



Human Rights and Export Credit Agencies:

An Analysis of the Implementation of International Human Rights Guidelines in the European Context

By

Jennifer Emma Hill

SOA- 3902

*A dissertation submitted in partial fulfilment for the degree:
Master in Human Rights Practice*

*School of Global Studies, University of Gothenburg
School of Business and Social Sciences, University of Roehampton
Department of Archaeology and Social Anthropology, University of Tromsø*

December 2013

Contents

Acknowledgements.....	iv
Abstract.....	v
List of Abbreviations.....	vi
1. Introduction.....	1
2. Review of the Literature.....	4
2.1 Theories on National Implementation of International Norms	
2.2 Previous Studies on Export Credit Agencies and Human Rights	
3. Methodology.....	12
4. Background: Human Rights and ECAs.....	17
4.1 Human Rights	
4.2 Relevant Guidelines	
4.3 Export Credit Agencies	
5. Analysis of Export Credit Agencies' Implementation of the Guidelines.....	26
5.1 Compliance with Guidelines	
5.2 Application of Theories	
6. Concluding Thoughts.....	37
7. Recommendations	39
References.....	40

Declaration form

The work I have submitted is my own effort. I certify that all the material in the Dissertation which is not my own work, has been identified and acknowledged. No materials are included for which degree has been previously conferred upon me.

Signed: *Jennifer E. Hill*

Date: *13 December 2013*

Acknowledgements

I would like to express my thanks and gratitude to all the people who helped to bring this paper about. First and foremost this would be my supervisor Lisbeth Segerlund, whose ongoing advice and encouragement have proven invaluable. I am also very thankful to the people working in NGOs, national human rights institutions and the ECAs themselves who took the time to talk to me and to answer my questions. My sincere gratitude to my sister Vivian and to Joe for offering to read draft versions. Out of my friends my particular thanks go to Joe, Mari and Kat who were always there throughout the process and to Finn who always seemed to appear and provide an energy boost just when my batteries felt completely empty. A warm thank you also to my parents and whole family for supporting me always. And last but not least to everyone in the Erasmus Mundus cohort who became like a second family over the last two years and made the time on the course not only instructive but a highly enjoyable experience.

Abstract

This dissertation explores the intersecting topic of human rights and national export credit agencies (ECAs). As organisations actively seeking to promote foreign trade and investment, these organisations are in a prime position to set the bar for human rights conduct of Western corporations abroad. In order to evaluate ECAs' human rights conduct, this thesis analyses how three European ECAs implement the OECD Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence and the United Nation Guiding Principles on Business and Human Rights. The analysis concludes that while compliance with the OECD Common Approaches is high, there are numerous gaps in the realization of the Guiding Principles.

Abbreviations

ASCM - Agreement on Subsidies and Countervailing Measures

BMWi – Bundesministerium für Wirtschaft und Technologie (German Federal Ministry of Economics and Technology)

EC – Export Credit

ECA – Export Credit Agency

ECG - OECD Working Party on Export Credits and Credit Guarantees

ECGD - Export Credits Guarantee Department

EHS Guidelines – Environmental, Health and Safety Guidelines of the World Bank Group

ESIA – Environmental and Social Impact Assessment

EU – European Union

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic, Social and Cultural Rights

IFC – International Finance Corporation

ILC – International Law Commission

ODA – Official Development Assistance

OECD – Organisation for Economic Co-operation and Development

OHCHR - UN Office of the High Commissioner for Human Rights in Geneva

SDR – Special Drawing Right (an artificial IMF currency)

TLPM – Transnational Legal Process Model

UDHR - Universal Declaration of Human Rights

UN – United Nations

WTO – World Trade Organisation

1. INTRODUCTION

In 2003, a BP-led consortium of oil companies started building the Baku-Tblisi-Ceyhan (BTC) pipeline, the ‘largest cross-border infrastructure construction project in the world’ at the time, designed to transport oil from the Caspian Sea to Western markets (IFC 2006, p.1). \$2.7 billion of the total \$4 billion, corresponding to nearly 70% of the total cost, were guaranteed by public institutions, including in the UK and Germany (Lustgarten 2005, p.2). The BTC pipeline has since been named amongst the most controversial large-scale infrastructure projects (Lustgarten 2005, p.1; Scheper & Feldt 2010, p.9) which is inter alia due to the alleged human rights abuses committed by the oil companies during its construction. The alleged abuses include illegal use of land without payment of compensation; lack of public consultation; involuntary resettlement and intimidation (Lustgarten 2005, p.2). The BTC pipeline is just one of many potential examples of cases in which large multinational corporations receive governmental support through their countries’ export credit agencies (ECAs).

This phenomenon highlights two interrelated problematic phenomena, namely firstly the activity of Western enterprises abroad potentially leading to human rights abuses, and secondly Western governments’ involvement in the process through their export credit agencies. The first of these issues is an expression of the widely referenced development of ‘globalisation.’ While the expansion of trade and production networks and investment flows is not a problem per se, these economic trends have come to be associated with a socio-economic ‘race to the bottom’ by producers (Hahnel 2000). This term describes the trend of Western producers moving their manufacturing sites to developing countries which have lower production costs. These cost reductions however are largely a result of lower wages and general labour standards. In an attempt to nevertheless secure this business for their own country, developing country governments and manufacturers enter the global ‘race to the bottom’, ever lowering standards in order to compete internationally. The devastating consequences for the living and working conditions of such workers are well documented. The recent series of fatal catastrophes in Bangladeshi workhouses is only one of many such examples (CCC 2012; Dostert 2012; Steinberger 2012).

From a legal and policy perspective, this development is moreover problematic as in most cases these international business operations fall into the so-called ‘governance gap.’ The concept of ‘governance gap’ (see e.g. Kinley 2009, pp.157–169; Ruggie 2008, para.3, 13 and 14; Voiculescu & Yanacopulos 2011, pp.1–2) describes the situation in which entities (in this case transnational corporations) fall outside the realm of effective government control. This can be the case with corporations when their

operations occur outside their home state, and the latter therefore considers these operations outside its jurisdiction. Host states on the other hand frequently lack the capacity or the political will to enforce stringent social standards on foreign business enterprises. The governance gap is especially relevant to large transnational corporations (TNCs). The term is here used to describe businesses which are incorporated in one country but operate, directly or through subsidiaries, in countries other than their ‘home’ state. The literature generally distinguishes between ‘home’ and ‘host’ states, to refer to the company’s country of incorporation and operation respectively. This distinction often corresponds to developed and developing countries. Whilst these classifications are very helpful means of systematising some overall trends, it should be borne in mind that these are simplifications. South-south economic cooperation is increasing in significance (Agarwal 2013) and thus blurring the line between developed states as home states and developing states as host states. Complex arrangements between parent companies and subsidiaries further complicate the picture, in that the ties between the parent companies (largely located in developed states) and its subsidiaries carrying out the operations abroad can be obscure.

Why focus on ECAs?

As such, ECAs represent a fascinating research angle on the field of business and human rights. As state-controlled entities which work directly with and provide a service to multinational businesses, these organisations are interesting vehicles for transforming state policy into business practice. Unlike the vast number of the operations of multinationals which operate independent of direct state-support and funding and which both companies and governments frequently argue are outside individual states’ jurisdictions, the conditions which ECAs impose on their clients are entirely in the hand of governments. Moreover, it is in the nature of the projects that are supported by ECAs to be especially risky. By definition this applies to the political and/or financial conditions under which they are carried out. However, such political and/or financial risks frequently go hand in hand with a particularly precarious human rights situation (Utlu 2013, pp.2–3). For example if a project was denied commercial funding due to the fact that it is situated in a politically volatile region on the brink of civil war, it is a straightforward assumption that it will be difficult to effectively safeguard all human rights of workers and the affected communities in the area. The same connection applies to e.g. a dam project that is an economic risk due to the fact that the plans require the resettlement of surrounding villages. Connected to this situation, there is a history of ECAs lending support to projects in industrial sectors which have been known to have a particularly problematic human rights record. This includes large infrastructure

projects such as dams or power stations (Utlu 2013, p.1), as well as oil and gas (Hildyard 2013, p.2). It should be emphasised that highlighting these areas does not imply that other industry sectors are not also problematic. Finally, the global financial crisis of the recent years made the activities of ECAs more pertinent than ever. Following the private sector's ability to maintain its pre-crisis levels of lending and insurance, officially supported agencies stepped in to fill the gap (Berne Union 2013, p.4; FERN & ECA-Watch Europe 2013, p.4). ECA Watch reports on increases in ECAs portfolios between 30 and 272 per cent as well as an increase of ECAs' financial capacity through their respective states (FERN & ECA-Watch Europe 2013, p.4).

Outline of the Study

The aim of the study is to gain an understanding of how Western European ECAs are implementing relevant human rights guidelines. Before embarking on this analysis, we will examine which literature is already available on this topic. This turns out to be rather scarce, with only a small number of NGOs and other organisations having conducted actual studies analysing ECAs' conduct with regards to human rights. Therefore, this paper will examine existing explanations for states' compliance with international norms more generally, including human rights. Subsequently, we will look at the existing studies on ECAs and human rights. The methodology employed is a multiple-case study of three Western European NGOs. Their policies and practices were examined through written material available through their websites which was analysed using qualitative content analysis. The paper provides an outline of the relevant international human rights guidelines, before examining the ECAs' conduct. Having analysed to which extent and how these agencies comply with the existing recommendations, we will apply the theoretical models examined above to offer some explanations of the organisational behaviour. The study concludes with policy recommendations and suggestions for further research on the topic.

Research Questions

1. How and to which extent are Western European ECAs implementing relevant human rights regulations?
2. How do existing theoretical models help explain the observable patterns in implementation?

2. REVIEW OF THE LITERATURE

A major part of what motivated this study was precisely the lack of academic literature on the topic of export credit agencies and human rights. While this is mostly an opportunity to explore an area that has previously not received a lot of attention, it also poses some challenges in terms of finding background material. However, what has been well researched is the implementation of international norms, including human rights in particular, in the national context. We believe that these offer valuable background insights, and much of the knowledge gained in this broader area is also relevant to the more specific context of export credit agencies. Besides this academic literature on norm implementation, there are also a number studies by NGOs and one research institution on export credit agencies and human rights. These will be consulted subsequently.

2.1 Theories on National Implementation of International Norms

In the following I will outline two sets of theoretical models that have been developed to explain why states do or do not comply with international norms, in particular human rights. The models are institutionalism on the one hand and a combination of regime theory and the transnational legal process model on the other. Subsequently there will be a comparative summary of the two models, exploring how these might apply to export credit agencies.

Institutionalism

Institutionalism is in many ways developed out of a realist world view. This manifests in a number of ways, but perhaps most importantly in the shared belief that states are unified actors and a largely motivated by self-interest (Hathaway 2002, pp.1947–48). This self-interest has been defined as ‘at a minimum [...] own preservation and, at a maximum, drive for universal domination’ (Waltz 2010). According to realists, international politics is thus characterised by a state of anarchy in which states are pitched against each other in a struggle to further their respective interests. Institutions and rules play no role in their own right. Although institutionalist theorists too believe that the international stage is governed by a state of anarchy at the outset, they stress the potential benefit of mutual cooperation. Thus, states have the option of founding international regimes which allow states to cooperate to achieve their long-term goals (Keohane 1998). In this view, states might join and comply with international regimes because they see this to be in their own interest. This point has given rise to some

doubts regarding the applicability of institutionalist thought to human rights. Since the relations that are being regulated are state-internal, a given state does not draw any direct benefit from another state's compliance, or contrary damage from non-compliance. This is contrasted with 'international institutions governing trade, monetary, environmental or security policy [which are designed primarily] to regulate policy externalities arising from societal interactions across borders' (Moravcsik 2000, p.217). Neumayer observes that compliance mechanisms must work fundamentally different for such a regime, as contrary to e.g. the trade regime, sanctions are never 'self-enforcing' in the sense that the 'threatening group of countries is better off actually executing the sanction' (2005, p.927). Louis Henkin adds that "the principal element of horizontal deterrence is missing [in the area of human rights]: the threat that 'if you violate the human rights of your inhabitants, we will violate the human rights of our inhabitants' hardly serves as a deterrent" (1989, p.253, in Hathaway 2002, p.2007).

Regime Theory & Transnational Legal Process Model

Regime Theory

Regime theory has been described as 'refinement from institutionalism' (Neumayer 2005, p.928). However, there are several significant differences. Probably the most significant of these is the fact that regime theorists such as Chayes and Chayes believe that an international treaty creates a binding obligation which states are likely to obey in its own right and not exclusively due to an interest or a fear of punishment (1993, p.185). This is expressed in the concept of *pacta sunt servanda*¹. Another key factor is that states are not seen as homogenous actors with a unified agenda and interests. Rather a multitude of state ministries and individuals within them, as well as often civil society actors weigh in on crafting the country's position (Chayes & Chayes 1993, p.181).

They offer a number of reasons for the premise of *pacta sunt servanda*. Firstly, due to the length and cost involved in the process of a policy change, the authors argue that states are likely to stick with one course of actions once it has officially been decided upon (1993, pp.179&186). Secondly, states enter treaties out of their own free will and more importantly, treaties usually come about as an outcome of intense inter-state discussions and negotiations. This process allows states to exert their influence towards fashioning the treaty according to their own interests. These interactions are likely to lead states to thoroughly think through, and potentially even reconsider their positions (1993, p.180). Franck

¹ 'The rule that agreements and stipulations, esp. those contained in treaties, must be observed' (Black's Law Dictionary, in Hathaway 2002, p.1956)

(2006) adds to this that part of the reason why nations follow rules is because they perceive them to be legitimate. He defines 'legitimacy' as "the capacity of a rule to pull those to whom it is addressed towards consensual compliance" (Franck 2006, p.93).

As a result, non-compliance, in this view, is usually not due to a lack of will to comply, but rather due to a lack of capacity, or understanding on behalf of the non-compliant state or due to the fact that many of the changes envisaged in international treaties are long-term developments which simply take time to realise (Chayes & Chayes 1993, pp.188–197). The response, so the authors argue, is to engage in persuasive discourse with the offending states to convince it to act according to the law. Thus, the idea is that it is not instrumental self-interest that drives states to comply (or not), but rather a process of international socialisation that leads to this outcome. They qualify this assertion with the statement that compliance need not be 'strict', but must simply meet a level that is " 'acceptable' in the light of the interest and concern the treaty is designed to safeguard" (Chayes & Chayes 1993, p.176). The authors themselves however also admit that human rights are the areas of international law in which it is most likely that 'a state will enter into an international agreement to appease a domestic or international constituency but have little intention of carrying it out' (Chayes & Chayes 1993, pp.187–188).

Transnational Legal Process Model

The transnational legal process model (TLPM) does not stand in contrast with regime theory, but rather seeks to add to it. This model, developed by Harold Koh (1997), focuses on the process of norm-internalisation. He openly builds upon the theories developed by Chayes & Chayes and Franck, but argues that the above skipped the step which falls between international norms being debated on the international stage and subsequently obeyed by states. He argues that in between the process of norm-internalisation occurs (1997, p.2602). The transnational legal process model focuses on how the international norms, including those in treaties, become internalised by actors at the state level. He proposes a three state process (1997, p.2646). The transaction starts when one transnational actor initiates an *interaction* with another, which is followed by an exchange which leads to an *interpretation* and often a formal formulation (even in treaty form) of the new norm. Thirdly, the other actor *internalises* the new norm, as a result of the interactions. Once an actor has internalised a norm he or she will be part of the domestic process which leads to the internalisation of the norm at the national state level. Such transnational actors, can be diplomats, NGOs or even private people (1997, p.2648). It is important to note however, that while this is how norm-internalisation can occur, there is by no

means a guarantee. Thus, this theory offers little predictive value as to why certain norms come to be internalised and others not (Hathaway 2002, pp.1961–62).

Comparison

The two sets of theories (henceforth regime theory and the transnational legal process model will be collectively referred to as one ‘theory’) explore and make assumptions about various aspects of state behaviour in relation to international norms and regimes.

The first regard the basic view of the state and assumptions about its interests. While institutionalists see the state as a unified actor on the international stage who is motivated by self-interest, adherents of regime theory and the TLPM would argue that also internationally the state has to be seen as an aggregation of its individual actors. Therefore, in this view the interest and position of the state are a lot less unified or defined, and usually open to negotiation and influence.

A second core difference is the importance that these theories attribute to the processes of international interaction. For institutionalists the international arena is one in which states seek to maximise their own interest, either at the expense of one another or collaboratively via international regimes and institutions. There is no indication however, that these interactions have any effect on how states define their interest. For regime theorists and the TLPM on the other hand, these international processes are key. This is where ideas are raised, debated, reframed and actors eventually become persuaded, which in turn serves to filter back into the definition of the national-interest and subsequent state behaviour.

This last point already touches upon the different motivations for complying with international norms. Institutionalists would argue that if states comply with international norms this is the case because it serves their own interests. This can either be the case because the actual norm-compliant behaviour is beneficial for them, or because the effect of compliance mechanisms makes it the politically astute choice. The other group of theorists would however argue that compliance is due to conviction and a basic respect for international laws.

These contrasting views provide us several points which will subsequently applied to the analysis. Firstly, it will be interesting to observe whether there are indicators that the state position is the outcome of a negotiation or compromise between different actors and subject to further negotiation, or whether it is firmly grounded in an understanding of ‘national interest’. Secondly, we can examine which role the processes of international interaction appear to play. Are there indications that the length

or intensity of the processes leading up to an international guideline influence the degree to which it is subsequently applied? And thirdly, which explanations can we find for whether or not states are complying. Does compliance yield political or economic benefits, or is non-compliance punished by effective mechanisms? Or are there indications that states comply out of conviction and a fundamental respect for norms?

2.2 Previous Studies on Export Credit Agencies and Human Rights

Critical Reviews of ECAs

Previous studies on ECAs and human rights draw out a number of critical points, mostly focused on national contexts.

Amnesty International UK

In June 2013, Amnesty International UK published a report titled ‘A History of Neglect – UK Export Finance and Human Rights’ which gives a critical view of the United Kingdom’s practice of export promotion with regards to human rights. Amnesty presents a number of illustrations of UKEF’s policy and practice which they argue amount to a failure of the British state to fulfil its ‘duty to protect’ under international human rights law (2013, p.3). A lot of the critique is tied to the fact that in 2010 the government decided to replace its previous ‘Business Principles’ for UKEF with the policy to follow the OECD Common Approaches (2013, p.11). This decision effectively meant a downgrading of the ECA’s policies and practice which hitherto had gone beyond this lowest-common-denominator agreement. Following this change in policy, UKEF no longer reviews projects for their environmental and social impacts if they fall below the threshold specified in the Common Approaches². With this change, Amnesty claims, UKEF relinquished its position of international leadership on human rights issues and export support and the agency’s ethical standards are now frequently lower than those of its international counter-parts (2013, pp.17–18). Amnesty is also critical of a new product which UKEF introduced in 2009, namely the Letter of Credit Guarantee Scheme. Under this scheme, UKEF supports exports indirectly via British banks, thereby effectively avoiding any ethical review (2013, p.15). Further contentious points are that UKEF’s lack of transparency and reluctance in complying with

² The OECD Common Approaches state that ECAs should review projects which have a repayment term of two years or more and the ECA’s exposure amounts to £10 million or the project is in or near a sensitive area (Amnesty International 2013, p.12). The OECD Common Approaches will be outlined in more detail in the section below.

Freedom of Information requests (2013, pp.19–20). It has also been remarked that the policies of UKEF and those of the rest of government, especially Parliament, seem disjointed. Thus, UKEF is not integrated with much of the government’s human rights policy and appears deaf to Parliamentary critique (2013, pp.16&26). Further points raised include UKEF’s share of third world debt and its practice of supporting the arms trade (2013, pp.2&6).

Feldt and Scheper

A further study by Christian Scheper and Heidi Feldt (2010) is the main academic work available on the topic, focusing on the German state’s practice on export credits and foreign investment promotion. The study takes a wide-angled approach to the topic, including international guidelines issued by the Berne Union and the OECD aimed at ensuring that official export credit support does not have a distorting function on market conditions. In the field of environmental and social guidelines for export credits, the authors examine the OECD Common Approaches (in their 2007 revision) as well as the standards of the International Finance Corporation (IFC) and the World Bank which these refer to (2010, pp.38–48). The authors go on to examine which ethical standards also to the less well regulated investment guarantees (2010, pp.48–50). Scheper and Feldt analyse the extent to which international human rights are covered by these standards, finding that although the World Bank group instruments in particular do include reference to a number of human rights issues, none of the documents previews a systematic human rights analysis (Scheper & Feldt 2010, pp.52–53).

ECA-Watch

The third study, ‘Still Exporting Destruction’, is a shadow report by ECA-Watch and other European NGOs. The report aims to assess ECAs’ compliance with the December 2011 European Union *Regulation approving the incorporation of the revised text of the Organisation for Economic Co-operation and Development (OECD) arrangement on officially supported export credits into EU law* (ECA regulation) (FERN & ECA-Watch Europe 2013, p.3). Under the regulation, ECAs must report their activities to the European Commission, in order for the EU body to assess whether or not the agencies have been complying with EU objectives, which include the ‘external action provisions’ (FERN & ECA-Watch Europe 2013, p.3). The ECA regulation states that the EU’s ‘Member States should comply with the Union’s general provisions on external action, such as consolidating

democracy, respect for human rights and policy coherence for development, and the fight against climate change, when establishing, developing and implementing their national export credit systems and when carrying out their supervision of officially supported export credit activities' (EU 2011, p.3). Although the EU reporting system in place is a positive first step, it still shows significant shortcomings. Principal amongst these was the delay in involving the European Parliament in the process, and most of all the lack of a clear set of benchmarks to assess ECAs' compliance with the EU requirements (FERN & ECA-Watch Europe 2013, p.21). The report furthermore stresses the need to oversee ECA conduct, based on the 'main problems associated with export credits [which] include the exacerbation of heavily indebted countries' debt problems, negative impacts on human rights, and support to projects that increase greenhouse gas emissions' (2013, p.4).

ECA-Watch is critical of existing regulation of ECAs, which is largely based on voluntary commitments (the OECD Common Approaches) that would not be sufficient to systematically ensure the respect of the whole range of internationally agreed human rights even if they were fully applied (2013, p.9).

Recommendations

Scheper & Feldt observe that many relevant human rights are already implicitly contained in applicable standards and are therefore considered in project assessments. However, they recommend that the state could do more to promote an explicit reference to international human rights standards (2010, pp.55&64–65). This should occur, i.a. by the ECA including an explicit reference to human rights in its criteria for export credit support (Scheper & Feldt 2010, p.76). Amnesty makes a similar point, recommending that 'all agencies and departments promoting trade and investment should demonstrate awareness of the UK's human rights obligations and the necessity for human rights due diligence in all cases of business support' (Amnesty International 2013, p.28).

A second point made by both Feldt and Scheper ECA (2010, pp.59–61) and Amnesty (Amnesty International 2013, p.28) is the need to increase the transparency of the ECA's operation to enable an effective oversight of the whole process, from initial project screening to ongoing monitoring of operations. They suggest that especially Parliament (and through it NGOs) must obtain a formalised role in the oversight of the ECA (Scheper & Feldt 2010, pp.59–61). Amnesty moreover stressed the

point of policy coherence, stating that the government should ensure that UKEF's policies are in line with the rest of the government's on human rights.

A third key point made in both studies is the creation of an independent complaints mechanism for victims (Amnesty International 2013, p.28; Scheper & Feldt 2010, pp.62&80).

ECA-Watch focuses on the EU level, stressing the need for the European Commission to enhance its monitoring practice to effectively 'check that ECAs have policies *in place* that are *effective* for ensuring that the ECA's activities accord with EU objectives' (2013, p.5). The NGO moreover calls on the European Commission to be more open about the limits it currently faces to effectively monitoring ECA compliance with the regulation, which it states currently still lacks 'an analysis of the gaps between current ECA due diligence policies and the objectives of the EU' (ibid, p.5).

3. METHODOLOGY

Multiple-case study

Case studies have several identified strengths compared to statistical other methodologies. Amongst the strengths identified by Bennett and George (2005, p.19) are ‘conceptual validity. The case study method has moreover been attested suitability for answering a descriptive or an explanatory question, i.e. seeking to understand *what* or *why* something is happening (Yin 2012, p.5). This is clearly the case in study here which is foremost a descriptive exercise, trying to describe *what* ECAs are doing in relation to certain international guidelines. Moreover, multiple-case studies allow for some degree of compromise between the depth of qualitative single case analysis and the representativeness of quantitative work (George & Bennett 2005, p.31). Of course, seeking an element of the best of both worlds, also requires trade-offs in either direction. It is important to stress in this context that although a multiple-case study may allow for some degree of contingent generalisation, it certainly does not aim to establish the level of universality of representativeness associated with quantitative studies which are based on a large, random sample (George & Bennett 2005, pp.30–31; Yin 2012, p.7).

Case studies moreover score high on measures of conceptual validity, i.e. the ability to ‘identify and measures the indicators that best represent the theoretical concepts the researcher intends to measure’. This is the so as a comparative case study approach allows for ‘contextualised comparison’, i.e. identifying in each situation which indicators correspond most closely to the concept they are seeking to measure (Yin 2012, p.8).

Case selection

Unlike in quantitative research, qualitative research does not necessarily require random sampling. Thus it is the researcher who is to make an informed and purposeful decision on which sites to study and how to delimit the study (Creswell 2003, p.185).

The case selection for this thesis was motivated by a number of factors. Firstly, the cases were drawn from a relatively homogenous group, namely Western European states. All three countries examined are OECD members, have a high compliance record for human rights and are wealthy, exporting countries. Within this ‘sample’³ I selected two ‘representative’ cases (Germany and the UK) and one ‘extreme’ case (the Netherlands) (Bryman 2008, pp.54–56). The Netherlands count as extreme case as

³ Term used tentatively, as such a case study does not constitute a representative sample, in the sense used in qualitative methodology.

they had previously been mentioned by experts as particularly advanced with regards to their ECA's human rights practice (Utlu 2013). The idea was to combine typical cases with one that presented alternative behaviour, in an attempt to gain some deeper insights into the patterns of ECA conduct and motivations.

Within the broader Western European context, the choice of the UK and Germany was further motivated by the personal motivation that the researcher has lived for extended periods in both countries and is fluent with the languages.

Qualitative Content Analysis

Content analysis developed as a mostly quantitative method, which built upon rigorous coding exercises (word-counting, to put it rather simplistically). However, the use of this method has since broadened out substantially, and the variant used here is qualitative content analysis. Qualitative content analysis has been described as comprising 'a searching-out of underlying themes in the materials being analysed [...]. The processes through which the themes are extracted is often not specified in detail. The extracted themes are usually illustrated' for example by quotations (Bryman 2008, p.529). Thus, content analysis can be used to identify i.a. 'themes' and 'topics' covered in a text, which in this case will be information on whether and how ECAs are implementing the relevant guidelines (Berg 2007, p.308). Researchers have stressed that content analysis is not limited to 'manifest' content, i.e. messages which are directly stated in the text. Rather, researchers may also examine 'latent' content, or circumscriptions or hints (Früh 2007, p.52). The key is to keep using a systematic and objective approach. It should be borne in mind that content analysis is not a strategy for identifying or testing causal relationships, for this a broader quantitative approach would be required (Berg 2007, p.328). Content analysis, especially in the form it is employed here, gives qualitative understanding of cases and may offer some guesses at correlations.

Source Critique

The sources consulted for this study were, besides the actual texts of the guidelines, in first line ECA publications, i.e. annual and other reports publicly available, as well as other pertinent information published on the agency websites. Bryman identified that one of the advantages of

conducting such a document-based study is that the documents were not specifically produced for the purpose of the research and are therefore not reactive (Bryman 2008, p.515).

Probably the greatest hurdle to this study has been the scarcity of information on ECA practice. This lack of ECAs' transparency has been commented on by various sources (FERN & ECA-Watch Europe 2013; Hildyard 2013; Utlu 2013). As a result, I have had to mostly resort on publicly available documents that can be found on the ECAs' websites, as well as on some secondary information obtained from NGOs. However, the sources of information have been too limited to fully satisfy established criteria for ensuring trustworthiness or credibility of a study (Bryman 2008, p.377). A common way of ensuring such credibility would be the use of *triangulation*, i.e. confirming information through different, independent sources, ideally three or more (Yin 2012, p.13). However, given the limit of information available this has usually not been possible.

However, following Scott, as official documents, ECA publications rank high on scores such as authenticity and meaning. Scott (1990, in Bryman 2008, p.516) suggest four criteria for assessing a document's quality in a social science research context. They are *authenticity*, i.e. whether the 'evidence [is] genuine and of unquestionable origin'; *credibility*, i.e. whether 'the evidence [is] free from error and distortion'; *representativeness*, i.e. whether the 'evidence [is] typical of its kind, and, if not, [whether] the extent of its untypicality [is] known' and fourth, *meaning*, i.e. whether the 'evidence [is] clear and comprehensible'.

While this clearly involves some issues, mostly in terms of limits to the information available and bias. While it is a reasonable assumption that the information obtained from the ECA websites, which are public bodies, is factually correct, there is still reason for caution. Firstly, the ECAs will be wishing to present themselves in a positive light and thus may somewhat overemphasise the importance they place on social standards and human rights. The findings of ECA Watch, that when cross checking different ECA reports figures do not always add up, gives further room to caution (2013). NGO information on the other hand may be prone to be overly critical.

Although it has been impossible to eliminate these issues in this study, I have sought to be aware of them and limit their distorting impact. Wherever possible I have cross-checked information against different sources, and generally have remained aware of the source of information and the likely purpose behind writing and publishing it when analysing the data obtained. A further advantage of using documents, compared to e.g. interviews, is that that attention will have gone into compiling the

written record. Such material can therefore be considered to be relatively well thorough and well thought through (Creswell 2003, p.187).

Ethical Issues

By the standards of social science research, the ethics of this study are relatively unproblematic. This is the mainly the case as the subject matter is not individuals' personal or private lives, but an aspect of public policy. Also, compared with for instance participant observation or ethnography, interviews and of course document analysis, are relatively unobtrusive research method (Creswell 2003, p.202). Nevertheless, certain standards and norms must considered and respected.

The most important cluster of aspects of the ethics debate can be subsumed under the heading of 'truth'. It seems a very obvious point to make that all evidence should be portrayed truthfully, doing justice to the facts and respondent's point of view, and without bias. However, this is a lot easier said than done. It is one thing not to wilfully distort data, or make factual errors such as misattributing quotes. Either of those actions would clearly be unethical, but may be avoided quite easily. However, there is the very important ethical issue of personal bias. Personal bias and values are bound to impact all stages of a research project, from the choice of the theme to the presentation and analysis of the data. A large problem with personal bias is that a lot of its influence can occur subconsciously.

Personal bias may skew the researcher such that he/she will implicitly favour one perspective over another, without actually manipulating data to an extent that would be factually erroneous. This may express itself in anything from the choice of wording, the space one side is given over another, the interpretation of data and so forth. Whilst this sort of bias is of course not desirable, the social sciences have moved away from the belief that it is possible to completely control for the influence of personal bias on a research project. Experienced researchers have argued that it is virtually impossible for a researcher to detach oneself completely from one's own values and preconceptions (Bryman 2008, pp.24–25). Whilst it has thus been agreed that values cannot be eradicated, this does not mean they should not actively be taken into account. The approach to this issue taken here is that of disclosure and *reflexivity* (Bryman 2008, p.25). Reflexivity essentially refers to the process by which the researcher firstly reflects on the expectations, attitudes and aims that he/she has with regards to the research topic and secondly discloses these to the reader.

On the topic of disclosure I should record at this point that my educational and professional background has certainly had a strong influence on this study. My university studies have been in political sciences followed by a Masters course on 'Human rights practice'. Already during my undergraduate studies I encountered views that were very critical of the structures of the international political economy in general and Western states role within it in particular. My Masters naturally involved extended and intense studies of international human rights in law and in practice. Although these studies were not uncritical, the overarching tone has been very supportive to the basic idea of universal human rights. These positions were further supported by the practical experience that I have had in various UK NGOs and with the UN Office of the High Commissioner for Human Rights in Geneva. This background has certainly predisposed me towards the side of the 'underdog', in this case the unidentified workers and community members that may in some way be affected by the exports and investments supported by the ECAs. On the other hand, I view the actions and motives of the ECAs and corresponding governments with a substantial degree of scepticism with regards to their approach to human rights.

Nevertheless, I have endeavoured to treat both sides fairly and to not let this predisposition allow me to skew any evidence against the ECAs. In order to achieve this I have consulted with both members of critical NGOs as well as the ECAs themselves. Throughout the study I seek to present all of the information supporting the arguments on both sides and to be as open as possible as to my reasoning and how I arrive at the conclusions I do.

4. BACKGROUND: HUMAN RIGHTS AND ECAS

4.1 The International Human Rights Regime In Relation To ECAs

The international human rights system which is referenced in this paper has been developing since 1945, following the end of World War II. At the core of this system is the ‘International Bill of Rights’, which consists of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These cover the range of existing human rights, which since has been further developed through additional treaties which expand on particular rights (e.g. torture; enforced disappearance and religious discrimination) or specify the applicability of all rights to particular groups (e.g. women; children or migrant workers). International human rights law consists of treaties which obtain legal status through states’ consent to be bound by them (ratification) (Smith 2010). The UDHR, while not formally binding due to its legal status as a ‘Declaration’, has since been gradually obtaining the status of ‘customary law’ due to its wide dispersion and acceptance (Smith 2010, p.37).

International human rights treaties are to a large degree developed at the international level, under the auspices of the United Nations (UN). Regional bodies, including the European Union (EU), have additional human rights systems. This study will generally draw on the universal, i.e. UN human rights regime, which is also the system referenced in the UN Guiding Principles on Business and Human Rights. In some cases which will be specified, we will also consult the EU system.

The basic notion of human rights is that they are entitlements, i.e. something that everyone has a legitimate claim to by virtue of being born (Freeman 2002; UN 1948, para.1–2). States have the duty to protect and/or provide the content of these rights. As such, the fundamental relationship between the individual as rights holder and the state as duty bearers is rather straightforward. The definition of the ‘state’ in international law includes ECAs. The International Commission of Jurists (ILC) (2002, Art.5) specifies that ‘The conduct of a person or entity [...] which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law [...]’. As ECAs act upon a public mandate, regardless of whether they are integrated into government ministries or private bodies, they are considered state actors in international law and therefore have the same human rights duties.

The basic principle of human rights law assumes that there are states which are responsible for the individuals within their jurisdiction. The responsibility extends to both protecting said individuals and ensuring that they themselves do not abuse other people’s human rights. In the national context this

occurs via the legal and court systems, which provide monitoring and enforcement mechanisms. However, as has been touched upon in the introduction, this picture has been complicated by international trade and financial relations. Thus, there are large, frequently Western, companies that are registered in one country but conduct their manufacturing, construction or other operations abroad. In such cases the question arises of who is responsible for safeguarding the human rights of the people affected by such business projects, in the first place the workers and surrounding communities. These situations in which the problems associated with a governance gap, i.e. the absence of any regulating state power which is clearly and effectively in control, manifest themselves (see introduction).

From a purely legal perspective it is generally the host states that are responsible (Bernstorff 2010, p.25). However, systematic and disastrous shortcomings of effective host state control have given rise to political pressure for effective extraterritorial control of home states over the operations of their businesses abroad (Bernstorff 2010; Kinley 2009, pp.189–193). The area of extraterritorial jurisdiction is both legally controversial as well as highly politicised. There have been some limited advances in this area, mostly related to international criminal law. The bottom line nevertheless remains that as of today we remain a far way off from effective extraterritorial (or alternatively international) jurisdiction on human rights matters (Bernstorff 2010).

This is not to say that governments have no obligations whatsoever, or at least regulatory possibilities with regards to the conduct of their corporations abroad. There is the evolving concept of ‘due diligence’ which will be considered in more detail in the context of the international guidelines examined below. Secondly, home states are legally permitted to regulate the activity of their corporations abroad, provided this is in compliance with international law (Bernstorff 2010, p.25). Thirdly, there are also instances in which home state conduct may amount to aiding or assisting an international wrongful act, as defined in Article 16 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ILC 2002). Article 16 states that ‘A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: a) That State does so with knowledge of the circumstances of the internationally wrongful act; and b) The act would be internationally wrongful if committed by that State’. This article contains a number of conditions in order to find a violation of the home state’s duty of care. Thus, firstly, the home state must commit some act to assist the host state in violating human rights and secondly this must occur with the knowledge of the home state of doing so. Export credit support for projects which will predictably lead to human rights violations by the host country have been named as examples of such assistance (Bernstorff 2010, p.27).

4.2 International Human Rights Guidelines for Export Credit Agencies

A number of international bodies have issued guidelines and regulations for the operations of ECAs. The most significant of these are those issued by the Organisation for Economic Co-operation and Development (OECD), the World Trade Organisation (WTO), the European Union (EU) and the International Union of Credit and Investment Insurers (Berne Union). Their output and recognition has been such that authors have started referring to a body of international law on official export credit support (Wolfram 2004, p.24). However, the majority of these focus on the financial aspects of ECAs' operations. Thus, the focus here will be on two sets of guidelines issued by the OECD and the UN respectively. The OECD is the author of the only regulation which is exclusively focused on the social and environmental conduct, which includes human rights issues, of ECAs. The UN has issued a set of 'Guiding Principles' which focuses on the human rights conduct of businesses, and makes a direct mention of human rights. As was discussed above and as analysed by ECA-Watch, the EU has also passed legislation which indirectly binds ECAs to EU human rights standards. However, since this was analysed so recently⁴ and the EU human rights system does not add significantly to the substance of human rights covered under the universal system, the focus here will be on the guidelines issued by the OECD and the UN. In the following we will explore these guidelines and also establish their legal status and outline the major difference in substance between the two regulations.

OECD Common Approaches

The Organisation for Economic Co-operation and Development (OECD) has been described as being the most important international governmental organisation in practice that deals with the international coordination and harmonisation of official export credit support (Wolfram 2004, p.28). This is largely the case as the OECD includes the economically most powerful countries in the world, irrespective of regional groupings such as within the EU. Simultaneously its membership is not as large as that of the WTO which makes the latter body slower to reach agreements.

The most relevant OECD standards for the purposes of this paper are the Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the 'Common Approaches') which were first adopted in 2001 and have since been regularly updated, most recently in

⁴ Since Feldt and Scheper's study the OECD Guidelines have been reviewed. Moreover, their study only covered Germany.

2012 (OECD 2012a). The stated goal of the Common Approaches is to harmonise the application of environmental and social standards by members, thereby increasing the observation of these standards and preventing a distortion of competition by unequal application of standards by different national ECAs (OECD 2012b, para.3). The Common Approaches apply to all officially supported export credits with a minimum repayment term of two years. Military equipment and agricultural products are excluded (OECD 2012b, para.2). The Common Approaches define ‘social impacts’ as the ‘project-related impacts on the local communities directly affected by the project and on the people involved in the construction and operation of the project; these social impacts encompass relevant adverse project-related human rights impacts’ (OECD 2012b, p.5).

In order to achieve the goals, members pledged to ‘undertake appropriate environmental and social reviews and assessments for projects and existing operations respectively, as part of their due diligence relating to applications for officially supported export credits’ (OECD 2012b, para.4(ii)). Moreover, members should ‘encourage protection and respect for human rights, particularly in situations where the potential impacts from projects or existing operations pose risks to human rights’ (OECD 2012b, para.4(iv)). The Common Approaches furthermore stress the importance of transparency (para.4(v)) and the application of the referenced international standards (para.4(vii)).

In the first stage, based on information by the applicants, the ECAs should identify all projects that should be subjected to further categorisation. This includes all applications for new projects and projects that have undergone substantive changes which are in or near sensitive areas (para.6). All projects in which the member’s share is equal or above SDR 10 million⁵ should automatically be subject to screening (paras.7&8).

Those projects which have been selected for classification are then divided into one of three categories: A, B or C. ECAs should identify positive and negative environmental and social impacts of the project. Social impacts may include ‘labour and working conditions, community health, safety, and security, land acquisition and involuntary resettlement, indigenous peoples, cultural heritage, and project-related human rights impacts, including forced labour, child labour, and life-threatening occupational health and safety situations’ (OECD 2012b, para.10). *Category A* refers to a project which ‘has the potential to have significant adverse environmental and/or social impacts, which are diverse, irreversible and/or

⁵ SDRs (Special Drawing Rights) are an artificial currency, manufactured by the IMF. The value of 1 SDR is calculated on a daily basis and is a combination of the euro, the Japanese yen, the pound sterling and the US dollar (IMF 2013a). On 28 October 2013 1SDR = 1.547 US \$ (IMF 2013b). SDR 10 million roughly equals £10 million or €15 million.

unprecedented. [...]’ (2012b, para.11). Projects in or near to sensitive areas are included by principle. A project falls into *Category B* ‘if its potential environmental and/or social impacts are less adverse than those of Category A projects. Typically, these impacts are few in number, site-specific, few if any are irreversible, and mitigation measures are more readily available’ (2012b, para.11). A project is classified as *Category C* ‘if it has minimal or no potentially adverse environmental and/or social impacts’ (2012b, para.11). The Annex I of the Common Approaches contains an illustrative list of typical category A projects which is reproduced in the annex to this paper. The environmental and social review of the project should include benchmarking the project, and to the extent relevant and possible any associated facilities, against the relevant international standards and a consideration of measures to prevent, mitigate or remedy adverse impacts.

Following this classification, members may require the applicants to provide an Environmental and Social Impact Assessment (ESIA). For category A projects, such an ESIA should always be required. For category B projects, members may decide which, if any, additional information should be supplied. Besides information on the project itself, its environmental and/or social impacts and the international standards the parties intend to apply, the ESIA should also contain information that the project complies with local legislation and on whether local communities have been consulted and if applicable, the outcome of these consultations (para.16).

The Common Approaches make recommendations on which international standards should benchmark projects against. In general, the Common Approaches recommend the ten World Bank Safeguard Policies or alternatively the eight IFC Performance Standards. The World Bank policies address the areas of *Environmental Assessment; Natural Habitats; Forests; Pest Management; Physical Cultural Resources; Involuntary Resettlement; Indigenous Peoples; Safety of Dams; International Waterways and Disputed Areas* (2012). The IFC standards deal with Assessment and Management of Environmental and Social Risks and Impacts; Labour and Working Conditions; Resource Efficiency and Pollution Prevention; Community Health, Safety and Security; Land Acquisition and Involuntary Resettlement; Biodiversity Conservation and Sustainable Management of Living Natural Resources; Indigenous Peoples; and Cultural Heritage (2012).

In addition, members should use the World Bank Group’s Environmental, Health and Safety (EHS) Guidelines (2007), which are referenced in both abovementioned sets of standards. Alternatively, members can choose to benchmark projects against other, stricter international standards such as those set by the European Union. However, despite detailing these standards, the Common Approaches

contain the get-out clause for members that members may choose to support a project that falls short of the chosen standards. In this case, the member state should provide a justification to the OECD Working Party on Export Credits and Credit Guarantees (ECG) (para.28).

After these steps have been completed, members decide whether to decline or support a project or to request additional information. If a project is endorsed, this may be linked to the fulfilment of certain conditions, such as the provision of compensation or remedies (para.30). In any case, projects should be adequately monitored to ensure compliance with the specified standards and conditions (para.31). Beyond this, members are tasked with publicising certain documents and regularly reporting on their activities, especially with regards to endorsed category A projects (paras.34-42). Specific conditions apply for thermal power plants and nuclear power plants (paras.23&43). The recommendations conclude with the sentence specifying that: ‘Members shall give further consideration to the issue of human rights, including with regard to relevant standards, due diligence tools and other implementation issues, with the aim of reviewing how project-related human rights impacts are being addressed and/or might be further addressed in relation to the provision of officially supported export credits’ (para.44).

UN Guiding Principles on Business and Human Rights

In June 2011 the UN member states endorsed the ‘Guiding Principles on Business and Human Rights’ through the Human Rights Council (Ruggie 2013). The Guiding Principles had been developed by an independent expert, Harvard professor John Ruggie, who was appointed the UN Secretary General’s Special Representative on Business and Human Rights. Under the heading of ‘The State Duty to Protect Human Rights’ the Guiding Principles specify that ‘States should take additional steps to protect against human rights abuses by business enterprises [...] that receive substantial support and services from State agencies such as export credit agencies [...] including, where appropriate, by requiring human rights due diligence (United Nations 2011, pp.4–6). The Guiding Principles thus include an explicit clause that requires states to have a process in place to ensure that ECAs operate according to international human rights standards, in cases where this may be an issue. Human rights due diligence is defined as a process which ‘should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tacking responses, and communicating how impacts are addressed. Human rights due diligence:

- a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve' (United Nations 2011, pp.17–18).

Furthermore, the Guiding Principles recommend that the process of identifying the actual and potential human rights impact should 'draw on internal and/or independent external human rights expertise; [and] involve meaningful consultation with potentially affected groups and other relevant stakeholders [...]' (United Nations 2011, p.19). The required actions in response to such an assessment depend i.a. on the 'extent of its [the business actor] leverage in addressing the adverse impact' (United Nations 2011, p.21).

Comparison of legal status and substantive content

Both the OECD Common Approaches and the UN Guiding Principles have the status of recommendations, i.e. are not legally binding. Nevertheless they carry some political weight, as all the states examined here endorsed them via the OECD and the UN Human Rights Council respectively. Albeit not legally binding, it is a policy commitment which other states and also NGOs, Parliamentarians and the general public may call upon to hold a government to its own promises.

There are some substantial differences between the contents of the two regulations. The differences regard two main areas, namely firstly the process foreseen to protect from negative human rights impacts, and secondly how and whether 'human rights' are defined. The OECD Common Approaches are clearly a lot more specific on the required procedure. While they outline clear steps from screening, over classification and review to monitoring of ongoing projects, the Guiding Principles mostly refer to a 'due diligence process'. Although this is expanded upon, it is by necessity generic as it is addressed to all types of business enterprises. In terms of substance, the Guiding Principles are arguably more specific and certainly more comprehensive with regards to human rights. The Common Approaches do use the term 'human rights', however they do not make reference to the International Bill of Rights or

any other human rights instrument. Those standards and benchmarks which are referenced to the document arguably de facto cover a range of rights, however this is often implicit and far from comprehensive. Thus, the EHS Guidelines to some extent cover the rights to health, food and water (World Bank Group 2007, pp.25&46–51), as well as a safe work environment (World Bank Group 2007, pp.38–39&59–76). The Common Approaches themselves make references to the rights of indigenous people and the communities' rights to consulted. Nevertheless, these rights are only part of the full spectrum, and there is evidence that other rights, including those to freedom of speech and assembly have in the past not been respected (Hildyard 2013, p.4).

4.3 Export Credit Agencies

Before launching into a detailed analysis of Export Credit Agencies' (ECAs) operations and state policies on them, it will be useful to have a more detailed overview of what ECAs actually are and what they do.

In essence, ECAs are government-linked bodies which provide exporting enterprises with financial credits, guarantees or insurance in cases which the private market deems to be too risky (Haniotis 1995, p.1; Wolfram 2004, p.14). The private sector may deem the projects too risky to support due to political and/or financial factors. Most ECAs offer a range of products. In many cases the two main categories are export credit guarantees and investment guarantees (BMW 2013a; UKEF 2013). The essential difference is that, as the names suggest, export credits are granted to support the export of goods or services through national enterprises to abroad. Investment guarantees on the other hand are granted to entrepreneurs seeking to build up, revive or alter (hence are investing in) an entire business enterprise abroad (BMW 2013b). In most cases, the projects that ECAs support are outside developed countries, i.e. in developing or emerging countries. The latter two types tend to be affected by a higher level of financial and political risk. Support may be granted in the short-term, medium-term and long-term. The duration of these is defined as less than two years, two to five years and over five years respectively (Wolfram 2004, p.7).

Whilst “no two national export credit systems are identical”, all ECAs do have some degree of government involvement in common (Haniotis 1995, p.5). However, the form of this involvement differs between countries. The first main difference between various types of ECAs is whether they are an integrated governmental agency, or a private body with a public mandate (Keenan 2008, p.2;

Mildner 2007, p.19). In either case however, the essential function of the ECA is underwritten by public funds. Secondly, national practices differ with regards to whether one body handles all products or whether the mandate is split across multiple agencies each handling different types of guarantees.

The core motivation for governments to support exports and foreign investment in these forms is to provide a boost for their own national economy (Haniotis 1995, p.2; Hildyard 2013, p.3). Mildner breaks this justification down into three elements (Mildner 2007, pp.67–68). Firstly, ECAs serve to balance out ‘market failures’. Thus, state-supported export credit providers do not seek to compete with private providers, but fill the gap in cases where the latter deem the financial or political risk too high to insure at regular rates. The result is that prospective exporters would either be unable to gain credit or only at such heightened costs that would put them at a significant disadvantage compared to the international competition. The second element of this explanation, namely that of the international competition is also the second argument in favour of ECs. Namely, given the fact that many exporting countries’ industries receive EC support, the own national companies would be placed at an international disadvantage if they were not too supported. Thirdly, ECs also support the domestic economy in that they strengthen the exporting industries and thereby promote growth and protect or generate employment. For foreign investment, this is also the intent, along with selecting strategic enterprises abroad, such as those connected to raw materials, that are believed to a be future strategic advantage to the domestic economy (BMW 2013b).

5. ANALYSIS OF EXPORT CREDIT AGENCIES' IMPLEMENTATION OF THE GUIDELINES

Having gained this oversight of the existing regulation, the next step is to analyse to focus on the first research question of ‘*How and to which extent are Western European ECAs implementing relevant human rights regulations?*’. To this purpose, we will firstly examine the relevant policies of the three ECAs in detail, before moving on to addressing the question of the extent to which these policies are implementing the guidelines.

Export Credits

Germany

The German report gives various details about its EC practice. The inter-ministerial working group (see below) which makes the final decisions on whether a project will be supported, states that the main criteria for eligibility of a project are ‘the general interest in promoting exports and safeguarding jobs in Germany, [...] and deals from SMEs [small and medium-sized exporters] are considered to be especially eligible for cover’ (BMW_i 2013, p.13). Beyond these mind criteria, the report also makes mention of further factors to be considered, which included economic law and international regulations such as the OECD consensus which intends to ensure fair international competition. Noticeably absent in this place is any mention of human rights or any other social standards.

The updated version of the OECD Common Approaches is discussed further on, in the chapter on development of export credits (BMW_i 2013, p.23). Here the report states that the government considers the environmental and social impacts of projects abroad, according to the recommendations made by the OECD. The main motivation that is given for the Common Approaches is the economic argument of ‘achiev[ing] a level playing field for all suppliers’ (BMW_i 2013, p.23). The report also remarks upon the facts that specific reference standards are included and there is a concrete reference to relevant human rights. Further on the report provides some details on the process for assessing project applications for ‘environmental impacts’, referring to the OECD Common Approaches. This screening process applies to projects of at least two years duration and worth of 10 million SDRs (BMW_i 2013, p.63; Euler Hermes 2013, p.2). Details for those projects which fell into categories A or B and were supported were published on the ECA website.

In addition to the information in its annual report, Hermes Euler published a special report on environmental and social impacts as covered in the Common Approaches (Euler Hermes 2013). This report describes in detail the assessment process that an application for project support undergoes. This description essentially outlines, and makes clear reference to, the process set out in the OECD Common Approaches (Euler Hermes 2013, pp.5–8).

The report also notes that the practices of Euler Hermes go beyond those prescribed in the Common Approaches in some cases. Thus, under certain conditions the ECA does apply the screening and assessment procedures to projects also of durations under two years (Euler Hermes 2013, p.10). These are projects that would fall into category A if they had a duration of two years or more; are projects within a sector that currently is believed to be especially at risk or a case in which there is the German company is responsible for an entire major project valued at over €50 million.

Germany reports that in 2012 (after aircraft and ships) the sectors that received most support were manufacturing, infrastructure and energy (BMW 2013, p.60). In 2012, Germany supported export credits for a total of twenty category A and B projects, with a total value of €1,4 billion (BMW 2013, p.62). Out of these, ten were category A projects, which amounted to a total value of €843 million. Out of 244 applications the ECA conducted a more in-depth assessment of 53 projects, which fell into A or B categories according to OECD standards (BMW 2013, p.63).

Netherlands

The Dutch ECA, Atradius, conducts social and environmental screening of all applications for export credit insurance and foreign investment insurance (Atradius 2013a, p.27). The latest version of the OECD Common Approaches was integrated into the national policy for environmental and social reviews (*Milieu en Sociale Beoordeling*) of August 2012 (Atradius 2013a, p.27). The environmental and social review process follows the recommendations set out in the Common Approaches, relying on information provided by the applicants (Atradius 2013a, p.27; Atradius 2013b, p.5). The ECA furthermore stated that it is also involved in the development of the national action plan for human rights and business (Atradius 2013a, p.27). Atradius reports that in 2012 they screened 181 applications, of which 54 were classified and submitted for further social and environmental review (Atradius 2013a, p.28). Out of these ten were classified as category A, five as category B, seventeen as category C and twenty-two were held under consideration related to the reputation of the buyer and the

related project. The ECA also mentions that it consults with NGOs on an ad hoc basis (Atradius 2013b, p.9). The Dutch ECA has large exposures in the oil and gas sector (Atradius 2013a, p.9).

United Kingdom

ECGD's annual report 2012-13 touches upon the topic of the revised OECD Common Approaches. The report makes explicit mention of the issue of human rights. Thus, it notes the commitment 'to establish how project-related human rights impacts should be addressed in relation to the provision of officially supported export credits. This will take into account the UN Guiding Principles on Business and Human Rights [...]' (UKEF 2013a, p.49).

Noticeable in the UK is the fact that since 2011 they have been expanding their product range. Thus, they introduced a set of new 'Short-Term products' which include a new 'Bond Support Scheme' as well as an 'Export Working Capital Scheme'. The stated purpose of both of these instruments is that they are targeted at export projects 'on short terms of credit (i.e. typically under two years)' (UKEF 2013a, p.26). Their figures show that the popularity seems to be rising steadily.

The ECGD had a policy change in April 2010 in which it effectively reduced the scope of its ethical policies, when it decided 'to follow international agreements related to ethical policies which apply to the operation of ECAs and not additionally create, and separately operate, its own policies which go beyond those agreements' (UKEF 2013a, p.50). The report explains that this excludes various of ECGD's products from review, including the new Short-Term products, which would have previously undergone an ethical assessment. The screening and categorisation process, as well as the follow-up monitoring now reportedly conform to the OECD Common Approaches and the benchmarks set out therein (UKEF 2013a, p.50). There is a 'how to apply' guide for prospective exporters which details the steps contained in the Common Approaches (UKEF 2013c).

UKEF reports that in 2012-2013, 43 per cent of its support went to 'aerospace', 47 per cent went to 'defence' and 10 per cent went to 'civil' (UKEF 2013a, p.25). In the previous two annual cycles the percentages of civil sector support were 21 per cent and 34 per cent respectively (UKEF 2013a, p.25). In 2012-2013, the UK screened 13 applications for environmental, social and human rights impacts, of which one was classified as a category B project.

Investment Guarantees

The German ECA reports that in 2012, the state provided investment guarantees for the sum of €6,1 billion, the second largest figure in its own history (BMW 2013, p.52). The majority of supported investments went into the automotive and construction industries (BMW 2013, p.52). The main criterion that the website mentions for granting an investment guarantee is that the project must be economically viable and have ‘sufficient legal protection for the investment in the host country’ (PwC 2013). Bilateral investment treaties usually play a substantial part in enhancing such legal protection (PwC 2013). Besides these criteria, there are ethical guidelines in place too. These are presented in a fact sheet on ‘environment’ which is available on the website (Euler Hermes 2001). As the title of the leaflet suggests, the main focus is on environmental factors. The basic procedure that is followed for investment guarantees corresponds to that proscribed in the Common Approaches, i.e. an initial screening, which is where relevant followed by a classification of the application into categories A, B or C, and in the cases of category A and B projects followed by a further review. All these processes occur on the basis of the information provided by the applicant (Euler Hermes 2001, pp.2–3). Contrary to the updated Common Approaches however, this leaflet only refers to environmental factors. In some cases these might include de facto human rights issues, such as the consideration of indigenous people’s territory, however there is no specific mention of general social impacts or human rights in particular (Euler Hermes 2001, p.2).

According to Atradius’s reports, the ECA applies the same screening and review procedures to projects that are seeking export credit insurance and foreign investment insurance (see above, and Atradius 2013b, p.10). Atradius reported that in 2012 it insured €188 million worth of foreign investment (Atradius 2013a, p.20).

The UK’s policy on investment insurances is ambiguous. On the one hand it would appear that investment insurances are subject to the same assessment process as are export credits. What gives this impression is the fact that amongst a step-by-step manual on how to apply for overseas investment insurance, under step two, applicants are invited to ‘read the guide for applicants on business processes and factors, to find out how we decide applications’ (UKEF 2013b). However, this link takes the user to a manual on how the agency considers applications for export credits which runs through the process described in the OECD Common Approaches. This gives the impression that direct investment

guarantees would be subject to the same scrutiny as export credits. However, on the other hand, this would contravene ECGD's own policy of not applying ethical standards beyond those proscribed in international guidelines. Since the OECD Common Approaches apply to export credits, applying them to investment insurances too would mean going beyond the minimum requirements [besides still hoping to get a questionnaire response that would clarify this, I have also emailed them asking to explain this point].

Institutional Arrangements

A further interesting point of comparison is the institutional arrangement of the different ECAs. As mentioned above, there are two main models for ECAs. In one case the ECA is integrated into a government ministry, and in the other it is an independent private body, mandated with a large part of the administration and execution of export credits. Both models can be found among the cases examined here.

The German agency is an example of the 'outsourced' model. Thus, the functions of an export credit agency are split between a consortium of two private bodies (Euler Hermes Deutschland AG and PricewaterhouseCoopers) which carry out the day to day business, and an inter-ministerial working group which has the political oversight and responsibility. This working group is led by the ministry for economics and technology (BMWi) and decides on all 'larger' applications as well as policy decisions (BMWi 2013, pp.13–14). Besides the BMWi, the group also includes representatives from the Ministry of Finance, the Foreign Ministry and the Ministry for Economic Cooperation and Development (BMWi 2013, p.14).

Within Euler Hermes, which is the primary partner for export credits, there is a team responsible for 'sustainability' issues, including the initial screening of all applications (Euler Hermes 2013, p.2). This team consist of engineers, lawyers and economists. With the caveat that there is no detailed information available on the background of the individual members of the sustainability team, there is no indication that any of them have specialised in human rights or other issues directly linked to sustainability (Deutsches Institut für Menschenrechte 2013).

The Dutch export credit agency too is a private body that has been mandated by the state to conduct the

functions of an official ECA. In this function, Atradius Dutch State Business N.V. manages official Dutch insurance of export credits and foreign investment (Atradius 2013a, p.8). Atradius cooperates with the Dutch Ministry of Finance and the Ministry of Foreign Affairs (Atradius 2013b, p.6). The collaboration takes the form of consultation, advice to the ministries on policy and coordination of procedures. Moreover, the ministries review the ECA's work (Atradius 2013b, p.6). Atradius's primary arrangement is with the Ministry of Finance. A policy change implemented in 2012 moved more authority from the state to Atradius, which is now allowed to decide on more applications on their own authority (Atradius 2013a, p.8).

The UK is an example of an export credit agency which is integrated within a government ministry. Thus, the Export Credits Guarantee Department (ECGD) is integrated into the mandate of the Secretary of State for Business, Innovation and Skills (UKEF 2013a, p.76). The members of the Executive Committee all form part of the Senior Civil Service (UKEF 2013a, p.77).

5.1 Compliance with Guidelines

OECD Common Approaches

The first question then, is to what extent the ECAs' practice coincides with the recommendations made in the OECD Common Approaches. Since the main source of information available to us are the ECAs' own communications, their information on the procedures in place which correspond to those recommended by the Common Approaches shall be used to assess compliance. In other words, the claim to be implementing something shall be taken as indicator of actual implementation. There are clearly issues with this type of measurement (see Source Criticism in the Methodology chapter above). For the Common Approaches, one may say that they are for the most part being implemented. The agencies' reports and procedures outlined on the websites refer to the Common Approaches and outline in detail what these entail. Based on the information that is available, it would therefore seem that all the three ECAs are implementing the procedures set out in the Common Approaches.

That said, there is a minor caveat in the case of Germany. Reading the Euler Hermes report, it was noticeable that in the general section on the motives and eligibility criteria for export credits, there is no mention of human rights or other social impact assessment. Although these factors are covered later on in a separate 'sustainability' chapter, the fact that they are not included in the 'general' section does

give the impression that they are secondary to the financial factors. Moreover, further on in the report, when the environmental and social standards are discussed this occurs under the heading ‘environmentally relevant aspects in the promotion of projects’ (BMW 2013, p.63). Subsuming social impact assessments under the heading of ‘environment’ gives the impression that the social aspects are somehow secondary and merely ‘tagged on’ to the environmental assessment. However, this caveat refers to nuance and comparative importance. There is no indication from the available information that the OECD Common Approaches are not being applied.

UN Guiding Principles

The assessment of whether and to which extent the Guiding Principles are being implemented is somewhat more complex. This is mostly the case as contrary to the Common Approaches, the Guiding Principles are much broader and do not contain the same type of clearly developed procedures as those set out in the Common Approaches. Therefore the assessment of the implementation of the Guiding Principles involves more of a value judgement than was the case for the Common Approaches. As was outlined above, the Guiding Principles call for states to take steps to ensure that ECAs are not involved in human rights abuses, including, ‘where appropriate, by requiring human rights due diligence’ (United Nations 2011, p.6). The first question we thus need to ask ourselves, is whether the ECAs are required to conduct a form of human rights due diligence where this is appropriate. The second question relates to the process of due diligence. This is somewhat more complex, but the amongst the main features are that it should cover any adverse human rights impact that the organisation may have and that it is ongoing and recognise that human rights risks might change over time. Thirdly, the Guiding Principles are also clear that the assessment should involve human rights experts, be they internal or external to the organisation. The fourth point considered important here, is the specification that part of human rights due diligence is the activity of communicating details of this process to externals, in particular stakeholders. Thus, these are the elements that will be considered when assessing ECAs’ implementation of the Guiding Principles.

The first question thus is, whether ECAs are conducting human rights due diligence in all cases where this is appropriate. Working on the assumption that in principle all types of enterprise have the potential to negatively affect human rights in some form (Ruggie 2010, p.3), one might argue that all project applications should undergo some form of human rights screening. This is clearly not the case.

First of all, this applies in principle to all products which fall below the OECD threshold of two years or a minimal exposure of SDR 10 million. While Euler Hermes indicated that it would also screen applications below this threshold if certain risk factors apply, neither the Dutch nor the UK ECA gave indications that they followed such a practice. Indeed, as discussed UKEF explicitly adopted a policy change to the purpose of limiting screening to such projects as fall within the OECD realm.

A second set of problematic products are foreign investment insurances. Since these are not formally covered by the Common Approaches, ECAs are under no formal obligation to conduct any human rights due diligence for them whatsoever. The only ECA out of the three examined which unambiguously states that it applies the same criteria to investment insurances as it does to export credits is the Dutch Atradius. Germany has a set of ethical principles in place, however from the information available these focus largely on environmental factors and only consider human rights in passing, mostly in relation to indigenous peoples. As mentioned, UKEF's policy is not entirely clear. Their stance on not going beyond international standards would suggest that they do not screen investment insurances. However, a somewhat ambiguous link on their website suggests that they might. Overall, it would appear that with exception of the Danish ECA, the ECAs do have some form of screening in place for investment insurances, however it falls behind that conducted for ECAs. This lack of clear procedures for investment insurances has been critically commented upon by various civil society actors (Deutsches Institut für Menschenrechte 2013; Utlu 2013, p.3). Moreover, the bilateral investment treaties that usually form the basis for foreign investment have been critiqued for their so-called 'stability clauses' which impose a burden on the host country to not change the business environment for the investor. These clauses have been known to effectively bar host governments from implementing human rights improvements (Amnesty International 2006).

Projects without a clear location such as aircraft and ships as well as agricultural produce and military equipment are excluded from the procedures specified under the Common Approaches. These products have special regulations (Euler Hermes 2013, p.3). However, especially given the prevalence of support given to these products, a lot more transparency and oversight would be desirable. As the figures cited above demonstrated, industrial sectors which are not covered by the OECD Common Approaches receive a substantial percentage of official export credit support. The UK is a particularly stark example for this, as in 2012-13 civil industries received a mere ten per cent of the support. In 2010-11 support for civil industries amounted to 34 per cent of total official export credits, the highest

in five years (UKEF 2013a, p.25). Nevertheless, this still meant that 66 per cent of officially supported export credits were granted to aerospace or defence enterprises.

The second question with regards to the implementation of the Guiding Principles asked which evidence is there that the impact assessments cover any adverse human right impacts that could arise from the agencies' practice? Are these flexible enough to ensure that changing situations and new risks are captured? In this area too, there are some problematic factors. As analysed above, the OECD Common Approaches do not systematically cover all human rights in the first place. Human rights experts have emphasised that this focus on environmental and general social impacts may mean that certain human rights issues are not picked up on in the screening process and therefore potentially problematic projects are not even subjected to the more extensive scrutiny of the review stage (Utlu 2013). This issue is compounded by the fact that the businesses themselves are the main source of information used for the assessments (Euler Hermes 2013, p.6; OECD 2012).

The third question in relation to the Guiding Principles was whether there are human rights experts involved in these assessments? Again, this area of ECA practice seems problematic in light of the Guiding Principles. As was touched upon above, with the potential exception of Atradius, none of the ECAs seem to be employing experts in the fields of human rights to conduct the project assessments.

And fourth, are details of these processes adequately communicated to the public and relevant stakeholders in particular? The ECAs clearly do publish a substantial amount of information, including with regards to category A projects as required by the Common Approaches. Nevertheless, a lot of the agencies' work continues to happen behind closed doors. UKEF is a particularly strong example of resisting even Parliamentary scrutiny.

As the above analysis demonstrated, while the examined ECAs do appear to be implementing the OECD Common Approaches, there are several shortcomings with regards to the Guiding Principles.

5.2 Application of Theories

The second research question asked how existing theoretical models help us to understand these patterns in implementation of international standards. The models of institutionalism on the one hand, and regime theory and the international legal process model (ILPM) on the other offered competing

explanations for this phenomenon. The differences fell into three main areas, namely the view of the state on the international stage; the importance of the international norm generating process and thirdly the state's motivation for complying with norms.

Regarding the view of the state of either a cohesive or a negotiated international actor, the second theoretical set appears more applicable. While ECAs would be expected to act as one entity in their external relations, there are certain noticeable splits between different official actors. Thus, at least for the German and especially the British cases it is clear that the Parliament pursues a different strategy than the ECAs themselves, and presumably other state actors such as the finance ministries which oversee them. This disjuncture would also provide a partial explanation for why the foreign arms of the governments signed up to support both the OECD and the UN Guidelines, but these are not in all instances realised in national policy and practice.

The regime theory/ILPM model also provides a very plausible model for why there is such a discrepancy between compliance with the Common Approaches and the Guiding Principles. While the Common Approaches are the outcome of political negotiations and bargains between representatives of the OECD member states, the Guiding Principles were drawn up by an appointed expert and endorsed by the UN members as a final product. Thus, Chayes and Chayes' argument that states' compliance partly stems from their ability to shape the agreements they accede to seems to apply, as does Koh's emphasis on the importance of the norm creation process. In this instance however, this explanation does not wholly contradict the institutionalist view that states comply because it is in their national-interest. Although, as was observed above, institutionalists have their doubts regarding the viability of international human rights norms due to their state-internal nature, the case of human rights and ECAs is a particular one. This is so, because as economic actors, ECAs in this instance straddle the border between the international free trade regime and international human rights. Whilst institutionalists would struggle to explain why states would want to support human rights in the first place, if one starts from the assumption that for some reason, such as internal political pressure, they do, signing off on such a lowest-common-denominator agreement as the Common Approaches makes sense. By setting the ethical standards together, states are able to ensure that applying such procedures to their ECA does not put them at an international competitive advantage. Here too the principle of 'self-enforcing' sanctions works again, as if one state disregards the standards, others might punish the offender by also lowering their standards, thus erasing any benefit gained from the digression.

Finally, also regarding the motives for implementation a combination of the two theories offers the most satisfactory explanation. Institutional self-interest, is a far more convincing explanation for the lack of implementation of the Guiding Principles, than the regime theory stance that non-compliance will most likely be the result of lacking understanding or capacity. While it is true that the Guiding Principles are somewhat more vague than the Common Approaches, they do offer a lot more guidance than can be seen realised in the ECAs. And since Western states tend to be well-resourced enough to be able to implement those policies for which there is sufficient political will, lack of capacity also does not provide a very convincing explanation.

6. CONCLUSION

The above thesis set out to explore the topic of international human rights as applied to national Export Credit Agencies. Given the present context of economic globalisation in which the internationalised economic structures are not yet fully matched with corresponding political oversight tools, this is an area of key importance for an ethically sustainable globalisation. As state actors actively promoting foreign trade and investment, ECAs are in a prime position to raise the human rights standards of corporations operating abroad.

The way we set out analysing this topic, after getting an overview on previous relevant work, was to establish and understand the main relevant international human rights guidelines. The OECD Common Approaches and the UN Guiding Principles both address the issue of human rights compliance of ECAs, but from rather different angles. While the Common Approaches set out clear procedures, these are aimed at ensuring environmental and general social standards of which human rights form only a small aspect. The Guiding Principles on the other hand focus primarily on human rights, and conversely to the OECD standards define these in terms of international human rights law. However, the UN guidelines are aimed at businesses in general and do not contain as developed implementation mechanisms as the Common Approaches. An analysis of the policies and practices of three Western European ECAs, the Dutch Atradius, the German Euler Hermes and the UK UKEF, primarily showed that while implementation of the Common Approaches is high, the Guiding Principles are far less applied in practice. Tentative explanations of this phenomenon drew on institutionalism and regime theory/international legal process model. Based on plausibility, important factors seem to be the more intense political negotiating process involved in the creation of the OECD Common Approaches, versus the more removed drafting of the Guiding Principles by an academic expert, albeit in close consultation with the states.

The main conclusion however remains the fact that ECAs continue to show significant shortcomings if measured against international human rights norms. This is the case, despite the high compliance level with the Common Approaches, as these guidelines represent a lowest-common-denominator product which in itself has numerous gaps with regards to a thorough human rights policy for ECAs. As identified above, these included certain products that are exempt from their process, be it on the basis

of industry sector, financial volume or length.

Moreover, there are several further problematic issues with regards to ECA practice that were not even included in the above analysis. The main two are the debt burden imposed on the host countries, which is subsequently often deducted from Official Development Assistance, as critiqued by Amnesty International and ECA-Watch. A further major issue is the virtual non-existence of grievance mechanisms for victims of human rights abuses through ECA-sponsored projects. The fact that these issues were not included in the above analysis was a matter of scope, not importance.

7. RECOMMENDATIONS

Policy and Practice

The main recommendation that follows from this analysis, is that ECAs and the responsible state ministries should subject ECA policy and practices both on export credits and investment insurance a thorough review, in light of the standards contained in the Guiding Principles. If states are to be coherent in their foreign and domestic policies, they must apply standards they endorse. Also the Common Approaches are in need of a further review that defines human rights in terms of international standards, and extends the review procedure to all relevant products, including investment insurance. States should also review possibilities for implementing an effective procedure for complaints and redress for victims.

Research

As a largely unexplored topic, the human rights practice of export credit agencies offers plentiful research opportunities. These include, but are not limited to, a more indepth analysis of current practice on foreign direct investment reviews, e.g. via a comparative analysis of ECA questionnaires to applicants. A second area would be the composition and background of the personnel reviewing applications.

REFERENCES

- Agarwal, M., 2013. South-South Economic Cooperation: Emerging Trends and Future Challenges. Available at: http://www.post2015hlp.org/wp-content/uploads/2013/05/Agarwal_South-South-Economic-Cooperation-Emerging-Trends-and-Future-Challenges_FINALFINAL.pdf [Accessed September 13, 2013].
- Amnesty International, 2013. A History of Neglect - UK Export Finance and Human Rights. Available at: http://www.amnesty.org.uk/uploads/documents/doc_23288.pdf [Accessed September 20, 2013].
- Amnesty International, 2006. Human Rights, Trade and Investment Matters. Available at: <http://www.amnestyusa.org/sites/default/files/pdfs/hrtradeinvestmentmatters.pdf> [Accessed December 2, 2013].
- Atradius, 2013a. 2012 Annual Review. Available at: http://www.atradiusdutchstatebusiness.nl/Images/dsben/Annual%20Review%202012%20spread_tcm1009-159337.pdf [Accessed December 1, 2013].
- Atradius, 2013b. Sustainability Report 2012. Available at: http://www.atradiusdutchstatebusiness.nl/Images/dsben/SustainabilityReport2012_tcm1009-159093.pdf [Accessed December 1, 2013].
- Berg, B.L., 2007. *Qualitative research methods for the social sciences*, Boston: Pearson/Allyn & Bacon.
- Berne Union, 2013. About the Berne Union. *Berne Union*. Available at: <http://www.berneunion.org/about-the-berne-union/> [Accessed November 26, 2013].
- Bernstorff, J. von, Institut für Entwicklung und Frieden, 2010. *Die völkerrechtliche Verantwortung für menschenrechtswidriges Handeln transnationaler Unternehmen: unternehmensbezogene menschenrechtliche Schutzpflichten in der völkerrechtlichen Spruchpraxis*, Duisburg: INEF. Available at: http://www.humanrights-business.org/files/voelkerrechtliche_verantwortung_fuer_menschenrechtswidriges_handeln_transnationaler_unternehmen.pdf [Accessed November 6, 2013].
- BMWi, 2013a. Home | AGA-Portal - AuslandsGeschäftsAbsicherung der Bundesrepublik Deutschland. *AuslandsGeschäftsAbsicherung der Bundesrepublik*

- Deutschland*. Available at: <http://www.agaportal.de/index.html> [Accessed November 30, 2013].
- BMWi, 2013b. Investitionsgarantien: Frequently Asked Questions. Available at: <http://www.agaportal.de/pages/dia/service/faqs.html#Antwort39> [Accessed November 30, 2013].
- BMWi, 2013c. Jahresbericht 2012. Available at: http://www.agaportal.de/pdf/berichte/jb_2012.pdf [Accessed December 1, 2013].
- Bryman, A., 2008. *Social research methods*, Oxford; New York: Oxford University Press.
- CCC, 2012. Bangladesh factory fire: brands accused of criminal negligence. Available at: <http://www.cleanclothes.org/news/bangladesh-factory-fire-brands-accused-of-criminal-negligence> [Accessed February 3, 2013].
- Chayes, A. & Chayes, A.H., 1993. On Compliance. *International Organization*, 47(2), pp.175–205.
- Creswell, J.W., 2003. *Research design: qualitative, quantitative, and mixed method approaches*, Thousand Oaks, Calif.: Sage Publications.
- Deutsches Institut für Menschenrechte, 2013. Menschenrechtliche Risikoanalyse in der Exportwirtschaft verankern. Available at: http://www.institut-fuer-menschenrechte.de/aktuell/news/meldung/archive/2013/november/article/menschenrechtliche-risikoanalyse-in-der-exportwirtschaft-verankern.html?tx_ttnews%5Bday%5D=22&cHash=108827b4607569ed67ff3697e70d5ec7 [Accessed December 11, 2013].
- Dostert, E.K. von E., 2012. Arbeit in Textilfabrik: Augen zu und zur Kasse. *sueddeutsche.de*. Available at: <http://www.sueddeutsche.de/wirtschaft/arbeitsbedingung-in-der-textilproduktion-augen-zu-und-zur-kasse-1.1533587> [Accessed January 31, 2013].
- EU, 2011. Regulation of the European Parliament and of the Council on the application of certain guidelines in the field of official supported export credits and repealing Council Decisions 2001/76/EC and 2001/77/EC. Available at: <http://register.consilium.europa.eu/pdf/en/11/pe00/pe00046.en11.pdf> [Accessed November 28, 2013].
- Euler Hermes, 2013. Hermesdeckung Spezial - Umwelt- und Sozialprüfung gedeckter Exportgeschäfte: Die Common Approaches. Available at:

- http://www.agaportal.de/pdf/hds/hds_umweltpruefung.pdf [Accessed November 24, 2013].
- Euler Hermes, 2001. Merkblatt Umwelt. Available at: http://www.agaportal.de/pdf/dia_ufk/info/dia_merkblatt_umwelt.pdf [Accessed December 1, 2013].
- FERN & ECA-Watch Europe, 2013. Still Exporting Destruction. Available at: <http://www.fern.org/sites/fern.org/files/shadow%20report.pdf> [Accessed November 22, 2013].
- Franck, T.M., 2006. The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium. *The American Journal of International Law*, 100(1), pp.88–106.
- Freeman, M., 2002. *Human rights : an interdisciplinary approach*, Cambridge, UK; Malden, MA: Polity Press ; Blackwell.
- Früh, W., 2007. *Inhaltsanalyse: Theorie und Praxis*, Konstanz: UVK Verl.-Ges.
- George, A.L. & Bennett, A., 2005. *Case studies and theory development in the social sciences*, Cambridge, Mass.: MIT Press.
- Hahnel, R., 2000. Houston, we have a problem: Challenging globalization. *Z Magazine*. Available at: <http://www.hartford-hwp.com/archives/25a/075.html> [Accessed December 4, 2013].
- Haniotis, T., 1995. *Should governments subsidize exports through export credit insurance agencies ?*, Geneva: UNCTAD.
- Hathaway, O.A., 2002. Do Human Rights Treaties Make a Difference? *Yale Law Journal*, 111. Available at: <http://papers.ssrn.com/abstract=311359> [Accessed December 1, 2013].
- Hildyard, N., 2013. Interview with Nicholas Hildyard, researcher at Corner House.
- IFC, 2012. Performance Standards on Environmental and Social Sustainability. Available at: http://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES [Accessed November 27, 2013].
- IFC, 2006. The Baku-Tbilisi-Ceyhan (BTC) Pipeline Project. Available at: <http://www.ifc.org/wps/wcm/connect/d01d2180488556f0bb0cfb6a6515bb18/BTC>

[_LOE_Final.pdf?MOD=AJPERES&CACHEID=d01d2180488556f0bb0cfb6a6515bb18](#) [Accessed September 10, 2013].

- ILC, 2002. Draft Articles on the Responsibility of States for Internationally Wrongful Acts. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/477/97/PDF/N0147797.pdf?OpenElement> [Accessed November 6, 2013].
- Keenan, K., 2008. Export Credit Agencies and the International Law of Human Rights. Available at: <http://www.reports-and-materials.org/Halifax-Initiative-Export-Credit-Agencies-Jan-2008.pdf> [Accessed September 19, 2013].
- Keohane, R.O., 1998. International Institutions: Can Interdependence Work? *Foreign Policy*, (110), pp.82–194.
- Kinley, D., 2009. *Civilising globalisation : human rights and the global economy*, Cambridge [U.K.]; New York, N.Y.: Cambridge University Press.
- Koh, H.H., 1997. Why Do Nations Obey International Law? *The Yale Law Journal*, 106(8), pp.2599–2659.
- Lustgarten, A., 2005. The Baku-Tbilisi-Ceyhan Pipeline: exporting an “environmental timebomb.” Available at: http://www.fern.org/sites/fern.org/files/media/documents/document_2651_2652.pdf [Accessed September 10, 2013].
- Mildner, S., 2007. *Staatliches Handeln in der Exportkreditversicherung: die US-amerikanische Export-Import Bank*. Frankfurt, M. [u.a.]: Campus-Verl.
- Moravcsik, A., 2000. The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe. *International Organization*, 54(2), pp.217–252.
- Neumayer, E., 2005. Do International Human Rights Treaties Improve Respect for Human Rights? *The Journal of Conflict Resolution*, 49(6), pp.925–953.
- OECD, 2012a. Common Approaches. Available at: <http://www.oecd.org/tad/xcred/commonapproaches.htm> [Accessed November 3, 2013].
- OECD, 2012b. Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence. Available at: <http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG%282012%295&doclanguage=en> [Accessed November 3, 2013].

- PwC, 2013. Investitionsgarantien: Deckungspraxis. Available at: <http://www.agaportal.de/pages/dia/deckungspraxis.html> [Accessed December 12, 2013].
- Ruggie, J., 2013. Business & Human Rights : Home. Available at: <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples> [Accessed November 28, 2013].
- Ruggie, J., 2008. Protect, Respect and Remedy: a Framework for Business and Human Rights. Available at: <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf> [Accessed November 11, 2012].
- Ruggie, J., 2010. The UN Protect, Respect and Remedy Framework Outline. Available at: <http://198.170.85.29/Ruggie-protect-respect-remedy-framework.pdf> [Accessed April 13, 2013].
- Scheper, C. & Feldt, H., 2010. *Aussenwirtschaftsförderung und Menschenrechte: eine Bestandsaufnahme deutscher Investitions- und Exportkreditdeckungen aus menschenrechtlicher Perspektive*, Duisburg: INEF.
- Smith, R.K.M., 2010. *Textbook on international human rights* 4th ed., Oxford ; New York: Oxford University Press.
- Steinberger, K., 2012. Arbeitsbedingungen bei Discounter-Lieferanten: Hungerlöhne, sexuelle Belästigung, Drohungen. *sueddeutsche.de*. Available at: <http://www.sueddeutsche.de/wirtschaft/arbeitsbedingungen-bei-discounter-lieferanten-hungerloehne-sexuelle-belaestigung-drohungen-1.1254977> [Accessed January 30, 2013].
- UKEF, 2013a. About - UK Export Finance. Available at: <https://www.gov.uk/government/organisations/uk-export-finance/about> [Accessed November 30, 2013].
- UKEF, 2013b. Export Credits Guarantee Department - Annual Report and Accounts 2012–13. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207721/ecgd-ukef-annual-report-and-accounts-2012-to-2013.pdf [Accessed December 2, 2013].
- UKEF, 2013c. Overseas investment insurance - Detailed guidance - GOV.UK. Available at: <https://www.gov.uk/overseas-investment-insurance> [Accessed December 12, 2013].

- UKEF, 2013d. Process and factors in UK Export Finance consideration of applicaitons: guidance to applicants. Available at: <https://www.gov.uk/government/publications/processes-and-factors-in-uk-export-finance-consideration-of-applicants> [Accessed December 1, 2013].
- UN, 1948. The Universal Declaration of Human Rights. Available at: <http://www.un.org/en/documents/udhr/index.shtml> [Accessed October 3, 2012].
- United Nations, 2011. Guiding Principles on Business and Human Rights. Available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf [Accessed April 19, 2013].
- Utlu, D., 2013. Interview with Deniz Utlu, Expert on Human Rights and the Economy at the German Institut for Human Rights.
- Voiculescu, A. & Yanacopulos, H., 2011. *The business of human rights: an evolving agenda for corporate responsibility*, London ; New York: Zed Books.
- Waltz, K.N., 2010. *Theory of international politics*, Long Grove, Ill.: Waveland Press.
- Wolfram, F., 2004. *Staatliche Exportkreditförderung: ein deutsch-amerikanischer Vergleich im Lichte des WTO-Subventionsübereinkommens*, München: Beck.
- World Bank, 2012. Safeguard Policies. Available at: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,menuPK:584441~pagePK:64168427~piPK:64168435~theSitePK:584435,00.html> [Accessed November 27, 2013].
- World Bank Group, 2007. Environmental, Health, and Safety (EHS) Guidelines - General Guidelines. Available at: <http://www.ifc.org/wps/wcm/connect/554e8d80488658e4b76af76a6515bb18/Final%2B-%2BGeneral%2BEHS%2BGuidelines.pdf?MOD=AJPERES> [Accessed November 27, 2013].
- Yin, R.K., 2012. *Applications of case study research*, Thousand Oaks, Calif.: SAGE.