibilities of their actions simply because they have become employed. An employment cannot dissolve the individual’s capacity to self-reflect or from being held responsible for its own actions even in their work environment regarding the business decisions they make. The thesis argues the contrary of what Holmes says that due to the corporations’ employees has both a moral and legal obligation to make ethical business decisions by avoiding violating human rights. The international humanitarian law has been changed in its legislative framework and holds employees responsible for human rights violations, which are a result from unethical business decisions. The same principle has been applied to corporations. Since the Nazi regime, several cases of where corporations have been involved in contributing to gross human rights violations have been both reported and brought up in domestic courts. The accusations have varied at the level of corporate involvement in activities, which have resulted in human rights violations. The accusations have varied from corporations providing logistical means, transportation routes, information or even directly helped to finance activities, which have led to human rights violations.

After John Ruggies report, the Guiding Principles on Business and Human Rights was endorsed by the Human Rights Council in 2011 which states that: “business enterprises should… (t)reat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.” In addition, the commentary concerning guiding principle 23 states that "Expanding web of potential corporate legal liability arising from extraterritorial civic claims, and from the incorporation of the provision of the Rome Statue of the International Criminal Court in jurisdictions that

64 Lewis: Defining ‘Business Ethics’: Like Nailing Jello to a Wall, Lewis. Published 1985, p.378
66 Ibid, p.13
provide for corporate criminal responsibility.” The commentary of guideline 23 continues by saying that "corporate directors, officers and employees may be subject to individual liability for acts that amount to gross human rights abuses. There is no doubt that corporations can be liable for human rights violations either if they have been contributed directly or indirectly towards these actions. This shows that corporations have a responsibility to respect human rights and conduct business in an ethical manner. Furthermore, officials, managers and employees can be legally held accountable for human rights violations and be brought to domestic court. Therefore, the thesis has just proven that the argument of Holmes in terms of individuals do not have a moral obligation when being employed and that individuals’ morals does not reflect on corporations in fact is wrong. Corporations have both a moral and legal responsibility to operate in an ethical manner that avoids the corporations’ business activities to violate human rights. Corporations and their employees become liable for human rights violations, which their business activities have resulted in, either directly or indirectly. Corporations are not states and despite the fact that they have both economical and political leverage they are still accountable for their actions.

4.3 Corporate Responsibilities, Hard and Soft Law Perspective

After the Second World War, international human rights systems were developed primarily to regulate the obligations of states to protect human rights, both from their own power, the power of other states and from third parties. The obligations of corporations as a third-party are not introduced as such in UN Human Rights Conventions or instruments. As a consequence, the determination of what moral and legal obligations corporations have in terms of respecting human rights have become difficult to establish both in terms of a concept as such and legally. The UN human rights conventions have been adopted by several states however a new process must be started in order for states to adopt similar conventions regarding the relationship between corporations and human rights. In addition, this might become problematic, as states would then give corporations a sense of sovereign responsibility.

Since the establishment of the UN Guiding Principles on Business and Human Rights, the concept of corporations and due diligence was introduced into the international human rights system. To incorporate corporate due diligence towards human rights will allow the gaps in human rights protec-

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67 Grabosh, Robert and Scheper, Christian: Corporate Obligations with Regard to Human Rights Due Diligence, Policy and Legal Approaches. Friedrich Ebert Stiftung, 2015. p.4

68 Ibid, p.4
tion on the economical market to close. Even though the principle of due diligence is not new, the application of the concept upon corporations leaves several questions unanswered such as what does due diligence entail, what consequences will it have on non-compliance of the principle on the behalf of corporations in terms of their production and trade-relations. To apply the principle of due diligence on corporations is to apply the international human right system directly upon corporations and their business operations. The application of due diligence onto corporations has in some perspective been quite controversial as it makes corporations responsible for protecting human rights in relation to their corporate corporations however without offering adequate implementation mechanisms which makes it difficult for corporations to implement the process in their corporate policies. To establish the UN Guiding Principles must be part of a broader process where states, corporations, NGOs and trade union organizations are part in the process both to help with the shaping of the implementation process but also the content of the implementation.

How can due diligence obligations be defined? Due diligence obligations establish the level of responsibility of both individuals and corporations to respect individuals’ human rights. Due diligence in relation to business practices is established on recommendations within the soft law framework however are not always used in the application of human rights issues. Nevertheless, there is a need to specify the application of due diligence in corporation operations established overseas and this process must lean on the protection of human rights offered by international law because of the high risk of human rights violations which might occur without corporate responsibility in a state with weak legislation. Corporations should clearly show their commitment to respect due diligence towards human rights and ensure that it is well documented and/or established within the corporate management policies. The intergovernmental human rights treaties have shaped the idea of what implications there are in terms of protect and respect human rights. The fundamental idea of the value content of human rights is transcending into several voluntary soft law frameworks such as the UN Guiding Principles on Business and Human Rights. The principle of due diligence is reappea-

69 Grabosh, Robert and Scheper, Christian: Corporate Obligations with Regard to Human Rights Due Diligence, Policy and Legal Approaches. Friedrich Ebert Stiftung, 2015. p.4

70 Ibid

71 Ibid

72 Ibid

73 Ibid

74 Ibid, p.6
ring in the Organization for Economic Cooperation and Development (OECD) which has established the framework of the OECD Guiding Principles for Multinational Enterprises. Corporate Social Responsibility (CSR) strategies include the due diligence principle where corporations have an obligation to respect and ensure that human rights are not violated in relation to their business operations.\textsuperscript{75}

As previously discussed in this thesis section 4.1 there is a grey zone in terms of political power between states and corporations. Nevertheless, several voluntary frameworks offer guidelines for corporations on how to respect human rights by using due diligence as a method of practice. These frameworks are based on universal norms and social expectations.\textsuperscript{76} For corporations to be successful in respecting human rights they must commit to such goals, establish ethical codes and due diligence management mechanisms.\textsuperscript{77} The use of due diligence mechanisms and policies will allow corporations to through risk management reduce their implications in human rights violations.\textsuperscript{78} Arguments have been brought forward by stating that making corporations responsible for human rights could be to apply the international humanitarian system upon corporations and attributing them the same characteristics as states.\textsuperscript{79} Furthermore, due to the fact that corporations have a responsibility to generate revenue for their shareholders they do not have the necessary knowledge to become responsible for human rights.\textsuperscript{80} The thesis argues that corporations should not be responsible for protecting human rights however they have a moral and legal responsibility to respect human rights when conducting business. These are two completely different things because states protect whist corporations needs to respect human rights and by implementing due diligence mechanisms they can make sure that their fulfill their responsibilities towards human rights both throughout their supply chains and business decisions.

After that the United Nations confirmed the corporate responsibility to respect human rights through the \textit{UN Guiding Principles on Business and Human Rights}, corporate responsibility has

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\item \textsuperscript{75} Grabosh, Robert and Scheper, Christian: \textit{Corporate Obligations with Regard to Human Rights Due Dilligence, Policy and Legal Approaches}. Friedrich Ebert Stiftung, 2015. p.7
\item \textsuperscript{76} Ibid, p.9
\item \textsuperscript{77} Ibid, p.10
\item \textsuperscript{78} Ibid, p.4
\item \textsuperscript{79} Ibid
\item \textsuperscript{80} Ibid
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been incorporated both in national and regional legislation in several states. Corporate responsibility has been regulated for instance in *The Californian Transparency in Supply Chains Act, The UK Modern Slavery Act, The France National Assembly’s Legislative Bill Relating to the Duty and Vigilance of Parent and Subcontracting Companies*. The UN Guiding Principles on Business and Human Rights clarifies corporate responsibility specifically in principle 13 and 17 where corporate responsibility is described as “*directly linked to their operations, products, or services by their business relationships, even if they have not contributed to those impacts.*” and that therefore corporations must impose a due diligence management system to serve the purpose as a *on-going management process that a reasonable and prudent enterprise needs to undertake, in the light of its circumstances to meet its responsibility...*”. Nevertheless, as these national and regional legislations have not been introduced as an universal incentive and that the UN has developed several corporate voluntary initiatives regarding due diligence and human rights the question remains as weather due diligence should be considered to fall under hard law, soft law or somewhere in between.

The thesis comes to the conclusion that due to the lack of an universal legislation regarding the responsibility of corporations to respect human rights and the lack of an universal definition of corporate responsibility it has left corporate responsibility in a grey zone. Corporations can both interpret their responsibility towards human rights as regulated in law. However, corporations based in states where corporate responsibility has not been introduced either in national or regional legislations their interpretation of responsibility towards human rights can be seen as a voluntary initiative. The first research question of the thesis is: "What responsibility in terms of due diligence, do mining corporations have to ensure that the extraction of diamonds from conflict risk and conflict areas does not serve either, directly or indirectly, as a means of financing activities that results in the violation of human rights?"

Through the use of a descriptive methodology and critical analysis of both the literature and ideas on corporate responsibility, the thesis has reached the conclusions that corporations have both a moral and legal responsibility to respect human rights. Due to the increasing economical and political leverage corporations have acquired at first it became questionable if corporations did not have a responsibility to protect human rights. However, due to the fact that corporations are still non-state actors the responsibility shifted from protecting to respecting. In addition, the moral obligations of

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81 International Center for Trade and Sustainable Development: *Responsible natural resources trade through supply chain due diligence.* Published 2015.

82 Ibid
employees to respect human rights played a central part in obtaining an answer to the research question. It becomes evident that the moral and legal responsibility of employees transcends into corporations resulting in corporations becoming liable for human rights violations both morally and legally. Despite the fact that there is no universal legislative framework established globally regulating corporate responsibility to respect human rights, corporations are still responsible to respect human rights when conducting business due to a global norm (legal framework and voluntary initiatives). Therefore, corporations have a responsibility to respect human rights when extracting minerals from conflict risk and conflict area. In order to achieve this, corporations must establish clear corporate ethical codes, which hinder unethical business decisions from being taken. To achieve this, corporations use due diligence as a business method to avoid becoming liable for human rights violations.

Chapter 5 Due Diligence and Responsible Supply Chains

The purpose of chapter five is to discuss the importance for corporations to establish due diligence mechanisms in their supply chains when extracting minerals from conflict affected and high-risk conflict areas. Chapter five starts to discuss the corporate responsibility when extracting minerals from conflict risk and conflict areas. The chapter continues and finishes to discuss ways in which corporations can implement due diligence within their supply chain and through risk assessment mechanisms avoid to contribute to human rights violations.

5.1 The Corporate Responsibility when Extracting Minerals from Conflict Areas

When corporations extract minerals from conflict risk and conflict areas corporations puts both themselves and individuals caught in the maze of war in create risk. The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas defines conflict-affected and conflict risk areas as being the following: “Conflict-affected and high-risk areas are identified by presence of armed conflict, widespread violence or other risks of harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may, consists of wars of liberation, or insurgencies, civil wars, etc. High-risk areas may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterized by widespread human rights abuses and violation of national or international laws.”

Due to the high risk of becoming liable for human rights violations it is imperative

for corporations to establish both ethical codes of conducts and clear due diligence management policies. The due diligence management policies will allow corporations to execute a so called risk-based due diligence which allows them to identify potential risks related to their business activities and sourcing projects.\textsuperscript{84} The Guidance defines risks as being “…the potential adverse impacts of a company’s operation, which results from a company’s own activities or its relationships with third parities, including suppliers and other entities in the supply chain. Adverse impacts may include harm to people (i.e. external impacts), or repetitional damage or legal liability for the company (i.e. internal impacts), or both.”\textsuperscript{85} The risks of operating in these areas are high for corporations due to the fact that their supply chain will be targeted by rebel groups or armed forces as a means to obtain a source of revenue for their war waging as previously discussed in chapter 3. Therefore, it becomes imperative that mineral corporations do use due diligence in their management policies which must be applied on their supply chains in order to avoid directly or indirectly liability for actions resulting in human rights violations.\textsuperscript{86} As previously discussed in chapter four, corporations are responsible for respecting human rights because both corporations and their employees can be persecuted in domestic courts for having aided or been directly responsible for human rights violations. Therefore, it is necessary for the corporations to ensure that their supply chain is not used as a source of revenue for these war-waging groups due to the human rights violations that they impose upon civilians.

The Guidance defines the mineral supply chain in the following way: ”The process of bringing a raw mineral to the consumer market involves multiple actors and generally includes the extraction, transport, handling, trading, processing, smelting, refining and alloying, manufacturing and sale of end product. The term supply chain refers to the system of all the activities, organizations, actors, technology, information, resources and services involved in moving the mineral from the extraction side downstream to its incorporation in the final product for end consumers.”\textsuperscript{87}

\textsuperscript{84} OECD: OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. OECD publishing 2013, p.13

\textsuperscript{85} Ibid

\textsuperscript{86} Ibid, p.14

\textsuperscript{87} Ibid, p.15
5.2 Implementing Due Diligence in the Supply Chain

When extracting high-valuable minerals from conflict risk and conflict-affected areas corporations put themselves and civilians at great risk. Therefore, it is imperative that the supply chain is closely monitored through the use of due diligence. As discussed in chapter two, natural resources in terms of raw materials do not cause conflict to arise instead it is underlying grievances and dispute over the control of natural resources with creates the connection between natural resources and war. Non-state actors like rebel groups, paramilitary groups and terrorist organizations will therefore use high-valued natural resources as a source of revenue to finance actions, which will contribute to human rights violations. In order for corporations to follow through with their obligation to respect human rights it becomes necessary to implement due diligence mechanisms within their supply chain. Through the use of due diligence, corporations can establish mechanisms which helps to assess potential threats towards the supply chain. This could be at any level of the supply chain for example the extraction process, the suppliers, the transportation routes, the trade, the refining of the raw materials into the products and the selling of the product. The guideline provides corporations with the assessment tools for when a potential risk becomes too risky meaning that the corporation must cut all means of becoming involved in these activities. The OECD Guidance is a voluntary principle, which focuses on reducing the involvement of corporations extracting valuable minerals in conflict risk and conflict areas and human rights violations. The OECD Guidance clearly states that corporations that have complied with the guidance shall not support either public or private security forces that have illegally gained control over a supplying mine site or is conducting illegal activities regarding transportation routes or taxation intermediaries. It is clearly stated in the OECD Guidance that the role of both public and private security forces at mine sites shall only be tolerated and supported by companies if they serve a protective purpose, meaning that their activities are in accordance to both the international and national law, they are there for the safeguarding of human rights and to protect the security of mine workers, protect the facility and the equipment present on the site, to protect the mine and the transportation route with the aim of hindering any tampering with the supply chain.⁸⁸ Efforts by the companies shall be made in terms of protecting vulnerable groups for instance artisanal miners working directly with mineral extraction and the small-scale mining companies so that they are protected on the mining sites from any group which wishes to gain illegal control over them on inflict any form of abuse upon the workers.⁸⁹

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⁸⁸ OECD: OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. OECD publishing 2013, p.22

⁸⁹ Ibid, p. 22-23
In order for the due diligence principle to become successful, risk assessment mechanisms must be put into place where reports are constantly being provided to senior management and if incidents or risks are being detected an immediate response must be provided by the corporations in order to shut down the corporates involvement in the matter.\textsuperscript{90}

Depending upon the natural resource and how it has been used in terms of war waging but also in terms of human rights abuses, the due diligence mechanisms will have to be shaped differently. Corporations dealing with diamonds in west African countries will have to put more extensive due diligence mechanisms in place due to the purpose of conflict diamonds and human rights violations e.g. forced labor, mutilation, murder, child soldiers and rape which are related to the diamond trade. It is important that all corporations working with the same natural resource all take their responsibility in conducting due diligence within their supply chain in order to both establish a social norm around corporate responsibility but also achieve a more efficient risk assessment management mechanisms. Through close collaboration, corporations can, with less difficulty, reveal if a supplier is aiding rebel groups to finance civil war but will also be able to put pressure on certain ethical code of conducts regarding due diligence, transparency, extracting processes and a no tolerance policy regarding human rights violations or the financing of civil wars.\textsuperscript{91}

According to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, there is an offered framework for corporations which are extracting valuable minerals from these areas and which will allow them to use due diligence within their supply chain to avoid to get involved in the financing of civil war and human rights violations. The first step is to establish a strong company management system, which means that the company must implement a company policy regarding the supply chain of minerals from these areas. The policy must set out clear guidelines on the accepted ethical code of conducts, which shall be held throughout the supply chain. It is of equal importance that mechanisms shall be put in place to allow the company to control the level of transparency of their mineral supply chain. The transparency includes the ability of the company to trace and identify all actors involved directly or indirectly in their supply chain. The second phase of implementing due diligence in the supply chain is by corporations signing a contract with their suppliers that they have understood the concept of due diligence and that they will perform due diligence according to either the terms set forward by the

\textsuperscript{90} OECD: OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. OECD publishing 2013, p.15

\textsuperscript{91} Ibid, p.15
corporation or to ethical codes of the corporation. The fact of making a supplier sign a contract with
the company to operate in accordance with the company's policy on due diligence will not only al-
low the company and supplier to work together with the same ethical values but will also make the
risk assessment system easier to establish and monitor.92

In the third stage in terms of their risk assessment management strategies corporations shall if a risk
has been reported either: "(i) continuing trade throughout the course of measurable risk mitigation
efforts; (ii) temporarily suspending trade while pursuing ongoing measurable risk mitigation; or iii)
disengaging with a supplier after failed attempts at mitigation or where company deems risk mitiga-
tion not feasible or unacceptable."93 In order to determine which strategy to use in these situations
the company must reflect about their power of influence upon the supplier in order for the supplier
to take the necessary measures to eliminate the risk (without financing war waging or contributing
to human rights abuses). During these periods it is essential that the company consults with the sup-
plier, civil society organizations and both local and central government officials in order to obtain
further opinions on the situation and the threat the risks contains. The risk management plan must
be monitored carefully and the risks must be continuously assessed and evaluated and reported back
to the senior management. The involvement of a third party, as mentioned above, must be done in
terms of consultation and cooperation until either the operations temporarily have been stopped or
until the risk has been eliminated. If the risk is no longer posing a threat to the company and the sur-
roundings, a risk assessment must be made to evaluate if the risk might accrue again or if it no
longer poses a threat.94

The fourth stage of the OECD is to have a third-party audit of the supply chain due diligence mana-
gement policies and strategies. The due diligence practice of the company should be evaluated at the
different levels of the supply chain in order to assure that the due diligence policy of the company is
being followed at all levels.95 The fifth stage of the OECD requires a report to be conducted on the
supply chain due diligence policies and practices of the corporation and should be presented pub-
licly in order for transparency to exist. It is also necessary that exterior parties can gain access and
information about the companies work and commitment regarding due diligence in the supply

92 OECD: OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. OECD publishing 2013, p.18

93 Ibid

94 Ibid

95 Ibid, p.19
chain, the level of corporate social responsibility the company is committed to and the access to annual reports on the progress and risks which have been encountered whilst extracting minerals in these areas.96

Chapter 6 The Kimberley Process Certification Scheme

The purpose of chapter six is to discuss the Kimberley Process Certification Scheme (KPCS) in terms of corporate responsibility to assure that diamond-mining corporations are not involved directly or indirectly in the financing of actions which will result in human rights violations. Chapter six starts by describing the history of the establishment of the scheme, and continues by explaining the purpose of the scheme and ends by describing how the scheme is compatible with the due diligence principle.

6.1 The History of the Kimberley Process Certification Scheme, KPCS

During the World Diamond Congress in Antwerp, held from 17 to 19 July 2000, the issue of conflict diamonds was raised for discussion. The diamond industry responded to the campaigns, which had been launched against them by NGOs, and activities that conflict diamonds could only be accounted for to approximately four percent of the world's gem production. To terminate all trade with countries, which were affected by conflict diamonds, was not an option as this could severely hurt the states economy. As discussed in chapter three, several states are dependent on high-valuable natural resources as they are sometimes their only source of income. Therefore, a solution to the problem was proposed which was to elaborate a certification scheme that states the origin of the diamond and that it is conflict free.97 The proposed solution to hinder conflict diamonds from entering into the international market and dissolving the connection between human rights abuses and diamonds was accepted. In 2002, negotiations were launched between the diamond industry, governments and civil society organizations that led to the establishment of the KPCS. In 2003, the KPCS entered into force as a voluntary initiative and today holds a total of 54 participants represented by 81 countries where the European Union and its member states countries are accounted for as one single participant. In total the member account for 99,8 percent of the global rough diamond pro-

96 OECD: OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. OECD publishing 2013, p.19

duction. The upholding of the scheme is mainly due to the World Diamond Council also known as the international diamond industry and the Partnership-Africa Canada a civil organization.98

6.2 The Purpose of the Kimberley Process

The KPCS is structured in such a way that every rough diamonds must be certified as being conflict free diamonds in order to enter the international diamond market. The purpose of the scheme as previously mentioned is to hinder conflict diamonds from entering the international market. The KPCS demands that every signatory state shall adapt their national legislations and institutional frameworks regarding export, import and international controls in order to make them compatible with the KPCS. In addition, the signatory states must comply with a minimum level of transparency regarding their own export of diamonds and provide these in the shape of statistical data. The auditing of diamond exportation per year will allow any anomalies in terms of a heavy increase in diamond exportation to be detected, which could indicate that conflict diamonds have entered into the international market despite the scheme. States must meet certain requirements continuously in order to be able to be part of the KPCS and have the possibility of certifying their rough diamonds as conflict free in accordance with the scheme.99 The certification scheme is used both when exporting and importing conflict free diamonds.

According to the US Ambassador Holbrook, the diamond exportation of Liberia was estimated to be worth thirty times more than what the country was actually able to produce. The difference in production capacity and exportation could be explained in three ways. First, countries and organized groups have exported diamonds into another country in order to avoid having pay a high taxation for instance Belgium. Secondly, money-laundering centers in Liberia for instance used diamonds as another form of currency. The prices of diamonds were reported to be higher in Monrovia in comparison to Antwerp. Thirdly, rebel groups had smuggled conflict diamonds into the borders of another country in order to be able to certify the diamonds as conflict free.100 Therefore, it is essential that a certain code of ethics is implemented and used in order for the scheme to become successful. According to De Beers, they can assure that as a diamond-mining corporation they will take all appropriate measures to secure that all diamonds extracted from their pipelines will not be mixed with

98 The Kimberley Process: About

99 Ibid

conflict diamonds. The certification system emphasizes the importance of cooperation between the exporting governments and the diamond industries. Transparency concerning the diamond trade is essential in order for the international efforts to hinder conflict diamonds from reaching the international market. Several difficulties can arise concerning transparency, as several involved parties have their own agendas and may not wish to disclose in public all of their activities. Transparency is a method that will allow hindering corruption to be involved in the diamond industry. Corruption is an important threat towards the success of the KPCS as this could involve introducing conflict diamonds into the international market however certified as conflict free. 101

6.3 The Kimberley Process and Due Diligence

In order to avoid corporations becoming involved in the financing of actions that results in human rights violations it is essential that due diligence mechanisms are implemented at every level of the supply chain. In this process, it is important that corporations establish a no-tolerance policy towards bribery and misrepresentation of the origin of the natural resources that are being dealt with. As previously discussed in chapter three, when operating in conflict risk or conflict affected areas the failure of the state will be connected to a weak legislative system and mechanisms. Therefore, it is essential for corporations, in order to avoid becoming part of financing civil wars against legitimized states, manage to avoid any form of bribery within their supply chain and that in addition implement a verification system regarding the minerals that they deal with to assure themselves and their customers that the minerals are not originating from a conflict affected mines.102

Even though the purpose of the scheme is to hinder conflict diamonds from entering into the international market, the scheme has several weaknesses, which allows conflict diamonds to enter into the international market. Therefore, it is essential that corporations use due diligence within their management policies and throughout their supply chains in order to adhere that conflict diamonds will not enter into the international market and that the corporations themselves will not become liable for directly or indirectly financing civil war and human rights violations.

When operating in conflict risk and conflict-affected areas corporations must strengthen their due diligence management policies because the risk of the corporations becoming liable for human


102 Ibid
rights abuses increase in failed states. As previously discussed in chapter four, corporations do not have sovereignty and cannot act in the place of states either however they can take their individual and corporate responsibility to respond towards a situation where human rights could potentially be violated. The corporation must therefore constantly evaluate the risks of conflict diamonds entering into their supply chain both at the mine site, through the supplier and during the transportation of diamonds to the international market. In states where rebel groups and other form of non-state actors operate and target the supply chain it might even become necessary to terminate the operations because the risks become to important. In these situations regarding the supply chain, the thesis suggest that corporations shall use themselves of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas in order to establish a clear ethical code of conduct both within the corporate supply chain but also with the suppliers which provides the corporation with the valuable minerals.

The second issue regarding the success of KPCS is the auditing capacity of corporations operating in these areas. Due to the level of corruption and lack of transparency, corporations must take their responsibility regarding setting out rules concerning auditing processes. Auditing is imperative in order for transparency to become part of the operations but also because it is a due diligence method where one will control the level of import on an annual basis which will allow a sudden increase to be detected. The auditing team must be relocated frequently in order to avoid the auditors from becoming tainted or tempted to adopt other ethical codes of conducts which to not correspond to those of the corporation. An audit which has been in place for a long time can either become immune against bribes and corruptions or instead become tempted, therefore to avoid this the auditors are often periodically relocated back to the headquarters of the corporations in order for the employee to have the corporate ethical standards reaffirmed. The fact that corporations apply due diligence upon their operations is essential in order for the KPCS to become successful as failure in the certification of conflict diamonds have been detected for instance in Congo (DRC), Angola, Malaysia and Ghana. There are several examples of diamonds having been certified as originating from Switzerland, where there are no kimberlitic pipelines. There again is another issue of individuals smuggling diamonds into other countries and certifying the diamonds at the airports.103

The KPCS is a state-to-state agreement and it has become evident that the scheme lacks of a framework regarding how mining corporations should act when extracting valuable-minerals in these

areas. The scheme focuses on the national legislation of signatory states more than how corporations uses due diligence within their supply chains. The initiative to try to hinder conflict diamonds from entering into the international market is a step forward, however, it is evident that the framework must become more elaborated. The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, offers corporations a framework on how to establish due diligence management policies and strategies which can be implemented both at a management level and throughout the corporate supply chain. In order to achieve a successful scheme the KPCS must assimilate with the OECD guidance and acknowledge the importance of corporations in the success of the scheme. To do so, the scheme must offer just as the OECD guidance does a framework specifically elaborated for mining corporations that deals with diamonds. The analysis has shown that the KPCS has weaknesses and must provide corporations with clear due diligence guidance. One suggestion would be to develop a separate scheme directed towards corporations with would be a combination of both the KPCS and the OECD guidance.

Chapter 7 Discussion and Conclusion

After the Cold War, the international community had to change its perception on the relationship between peace and security. Historically, peace and security was determined by the relationship between states and their ability to resolve disputes between each other before resorting to war. Today, the international community is forced to accept that non-state actors (terrorist groups, rebel groups, armed forces and corporations) play a crucial role in the determination of the political situation and world peace. Therefore, the perception of war has broadened from conventional wars to including asymmetrical wars.

The environment is rich of natural resources that if managed in a responsible manner are a source of development both for states and their citizens. Unfortunately, in combination with grievances natural resources have become the subject of dispute and are used as a source of revenue for rebel groups to finance civil wars against legitimized government. According to the United States Agency for International Development (USAID) minerals become conflict minerals when “…their control, exploitation, trade, taxation or protection contributes to, or benefits from, armed conflicts”104 Due to globalization, the demand for high-valued minerals has increased and as a result conflicts have become even more complex as high-valued natural resources are used for the financing of civil wars

104 United States Agency International Development: *Minerals and Conflict, A Toolkit for Intervention*, p. 3
and actions involving human rights violations. Natural resources as raw minerals are not what triggers conflicts to arise but it is the underlying grievances such as political, economical and social factors which will result into natural resources becoming involved in conflicts. The research of the thesis found that the presence of high-valued natural resources could lead to the undermining of peace negotiations and the duration of peace agreements if parties see those as a threat towards their own profit of the natural resources. In addition, peace negotiations and agreements seldom include further discussion about environmental factors and natural resource distribution, which often leads the conflict into relapsing.105

The purpose of the thesis was to answer the research question ”What responsibility in terms of due diligence, do mining corporations have to ensure that the extraction of diamonds from conflict risk and conflict affected areas does not serve either directly or indirectly, as a source of revenue for rebel groups in their war waging against a legitimized government?” In order to answer the research question the thesis has explored the responsibility of corporations to respect human rights both from a moral and legal perspective. The conclusions are that due to globalization a power gap on the international market has emerged as states only have sovereignty and jurisdiction within their national borders, which makes it difficult for states to control the business activities of corporations operating overseas. In addition, due to the increase in economical and political leverage which corporations have gained over the last decades they have the capacity to both hinder and facilitate the development of host states. Therefore, the thesis went further into depth and analyzed the corporate responsibility of respect human rights by using business ethics as an approach. The findings are that there are no universal definitions of what business ethics entails which makes it difficult for corporations to work from a common perspective regarding their responsibility to respect human rights.

In addition to the lack of a universal definition regarding business ethics, it has been challenging for researchers to conduct studies on the existing business ethics within corporations as the executives, managers and supervisors have been reluctant to allow an external party to examine their business practices. The findings of such studies would provide corporations the opportunity to establish a common framework on the ethical codes, which are accepted on the international market. A common ethical code would make it easier for corporations to respect human rights and draw the line for when business decisions become unethical. Nevertheless, the studies which have been possible to conduct have found that the managers and employees perceptions of business ethics are influenced

105 United Nations Environmental Programme: From Conflict to Peacebuilding, The Role of Natural Resources and the Environment. Published by the UNEP, 2009, p.6
directly by factors such as culture, religion, childhood and gender. To obtain a deeper understanding, the research paper went closer and found a correlation between states where religion is valued as important in the eyes of the citizens, a culture which highly values the collective well-being and the level of ethics in the employees business decisions. The thesis found that employees sometimes feel that there has been an ethical code which has transcended from the management level upon them and that the employees sometimes find it difficult to assimilate with these ethical codes as they differ greatly from their own personal ethical codes. Due to the differences between the employees’ ethical codes and the ethical codes within corporations the research paper aimed at analyzing if corporations had moral obligations due to the morals of their employees. According to Holmes, “(a) "morality has no application to corporations since corporations are not persons and only persons can be held morally responsible”, and (b) "persons within corporations cannot have moral obligations given the position of the individual in the corporation””

The thesis disagrees with the argument of Holmes in terms of employees losing their moral obligations to respect human rights due to their employment status. The thesis argues instead that corporations become morally responsible for their actions and especially concerning their responsibility to respect human rights because of the moral responsibility of their employees, which transcends upon the corporation. This arguments points to the fact that corporations have a moral obligation to respect human rights whilst making business decisions and that this respect for human rights must be part of the corporate ethical codes. To obtain support for this argument the thesis leans on the facts that both corporations and corporate employees have been brought to domestic courts and held accountable for business decisions and operations, which have resulted in the violation of human rights. Therefore, the conclusion is that the moral obligations of employees are connected directly with the moral and legal liability of corporations towards human rights violations. The conclusion of the thesis is that employees and corporations have both a moral and legal responsibility to respect human rights. The research found that there is not a universal indoctrinated corporate responsibility towards human rights as some legislative frameworks exists only in some nations however several voluntary initiatives have been established by the United Nations for corporations to use due diligence towards human rights and respect human rights whilst conducting business. The answer to the main research question is therefore that corporations do have a responsibility to respect human rights


108 International Centre for Trade and Sustainable Development: Responsible natural resources trade through supply chain due diligence. Published 2015.
conducting business both morally because of the moral responsibility of their employees which transcends onto the corporations and legally due to a couple of laws which have been implemented at a national level.

To define due diligence has been proven to be a hardship as the terminology can have different meanings depending upon the situation it is applied to. According to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, due diligence refers to the responsibility in terms of how corporations establishes global supply chain management principles which allows them to extract minerals in a responsible manner. The framework offers five steps which corporations can use to eliminate the risk of becoming liable and connected to the financing of rebel groups war waging against legitimized governments. Due to the differences in the meaning of the definition due diligence, the research thesis operationalized the defining as follows: "Due diligence is a business method used to evaluate and eliminate risks for human rights violations, through the supply chain. The method is used to eliminate work methods and circumstances which will allow rebel groups to use as a source of revenue for financing illicit war waging against legitimized governments and in the process use methods which violates human rights."

The second research question for this research was: "Is corporate due diligence possible to acquire with the use of the Kimberley Certification Scheme concerning conflict diamonds? If any weaknesses are found which are they and how could the Certification Scheme be improved?" When analyzing the certification scheme the thesis found that the initiative has the purpose of assisting corporations and states from hindering conflict diamonds from entering into the international market. Through certification of diamonds the aim is to sort out conflict diamonds from conflict free diamonds. The research found that despite the initiative, corporations face considerable challenges being involved either directly or indirectly in financing civil war and activities which contributes to the violation of human rights because firstly the certification scheme is a state-to-state agreement and secondly does not introduce corporate due diligence as a business method. Therefore, it becomes imperative that corporations use due diligence as a method of practice in order be able to introduce risk-assessment within their supply chain when sourcing from conflict risk and conflict affected areas. To avoid being involved in human rights’ violations activities, it becomes imperative that corporations recognize their corporate responsibility to respect human rights and to implement

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109 International Centre for Trade and Sustainable Development: Responsible natural resources trade through supply chain due diligence. Published 2015.
clear ethical codes both within their management policies and with their suppliers. Therefore, to answer the sub-research question of the thesis the answer states that that the KPCS does have weaknesses as many exterior and environmental factors play an important role in determining the success of the scheme. It then becomes evident that not only can corporations use due diligence in combination with the KPCS but it becomes vital that they use due diligence both inside of the corporate management policies and throughout their supply chains. Including signing a contract with the suppliers that entails that the suppliers will work with the same interpretation of due diligence as the corporation as corporations have moral and legal responsibility to respect human rights. Due diligence is essential to incorporate throughout the supply chain and ethical codes needs to be implemented to set a clear code of conduct which will aid all parties involved to conduct business whilst respecting human rights by avoiding the business operations from becoming a source of revenue for rebel groups in their war waging against legitimized governments. Though following the KPCS and the OECD guidance, corporations can therefore when operating in conflict risk and conflict areas extracting diamonds take both their moral and legal responsibility towards human rights.
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