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I. LAW

K. Hall and M.C. Regan, *Lawyers in the Shadow of the Regulatory State: Transnational Governance on Business and Human Rights*, 84 FORDHAM L. REV. 2001 (2016).

This paper examines the growth of transnational governance, and what it means for business lawyers advising multinational corporate clients. The term "governance" incorporates the network of actors, instruments and mechanisms that now govern transnational corporations, separate from the nation state. It is reasonable to expect that lawyers play an important role in advising business clients on how to effectively operate within this system. Indeed, many transnational legal instruments are intended to enhance clients' business goals by enabling them to engage more efficiently in cross-border commerce. Other forms of regulation, such as human rights regulation, purports to impose requirements on companies that go beyond what is necessary to enhance cross-border commerce.

In this paper we discuss the transnational governance regime that has arisen to address the adverse human rights impacts of business activities. We focus in particular on the United Nations (UN) Guiding Principles on Business and Human Rights, which were adopted by the UN Human Rights Council in 2011. We ask what if any role is there for lawyers in fostering acknowledgment and fulfilment of these responsibilities among clients? Is the duty to respect human rights a "legal" obligation in any sense? If a lawyer does provide advice, should it encompass only legal risks to the company that fall within the lawyer's traditionally defined specialized expertise? Or should it go beyond that to include other concerns?

Keywords: transnational governance, transnational corporations, lawyers, human rights, United Nations Guiding Principles, corporate social responsibility

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Mares, Radu. "Decentering Human Rights from the International Order of States: The Alignment and Interaction of Transnational Policy Channels." *Indiana Journal of Global Legal Studies* 23, no. 1 (2016): 171-199.

This article accounts for recent developments in corporate social responsibility, international trade and investment law, international human rights law, development aid, and the laws of home states reaching extraterritorially in order to advance a regulatory perspective on commerce and human rights. While these developments are remarkable, the analysis documents the prevalence of softer strategies and a corresponding scarcity of coercive legalization strategies. The question, then, is how to reason about these recent developments and their genuine potential for human rights protection. The article proposes two elements—a root-cause orientation and the interaction of policy channels—as indispensable for a regulatory and systemic perspective on business and human rights. To make corporate activities compliant with human rights,

the emerging regulatory regime cannot afford to waste any source of leverage. In a less state-centric global order, this is a search for a multichannel, rights-holder-centered, transnational regulatory perspective that highlights alignment, interaction, and complementarity among international policy channels where strength can be achieved by creating a "rope" from weaker strands.

Keywords: Corporate responsibility, interaction, international trade, human rights, foreign policy, exterritoriality, investment, government regulation of business, international law, scarcity, social responsibility, transnationalism, human rights, principles, value chain, institutionalization, transnationalism, international organizations, international relations, public policy/administration, public policy, United Nations–UN

Lee McConnell, *Analogy and Normative Development: Assessing the Feasibility of a Business and Human Rights Treaty*, 66 INT'L & COMP. L.Q. 143 (2017).

In light of a recent shift in dialogue to hard law standards in the domain of business and human rights, this article provides an in-depth examination of the viability of a business and human rights treaty. It seeks to advance a valid theoretical model for a treaty that directly addresses non-State actors, explores the allocation of responsibility among multiple duty-bearers, and contemplates the scope, content, and enforcement of the potential obligations. By supplementing this analysis with analogies drawn from existing treaty regimes, the article aims to contribute positively to the normative development of international law in the field.

Keywords: Business and human rights, formalism, international human rights, international law-making, legal analogy, legal theory, non-state actors, pure theory of law

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Daria Davitti, *Refining the 'protect, respect and remedy' framework for business and human rights and its guiding principles*, 16 HUM. RTS. L. REV. 55 (2016).

At a time of intense debate on the feasibility of an international treaty on business and human rights, the current relevance of the United Nations Framework and Guiding Principles for Business and Human Rights has been called into question. In order to test their significance and applicability, this article analyses their content and highlights their perceived weaknesses. In so doing, the article addresses two questions, which still remain crucial to any discussion on business and human rights. The first question relates to the first pillar of the Framework and concerns the role of home states: are home states under an obligation to regulate the activities of corporations under their jurisdiction? The second question relates to the second pillar and, within business groups, to the role of parent companies when subsidiaries violate human rights. When the parent company does not contribute to the abuse, is it under a responsibility to act? By addressing these two questions, the article outlines two currently perceived gaps in the Framework, and aims at refining it and rendering it applicable to the effective protection of human rights.

Keywords: business and human rights, corporations, extraterritorial obligations, due diligence principle, duty of care, UN Framework and Guiding Principles for Business and Human Rights

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Rajavuori, Mikko. "State Ownership and the United Nations Business and Human Rights Agenda: Three Instruments, Three Narratives." ***Indiana Journal of Global Legal Studies*** **23, no. 2 (2016): 665-707.**

The rise of globally-oriented state ownership has emerged as a crucial issue across political, economic, and legal planes during the past decade. Contrary to the traditional approach where state ownership is viewed primarily through trade law, antitrust law, and corporate law, this article discusses the proliferating state shareholder power in relation to international human rights law. In particular, the article interrogates three recent U.N. human rights governance instruments by using narratives that highlight perils, potential, and specialty of state ownership in the emerging business and human rights agenda. It is argued that the U.N. instruments realize the changes in the architecture of globalized state ownership, portray it as a regulatory space, and seek to utilize this space by recalibrating states' private shareholder identities with public ends. At the same time, however, the nascent human rights-based regulation of state ownership exposes a deeper market contingency underpinning the techniques of contemporary human rights governance.

Keywords: Protectionism -- laws, regulations and rules, public enterprises -- laws, regulations and rules, antitrust law

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Corinne Lewis, ***The ABA's commitment to develop and promote business and human rights within the legal profession: what this means for lawyers*****, 38 HOUS. J. INT'L L. 1 (2016).**

Lawyers increasingly hear the refrain that as advisors and representatives of businesses they should assist their business clients to respect human rights. Yet many lawyers remain unsure about not only what "human rights" are but also how to incorporate human rights into their work. As the American Bar Association and other bar associations around the world reflect upon how to support the legal profession' s implementation of a human rights-based approach, there are a number of challenging issues that they should consider, study and discuss. These include the appropriate business and human rights framework, the elaboration of the sources of human rights, the nature of human rights, and practical difficulties faced by lawyers as they advise their clients on international human rights. This article explores these issues in a manner that should assist bar associations with identifying and addressing these issues and also provides lawyers an enhanced understanding of the human rights field and its relevance to their practices.

Keywords: corporate social responsibility – analysis

Abe, Oyeniyi. "The feasibility of implementing the United Nations guiding principles on business and human rights in the extractive industry in Nigeria." *Journal of Sustainable Development Law and Policy (The)* 7, no. 1 (2016): 137-157.

Extractive resource governance has been a challenging task for resource-rich countries in Africa. It has fuelled civil wars, ethnic clashes and underdevelopment in this region. This has turned the so-called resource wealth into resource curse. To address this particularly nauseating challenge, the international community came together to adopt the UN Guiding Principles on Business and Human Rights (GPs). Polarised debate on whether the GPs should be binding or voluntary has slowed down the effective implementation of the Principles. This article argues that while the GPs have been the latest attempt at regulating multinational companies (MNCs), greater emphasis should be placed on the readiness of states to domesticate the Principles. To achieve this, the paper explores various approaches through which the GPs can be crafted into national legislation. It also investigates the different methods through which states can ensure that corporations systemically respect human rights obligations in their areas of operation. In order to restore faith in the whole process, it is necessary to examine how human rights principles can be mainstreamed into corporate practice locally. No doubt, rights-based frameworks, such as the GPs, are needed to ensure that human rights are streamlined in business' projects, policies, and agreements throughout the various stages, including preparation, funding, implementation and monitoring. The issue of corporate liability under international law has had its troubled history, thus, this article argues that MNCs have a heightened responsibility to respect the human rights of the local communities in resource rich, war-torn zones, particularly in sub-Saharan African, using Nigeria as focal point.

Keywords: guiding principles, business, human rights, multinational companies (MNCs)

Lindahl, Hans. "One Pillar: Legal Authority and a Social License to Operate in a Global Context." *Indiana Journal of Global Legal Studies* 23, no. 1 (2016): 201-224.

The claim that businesses have a social license to operate acquires concrete form in the second pillar of the U.N. Guiding Principles on Business and Human Rights (UNGPs) in the fundamental distinction between "compliance with all applicable laws" and "respect for human rights." The aim of this paper is to critically examine the presuppositions that undergird this distinction and to explain how and why moving beyond state-centered thinking about law, in response to violations of human rights by globally operating businesses, requires acknowledging that there is one pillar that embraces states and businesses: the legal obligation to comply with international human rights law. Arguing that legal order can best be conceptualized as authoritative collective action, the paper develops the one-pillar thesis along two fronts. The first argues that there can be no credible social license to operate in a global context absent authorities that uphold and

regulate joint action as regards what is to count as a global collective's bounded common good and as its bounded common place. Yet, it is this authoritative dimension of a social license to operate that the UNGPs preclude by proclaiming that the corporate responsibility to respect human rights does not itself create a legal obligation. The second argues that both states and globally operating businesses are legal orders in their own right. From the firstperson plural perspective of authoritatively mediated collective action, nothing justifies separating a state's obligation to uphold human rights, as per the first pillar of the UNGPs, from a business's responsibility to respect human rights, as per the second pillar.

Keywords: social contract – analysis, corporate social responsibility -- laws, regulations and rules, international trade -- social aspects

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Ena Cefo, *Corporate Human Rights Violations in the Occupied Palestinian Territories: Is there any Recourse?* 47 GEO. J. INT'L L. 793 (2016).

This Note explores the available remedies against corporate violations of human rights within the Occupied Palestinian Territories. It considers the difficulty of recourse against corporate actors at the international level and the domestic level in the United States. It concludes with analyzing soft-law codes--namely, the U.N. "Protect, Respect and Remedy" Framework on Business and Human Rights, U.N. Global Compact, OECD Guidelines for Multinational Enterprises and Social Policy. The hope for victims of human rights violations in the OPT is to use these soft-law principles to pressure implicated corporations to respect human rights, and to advocate for the development of binding codes of direct corporate responsibilities.

Keywords: corporate social responsibility -- laws, regulations and rules, multinational corporations -- laws, regulations and rules, occupied territories -- laws, regulations and rules, human settlements -- laws, regulations and rules

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Zenkiewicz, Maciej. "Human Rights Violations by Multinational Corporations and UN Initiatives." *Rev. Int'l L. & Pol.* 12 (2016): 121-160.

The article presents United Nations' (UN) activity to the problem of human rights violations committed by multinational corporations. The article consists of two parts: The first part is an introduction to the problem of multinational corporations (MNCs) and human rights, it explains why the international community is so vigorously interested in MNCs and human rights, and presents the pros and cons for two possible ways to regulate MNCs - either indirectly via the state, or directly through obligations under international law. The second part presents and evaluates the most important three UN initiatives regarding business, human rights and the recent developments: first, the UN Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights; second, the Global Compact Initiative; and

third, the activity of the UN Secretary-General Special Representative on business and human rights. The author discusses the content of the aforementioned norms/initiatives, scrutinizing the novel attitude toward the problem of MNCs and human rights, but also presents and comments on the critique of them. The author especially addresses the critique of the Ruggie's framework, presenting the arguments of UN Secretary-General Special Representative's opponents and mainly disagreeing with their position. Furthermore, the article is enriched by the brief commentary on the recent developments, namely the activity of an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG), which focuses on the question of legally binding instruments.

Keywords: multinational corporations (MNCs), United Nations, global compact, Ruggie framework

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Nigel D. White, *Regulation of the Private Military and Security Sector: Is the UK Fulfilling its Human Rights Duties?* 16 HUM. RTS. L. REV. 585 (2016).

There is a divergence in state practice as regards the regulation of private military and security companies (PMSCs), ranging from outright prohibition, to forms of licensing, to voluntary self-regulation. This article considers the self-regulation model as adopted by the UK in order to illustrate the compatibility of such a regime with international norms, especially those guaranteeing human rights.

Keywords: human rights, private military and security companies, International Code of Conduct for Private Security Providers 2010, United Kingdom

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Donald, Kate, and Sally-Anne Way. "Accountability for the Sustainable Development Goals: A Lost Opportunity?." *Ethics & International Affairs* 30, no. 02 (2016): 201-213.

On August 2, 2015, after three long years of intergovernmental negotiations and consultations and some tense final moments, all UN member states finally endorsed the 2030 Agenda for Sustainable Development, with a new set of Sustainable Development Goals (SDGs) that replace the Millennium Development Goals (MDGs) in 2016. The question of accountability--or, more precisely, the question of how governments will be held to account for implementing the commitments made in this new agenda--was a critical point of contention throughout the negotiations, resulting in a significant watering down of initial proposals by the end of the process.

Keywords: development, inequality, and poverty, international law and human rights

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17) Gonza, Isabel Alejandra. "Integrating Business and Human Rights in the Inter-American Human Rights System." ***Business and Human Rights Journal*** **(2016).**

The paper explores how the Inter-American System has laid the foundation for developing concrete standards relating to corporate accountability. It describes how the System needs to better apply the United Nations Guiding Principles on Business and human rights and further explore their connection with the American Convention and Declaration. Within the case system the Inter-American bodies have the opportunity to address the impunity of corporations in the region. The Inter-American system's remedial approach already is distinguished among regional human rights systems. By developing remedies to redress the harms of corporations and hold them accountable, the System could significantly impact the globe's legislation, policies and regulatory frameworks.

Keywords: United Nation Guiding Principles on Business and Human Rights, UNGPs, Inter-American System, OAS, business and human rights

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Bilchitz, David. "The Necessity for a Business and Human Rights Treaty." ***Business and Human Rights Journal*** **1, no. 02 (2016): 203-227.**

In June 2014, the Human Rights Council passed a resolution establishing an inter-governmental working group to discuss a legally binding instrument relating to transnational corporations and other business enterprises. In this article, I outline four arguments for why such an instrument is desirable. Identifying the purpose of such a treaty is crucial in outlining a vision of what it should seek to achieve and in determining its content. The arguments indicate that a treaty is necessary to provide legal solutions to cure serious lacunae and ambiguities in the current framework of international law which have a serious negative impact upon the rights of individuals affected by corporate activities. The emphasis throughout is upon why a binding legal instrument is important, as opposed to softer forms of regulation such as the United Nations Guiding Principles on Business and Human Rights. The four arguments in turn provide the resources to respond to objections raised against the treaty and to reject an alternative, more restrictive proposal for a treaty that only addresses 'gross' human rights violations.

Keywords: fundamental rights, treaty, Guiding Principles, access to remedies, international law

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Cassel, Doug. "Outlining the Case for a Common Law Duty of Care of Business to Exercise Human Rights Due Diligence." ***Business and Human Rights Journal*** **1, no. 02 (2016): 179-202.**

This article outlines the case for a business duty of care to exercise human rights due

diligence, judicially enforceable in common law countries by tort suits for negligence brought by persons whose potential injuries were reasonably foreseeable. A parent company's duty of care would extend to the human rights impacts of all entities in the enterprise, including subsidiaries. A company would not be liable for breach of the duty of care if it proves that it reasonably exercised due diligence as set forth in the Guiding Principles on Business and Human Rights. On the other hand, a company's failure to exercise due diligence would create a rebuttable presumption of causation and hence liability. A company could then avoid liability only by carrying its burden to prove that the risk of the human rights violations was not reasonably foreseeable, or that the damages would have resulted even if the company had exercised due diligence.

Keywords: common law, due diligence, duty of care, negligence, torts

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O'Brien, Brynn. "Extraterritorial detention contracting in Australia and the UN Guiding Principles on Business and Human Rights." ***Business and Human Rights Journal*** **1, no. 02 (2016): 333-340.**

Keywords: detention, immigration, refugees, Australia, contracting

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Gathii, James, and Ibironke T ODUMOSU-AYANU. "The Turn to Contractual Responsibility in the Global Extractive Industry." ***Business and Human Rights Journal*** **1, no. 01 (2016): 69-94.**

This article argues that there is a newer model of contracting for natural resources that expands the potential for corporate responsibility towards those adversely affected by business activities. It lays out the conceptual roadmap and justification underlying these shifts and changes in contracting for natural resources. The article calls for a renewed focus in exploring enforcement of corporate obligations for impacts to individuals and communities within a contractual framework. Examples of this type of arrangements include contracts that can be construed to allow third parties to sue on a contract; community development agreements; contracts between investors and communities; environmental contracts; human rights deeds, and investor–state–local community contracts (tripartite contracts). These contractual forms demonstrate that the law of contract has evolved from the nineteenth century idea that contracts merely protect the rights of investors without much concern for those who are directly affected by extractive industry operations. By including affected communities, indigenous communities, and others, these new contractual forms demonstrate that investors and governments are trustees and that extractive resources must be mobilized for the benefits of their publics. In so doing, we map this turn to contracts between multiple parties in the resource extraction context, and argue that it affirmatively demonstrates real potential to address or mitigate the absence of remedial and responsibility regimes for the adverse impacts of extractive industry activities on individuals and communities.

Keywords: contracts, human rights, investors, natural resources, remedies

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Kube, Vivian & Petersmann, E.U. "Human Rights Law in International Investment Arbitration." *AJWH* 11, no. 01 (2016): 65-113

This paper discusses problems of legal fragmentation of international investment law and human rights law and related legal methodology questions regarding person-oriented principles of justice (such as human rights and "proportionality balancing") in contrast to the more commonly applied focus on judicial balancing of state-centered "principles of justice" (like state responsibility). The paper builds on a comprehensive survey of publicly available investor-states disputes in which human rights were invoked by the parties to dispute (investor, host state and arbitrators ex officio) or third party interveners.

The assessment of these awards in Part II of this paper suggests that arbitral tribunals are more open towards human rights as due process rights and as principles of procedural fairness and balancing than towards integrating human rights as an authoritative legal regime consisting of legally enforceable entitlements. The only exception to this general trend remains the right to property. However, the assessment generally reveals a lack of any systematic methodology as to how to respond to human rights argumentation.

Part III traces the legal reasons behind these observations by looking into the entry points for human rights and obstacles for integration as they emerge from the texts of BITs and IIAs. This part demonstrates the possibilities that already exist for arbitrators to take into account human rights, such as jurisdiction clauses, applicable law clauses, definitions of "investments", the customary rules of treaty interpretation, preambles of BITs, relevant protection standards and rules on awarding damage compensation.

The conclusion suggests that the shortcomings are not an inevitable result of textual limitations, as alternative outcomes of ISDS disputes are legally possible and justifiable. In the absence of any development of a clear methodology, textual adjustment might thus not counter fragmentation. Systemic reform might be necessary to ensure transparent, coherent and balanced approaches to human rights argumentation.

Keywords: human rights, investment law, investor-state arbitration, judicial comity, legal methodology, principles of justice, treaty interpretation

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Lieselot Verdonck, *How the European Court of Human Rights evaded the Business and Human Rights Debate in Özel v. Turkey* , 2 TUR. COM. L. REV. 111 (2016).

The judgment of the European Court of Human Rights (ECtHR) in Özel v. Turkey is consistent with its established case law on interferences with European Convention on Human Rights and Fundamental Freedoms in which private actors are involved.1 By delineating the obligation of states to protect their people against human rights violations

by private actors, the Court's jurisprudence has contributed to the global debate on business and human rights. Nevertheless, the judgment in Özel v. Turkey is disappointing in that the Court decided not to discuss the actual impact of human rights on companies. In times of vigorous and divisive debates about the role of international law in ensuring respect for human rights by companies, the ECtHR should not dodge controversies but lead the way.

Keywords:

RIVERA, Humberto CANTÚ. "The Mexican Judiciary's Understanding of the Corporate Responsibility to Respect Human Rights." ***Business and Human Rights Journal*** **1, no. 01 (2016): 133-138.**

Keywords: case law, corporate responsibility to protect human rights, human rights policy, Mexico, UN Guiding Principles on Business and Human Rights

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Liste, Philip. "Geographical knowledge at work: Human rights litigation and transnational territoriality." ***European Journal of International Relations*** **22, no. 1 (2016): 217-239.**

In April 2013, the US Supreme Court left a mark on the spatiality of law. In a decision on human rights violations in Nigeria, state territoriality served as a technique to rule out the application of transnational law against private corporations. Paradoxically, the private actor turned out to be the primary beneficiary of this jurisdictional territorialism. Drawing on work in critical geography, the article argues that this was only possible against the background of a certain geographical knowledge as reproduced in the course of legal practice. The corporate production of space consisted of a 'private use of territoriality' to resist the extraterritorial application of law and thus transnational state regulation. During a spatial analysis of a number of the 82 amicus curiae briefs to Kiobel v. Royal Dutch Petroleum, the article reveals how the geographical configurations of our contemporary order not only withstand transnational challenges, but are even reproduced transnationally by a multiplicity of state and non-state actors. While international law builds upon and reproduces territoriality as a foundational principle of global normativity, it also provides the means for the doing away with territoriality. In order to demonstrate how legal practice contributes to a critical reproduction of normativity on different scales (national and international, local and global), the article establishes a spatial gaze on transnational relations at work.

Keywords: international law, law, petroleum, rights, transnational

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Gathii, James Thuo. "Variation in the Use of Subregional Integration Courts between Business and Human Rights Actors: The Case of the East African Court of Justice." ***Law and Contemporary Problems*** **79, no. 1 (2016): 37-62**

This article analyzes the resort to the East African Court of Justice (EACJ) by human rights advocates and business actors. In doing so, this article considers how the EACJ fits Alter, Helfer, and Madsen's concept of the authority of an international court (IC). According to Alter and her co-authors, an IC has authority when two conditions are met. First, when a legally binding ruling issued by an IC exists, and second, when key audiences, such as governments and private actors, engage in meaningful practices designed to give full effect to those rulings. This article demonstrates that the EACJ has intermediate authority at a thin-elite level in human rights cases because urbanbased, human rights nongovernmental organizations (NGOs), pro-democracy activists, and some governmental officials recognize in some, but not all, cases the legally binding nature of the EACJ's human rights cases and take steps to give effect to the rulings of the EACJ. Most importantly, the EACJ has intermediate authority not only because there are efforts by governments to comply with some human rights cases, as the Alter, Helfer, and Madsen authority framework suggests, but also because of the mobilization of these cases to "name and shame" East African Community (EAC) governments for human rights violations, which that framework does not take into account.

Keywords: courts, rights

Holly Cullen, ***The Irresistible Rise of Human Rights Due Diligence: Conflict Minerals and Beyond*****, 48 Geo. Wash. Int'l L. Rev. 743 (2016).**

Human rights due diligence (HRDD) is an important new concept in international efforts to improve the accountability of transnational corporations for violations of human rights. Due diligence has a clear meaning in corporate governance, setting out context-specific risk-management obligations for corporations. It also has been applied in a variety of contexts in international law, including international human rights law, to define the scope of state responsibility for the acts of non-state actors. HRDD applies international human rights standards to the acts of businesses in the international sphere. It is designed to provide guidance to corporations on how to avoid adverse impacts of business on human rights and how to remedy such adverse impacts.

This Article begins in Part I with a review of the concept of due diligence in international law, examining its role in areas such as diplomatic protection, international environmental law, and human rights. Part II then examines how the Special Representative of the Secretary-General for Business and Human Rights, Professor John Ruggie, elaborated the concept of HRDD within the United Nations; it also examines how the OECD adopted HRDD. Part III focuses on how the OECD applied HRDD to international efforts to remove conflict minerals from supply chains, and Part IV discusses how the OECD model of HRDD for conflict minerals interacts with regulation

under the Dodd-Frank Act. Part V elaborates on the implementation of these HRDD measures by the OECD. Finally, Part VI looks ahead to the OECD's work in applying HRDD to other sectors, notably financial services and manufacturing.

Keywords: civil rights law, international law, sovereign states & individuals, human rights, genocide, international trade law, trade agreements

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Jennifer M. Green, *Corporate Torts: International Human Rights and Superior Officers*, 17 Chi. J. Int'l L. 447 (2017).

Recent decisions by U.S. courts have attacked the ability of human rights victims to hold corporations accountable for their complicity in atrocities around the world. This Article argues that in the face of this attack, advocates and scholars have given insufficient attention to a potent strategy--holding corporate officers liable. It examines the corporate officer liability question through the lens of tort liability, focusing on those officers with superior responsibility over their subordinates who physically commit the violations. It is the first to provide a systematic analysis of how superior officer liability under tort and international law approaches to superior responsibility and criminal liability might provide a basis for greater accountability for corporate officers. This Article examines the historical origins of military and state civilian command responsibility, the trials of civilian corporate officials in Nuremberg and Tokyo jurisprudence following World War II, the special international and hybrid criminal tribunals first established in the 1990s, and tort cases in the U.S. and other jurisdictions. In so doing, this Article complements important parallel efforts to hold corporations liable. This Article considers options for officer liability in situations when governments cannot or will not bring criminal charges, or when bringing claims against the officer may be the most efficient means of changing corporate behavior. It concludes that human rights law, international criminal law, and domestic tort and related liability standards all provide liability for corporate officers under a theory of superior responsibility for human rights violations. This common core standard provides an important tool for compensating victims of past abuses and deterring ongoing or future human rights violations.

Keywords: business & corporate law, corporations, directors & officers, management duties & liabilities, causes of action, international trade law, trade agreements, intellectual property provisions, torts, public entity liability, liability

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Caroline Kaeb, *The Shifting Sands of Corporate Liability under International Criminal Law*, 49 Geo. Wash. Int'l L. Rev. 351 (2016).

The sands of corporate criminal liability for atrocities are shifting. Demands for corporate accountability have risen significantly over the last decades and have manifested themselves in different ways, such as litigation under the U.S. Alien Tort Statute (ATS) and the adoption of the U.N. Guiding Principles of Business and Human Rights, as

well as newly emerging regulatory mandates in the area of due diligence and reporting requirements on both sides of the Atlantic. A growing number of legal systems around $=P352 the world have included corporate liability for international crimes into their criminal codes and are poised to adjudicate such liability before their domestic courts. Moreover, international treaties have increasingly featured corporate criminal liability provisions. Most recently, the issue of corporate accountability in a broader societal and political context has been the subject of adjudication by the Special Tribunal for Lebanon (STL). It is hard to ignore the growing international trend where courts and regulators are trying to grapple with fundamental questions of corporate personality, corporate guilt, and corporate criminality. Because corporations have "neither bodies to be punished, nor souls to be $=P353 condemned[,]" these questions create unique challenges, especially with regard to the criminal responsibility of legal persons.

Keywords: international law, dispute resolution, tribunals, international law, sources of international law, international trade law, trade agreements, intellectual property provisions

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Christopher R. Knight, ***International Human Rights Litigation after Bauman: The Viability of Veil Piercing to Hale Foreign Parent Corporations into U.S. Courts*****, 41 DAYTON L. REV. 213 (2016).**

The Supreme Court's recent jurisprudence erects significant hurdles for international human rights plaintiffs looking to sue foreign multinational corporations in U.S. courts for human rights violations committed abroad. The first hurdle makes bringing suit more difficult for such plaintiffs by limiting the subject-matter jurisdiction of federal courts. Until 2013, plaintiffs could bring international human rights claims under the Alien Tort Statute ("ATS") and obtain relief for human rights violations in federal court. In Kiobel v. Royal Dutch Petroleum Co., however, the Court held that the presumption against extraterritoriality--a "canon provid[ing] that '[w]hen a statute gives no clear indication of an extraterritorial application, it has none'"--applied to limit the reach of claims authorized under the ATS. Kiobel's application of the presumption to the ATS severely limits suits by foreign plaintiffs against foreign defendants for foreign conduct (referred to as "foreign-cubed" or "f-cubed"). But the Kiobel Court did not slam the door on such claims completely: a foreign plaintiff could still maintain a claim under the ATS in federal court if it could displace the presumption by showing its claim was sufficiently domestic.

This Article will proceed in two main Parts: the first (Part II) describes the background and problem; the second (Part III) explores whether veil piercing might be a potential solution. Part II thus describes the legal background against which international human rights plaintiffs find themselves when looking to hale a foreign corporation into U.S. court by piercing its veil. I first look at the background for international human rights claims in U.S. courts, specifically examining the jurisprudence involving claims brought under the ATS in federal courts. Then I consider the Supreme Court's general

jurisdiction caselaw, culminating in *Goodyear* and *Bauman*. I also extensively consider veil-piercing law as it relates to both substantive liability and jurisdiction. Part III looks to whether piercing is a viable option for international human rights plaintiffs. I conclude that piercing a U.S. subsidiary's veil to hale a foreign parent into court when the parent has committed human rights violations abroad (particularly when the plaintiff has a viable claim against the parent arising under the ATS) works reasonably well within the context of existing veil-piercing law, and that it makes sense in light of the policies of both veil piercing and international human rights.

Keywords: business & corporate law, corporations, shareholders, disregard of corporate entity, business & corporate law, foreign businesses, international trade, law, dispute resolution

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Nathan J. Miller, *Human Rights Abuses as Tort Harms: Losses in Translation*, 46 SETON HALL L. REV. 505 (2016).

This Article provides the first-ever examination of the normative challenges posed by bringing international human rights claims in state courts under the common law of torts. It argues that the normative structure of the private law of torts cannot adequately address the very different concerns at stake when addressing public harms. Torts address issues that arise between two parties and those parties alone. But public law addresses harms done simultaneously to individuals and to the body politic. Redress for public harms should encompass both individual and systemic remedies, but tort law offers only the former. Instead of advancing tort claims, advocates should urge state courts to exercise their concurrent jurisdiction over the customary international legal norms incorporated into the federal common law to hear claims for violations of international human rights.

Keywords: civil procedure, jurisdiction, subject matter jurisdiction, governments, local governments, claims by & against, international law, dispute resolution, tribunals

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Vilena Nicolet, *The "Sullivan-Plus" Principles: A Cure for Silent Complicity by Corporate Actors*, 25 MINN. J. INT'L L. 545 (2016).

This Note seeks to explain the approach the international community should take and the role international corporations can play in the enforcement of international law. Part II describes the concept of complicity in its broadest form, including its moral and criminal law dimensions, in the context of human rights violations. It also lays out the history of past corporate involvement in resisting international law violations by foreign states. Part II also analyzes the actions taken by corporate actors in response to the annexation of the Crimean peninsula by Russia. Part III then introduces a novel concept of complicity covering its philosophical and criminal law dimensions. It also offers a new approach that addresses corporate silent complicity through imposing a minimum positive duty to raise concerns about human rights and international law violations, and enforcing it with the

"Sullivan-Plus" Principles. Furthermore, considering the nature and interests of corporations, as well as the uniqueness of the silent complicity concept, this Note suggests that effective enforcement of the "Sullivan-Plus" Principles might be obtained through home-state actions that account for corporate characteristics embedded in corporate nature. Finally, this Note recognizes that the basic values of the rule of law will prevail in the world only through a consistent promotion and support by corporate actors.

Keywords: civil rights law, criminal law & procedure, scienter, actus reus, international law, sovereign states & individuals, human rights

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Vivian Grosswald Curran, *Harmonizing Multinational Parent Company Liability for Foreign Subsidiary Human Rights Violations*, 17 CHI. J. INT'L L. 403 (2017)

A notable development in recent years has been the ubiquity of the giant multinational corporation and its ability, through legal structures, to insulate itself from liability for the conduct of its foreign subsidiaries. In effect, multinational corporations simultaneously become legally invisible in their home states while potentially present through subsidiaries in innumerable other states.

This Article focuses on multinational corporations whose parent companies are at home in a developed country while their subsidiaries operate in states in the developing world, and specifically where the foreign subsidiaries are alleged to have violated norms of universal human rights. It examines current legal theory and offers a comparative perspective on legislative and judicial traditions and innovations in several home states of large multinational parent companies. The Article includes an exposé of relevant aspects of the new Restatement (Fourth) of Foreign Relations Law of the United States, approved by a vote of the American Law Institute as of May 2016. The overall goal of the Article is to explore various legal methods by which parent-subsidiary human rights liability might be harmonized.

In the aftermath of the Second World War and its upheavals, the Universal Declaration of Human Rights formed the basis of subsequent international human rights concepts, and may thus serve as a point of departure when considering victim rights. In the current era of transnationalization and deterritorialization, law has produced new challenges to human rights as circumstances have altered and destabilized existing structures. We have seen the ability of large corporations to operate across the globe beyond the reach of states with stricter human rights standards of conduct than often exist in the developing world. This is in part because universal human rights so far have had little success in practice in implementing claims of universality or extraterritorial jurisdiction.
In the U.S., jurisdictional standards have tightened since the Supreme Court's Kiobel and Daimler decisions. Both of those decisions undertake to further comity, however, and recent legal developments in several countries, particularly in the area of legislation and court decisions, suggest that legal harmonization might yet eclipse enough of the divide among different nations' legal regimes. Such harmonization could be accomplished by

bringing foreign subsidiaries' violations of human rights under extraterritorial jurisdiction, or, alternatively, by reconfiguring legal theory such that extraterritoriality ceases to be an issue. These developments, appropriate to a transnationalizing world and what may evolve in its wake, suggest the potential for increasing international and national laws' respect for human rights issues in a variety of ways that need not be mutually exclusive.

Keywords: business & corporate law, foreign businesses, international law, sovereign states & individuals, human rights, torts, vicarious liability, corporations, subsidiary corporations

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R. George Wright, *Negotiating the Terms of Corporate Human Rights Liability Under Federal Law*, 53 SAN DIEGO L. REV. 579 (2016).

Human rights law presents a number of difficulties that seem to be largely doctrinal in nature. Individuals naturally seek the best answers to these difficulties. This Article documents some of these difficulties, and suggests not so much answers, but what one might call a negotiational approach to their resolution. The Article addresses the role of corporate liability, an increasingly important area of the law, particularly under the federal Alien Tort Statute, for major violations of the most fundamental human rights. Often, such cases involve a theory of corporate aiding and abetting liability in connection with an underlying substantive human rights violation.

Keywords: criminal law & procedure, scienter, family law, family relationships & tort, governments, legislation, statutes of limitations

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Augenstein, Daniel. "Paradise Lost: Sovereign State Interest, Global Resource Exploitation and the Politics of Human Rights." *European Journal of International Law* 27, no. 3 (2016): 669-691.

Taking its cue from the US Supreme Court judgment in Kiobel that restricted the extraterritorial reach of the Alien Tort Claims Act, this article explores how sovereignty structures the relationship between global resource exploitation and the localization of human rights in the international order of states. The argument situates international human rights law in an area of tension between national political self-determination and the global economic exploitation of natural resources. Global business operations in resource-rich developing countries undermine the protective role of sovereignty in relation to political self-determination that once justified the confinement of human rights to the territorial state legal order. At the same time, jurisdiction as an expression of sovereignty restricts access to justice for victims of extraterritorial human rights violations in Western home states of 'multi-national' corporations. I contend that this asymmetry should be resolved through a territorial extension of international human rights law that accounts for the human rights impacts of

global resource exploitation. This entails that transnational tort litigation for corporate human rights violations should be appraised in the light of states' human rights obligations to ensure effective civil remedies for victims located outside their borders. Moreover, it suggests that victims' quest for justice through private litigation is not merely about the satisfaction of pecuniary damages but also represents a public and political attempt to reclaim their human rights in the judicial fora of Western states.

Keywords: Supreme Court justices (U.S.), violation of sovereignty, human rights, violation of sovereignty (international law), self-determination theory

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II. BUSINESS/ MANAGEMENT

Buhmann, Karin. "Public regulators and CSR: The 'Social Licence to Operate' in recent united nations instruments on business and human rights and the juridification of CSR." *Journal of Business Ethics* 136, no. 4 (2016): 699-714.

The social licence to operate (SLO) concept is little developed in the academic literature so far. Deployment of the term was made by the United National (UN) Guiding Principles on Business and Human Rights and the UN 'Protect, Respect and Remedy' Framework, which apply SLO as an argument for responsible business conduct, connecting to social expectations and bridging to public regulation. This UN guidance has had a significant bearing on how public regulators seek to influence business conduct beyond Human Rights to broader Corporate Social Responsibility (CSR) concerns. Drawing on examples of such public regulatory governance, this article explores and explains developments towards a juridification of CSR entailing efforts by public regulators to reach beyond jurisdictional and territorial limitations of conventional public law to address adverse effects of transnational economic activity. Through analysis of an expansion of law into the normative framing of what constitutes responsible business conduct, we demonstrate a process of juridification entailing a legal framing of social expectations of companies, a proliferation of law into the field of business ethics, and an increased regulation by law of social actors or processes.

Keywords: CSR transparency and reporting, EU and CSR, juridification of CSR, OECD Guidelines for Multinational Enterprises, social licence to operate, politicization of business, UN Guiding Principles on Business and Human Rights, UN 'Protect, Respect and Remedy' Framework

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Cindy S. Woods, *The Implications of the B Corp Movement in the Business and Human Rights Context*, 6 NOTRE DAME J. INT'L & COMP. L. 77 (2016).

In recent decades, issues of corporate accountability and social responsibility have risen to the forefront in international debates. The U.N. Guiding Principles on Business and Human Rights (Guiding Principles), unanimously endorsed by the U.N. Human Rights Council in June 2011, authoritatively lay out the State duty to protect and the corporate responsibility to respect human rights. In an effort to operationalize the Guiding Principles, the U.N. Human Rights Council called on all States to develop National Action Plans (NAPs) for domestic implementation of the Guiding Principles. A key first step in the creation of a NAP is the completion of a national baseline assessment of the current frameworks and conditions affecting the protection and promotion of human rights by the State and businesses alike. With over thirty-five countries now committed to the creation of a NAP, it is increasingly important to evaluate existing corporate structures that claim to be socially and ethically motivated. The "B Corp" movement began in earnest in 2006, through the work of U.S.-based non-profit B Lab. A B Corp is a business certified by B Lab as a corporation committed to creating and supporting social

and environmental rights. The B Corp movement has grown in size and stature, spreading into over thirty countries and garnering a reputation for excellence. Boosts to the movement have recently come from the certification of large multinational companies and the interest of businesses that followed. As the B Corp movement continues to proliferate, its technical and normative value within the business and human rights field merits close consideration. Through a comparative analysis between the B Corp certification requirements and the Guiding Principles, this paper seeks to answer the following questions: Do B Corps fulfill the Guiding Principles' corporate responsibility standards to respect human rights? Are they a desirable normative shift in the business and human rights context?

Keywords: Corporate Social Responsibility, Shareholder Wealth Maximization, B Corps, UN Guiding Principles, Corporate Accountability

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Rainer Baisch and Rolf Weber, *Liability of Parent Companies for Human Rights Violations of Subsidiaries*, 27 EUROPEAN BUS. L. REV. 669 (2016).

The infringement of human rights by subsidiaries of multinational enterprises has become a thoroughly discussed topic. It is obvious that potential corporate liability under any regime gives incentives to group companies for structuring themselves in a way that, if ever agents who do not respect human right will be held responsible, the liability risks remain within the sphere of a foreign subsidiary. Looking from the perspective of the injured person, this strategy motivates to invoke veil-piercing, direct liability or forum-doctrines to tap the financial capability of the parent company. Following the UNGP the question arises what can be done to establish fair jurisdiction, suitable to hold negligent parent companies liable e.g. based on mandatory due diligence obligations in respect of the adherence to human rights.

Keywords: international business enterprises -- law & legislation; corporate, subsidiary, and regional managing offices; human rights violations; subsidiary corporations -- social aspects

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Malgwi, Charles A., and Charles A. Malgwi. "Corollaries of corruption and bribery on international business." *Journal of Financial Crime* 23, no. 4 (2016): 948-964.

Purpose - The purpose of this paper is threefold: it examines and analyzes the extent to which corruption and bribery have become the quintessential problem of international business and economies; analyzes the effect of corruption and bribery on international business at the macro level; and recommends specific action-oriented sustainable initiatives to help mitigate corruption and bribery.

Design/methodology/approach - This paper has conducted an in-depth global analysis of extant literature on corruption and bribery affecting international business.

Findings - This paper provides a succinct analysis of corruption and bribery relevant and critical to international business. It shows that corruption undermines democracy and the rule of law; leads to violations of human rights; distorts markets; erodes the quality of life; and allows organized crime, terrorism and other threats to human security.

Research limitations/implications - This paper realizes that not all corruption and bribery have the same degree of impact on all countries and economies. This issue is not discussed, as it is outside the scope of the paper.

Practical implications - This paper serves as a good reference
for international business community, anti-corruption agencies, law enforcement and for pedagogy in the classroom.

Originality/value - Provides a concise macro level of pertinent corruption and bribery issues useful as a learning material for international business, trade and development and corporate social responsibility.

Keywords: bribery, corruption, governance, international business, transparency

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Rodhouse, Toyah, and Frank Vanclay. "Is free, prior and informed consent a form of corporate social responsibility?." *Journal of Cleaner Production* 131 (2016): 785-794.

International organizations are increasingly including Indigenous peoples' rights and the concept of Free, Prior and Informed Consent (FPIC) in their guidance documents, codes of conduct, and performance standards. Leading companies are adjusting their Corporate Social Responsibility (CSR) and Social Performance frameworks to include
a human rights based approach for engaging with Indigenous communities. Arguably, insufficient attention has been given to the normative, conceptual and practical differences between CSR and FPIC. The voluntary and instrumentalist character of CSR is not readily compatible with the basic tenets of human rights. While CSR is primarily applied by companies to reduce risk associated with societal opposition and reputational harm, FPIC is a mechanism to ensure respect for Indigenous rights relating to land, use of resources, and self-determination. CSR and FPIC thus serve different purposes, as reflected in their positions on issues such as: economic development; stakeholder management; the role of the corporation vis-à-vis the state; and the responsibilities and accountabilities of corporations.

Keywords: community engagement, corporate human rights responsibilities, social licence to operate, social risk management, United Nations Declaration on the Rights of Indigenous Peoples

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Dahan, Yossi, Hanna Lerner, and Faina Milman-Sivan. "The Guiding Principles for Business and Human Rights: Labour Violations and Shared Responsibility." ***International Journal of Comparative Labour Law and Industrial Relations*** **32, no. 4 (2016): 425-447.**

The 'Protect, Respect, and Remedy' Framework and the Guiding Principles on Business and Human Rights drafted by John Ruggie, the Special Representative of the UN Secretary-General for Business and Human Rights, place responsibility on multinational corporations to respect human rights in conducting their relationships with business partners. The article explicates and criticizes the normative conception of responsibility underpinning Ruggie's approach. It does so by juxtaposing Ruggie's approach with an alternative normative conception of shared responsibility towards workers' rights, according to which responsibility to prevent and remedy labour rights violations should be shared by all participants in the global chains of production. The shared responsibility approach offers a set of five principles for allocating responsibility among the different participants, whereas Ruggie takes into consideration only two of these principles. Thus, we argue that the moral responsibility of business proposed by the Framework and Guiding Principles is too narrow and does not allow for a substantive protection of labour rights in global supply chains. The Framework and the Guiding Principles should be revised to place stringent responsibilities on multinational corporations. Such revisions are not only morally justified but could also be feasible, as demonstrated by recent developments, such as the creation of the Accord on Fire and Building Safety in Bangladesh and the Alliance for Bangladesh Worker Safety, as well as the demands raised by Ecuador and South Africa in the 26th session of the UN Human Rights Council.

Keywords: partnership (business), human rights, violence

Werhane, Patricia H. "Corporate moral agency and the responsibility to respect human rights in the UN Guiding Principles: do corporations have moral rights?." ***Business and Human Rights Journal*** **1, no. 01 (2016): 5-20.**

In 2011 the United Nations (UN) published the 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect, and Remedy" Framework' (Guiding Principles). The Guiding Principles specify that for-profit corporations have responsibilities to respect human rights. Do these responsibilities entail that corporations, too, have basic rights? The contention that corporations are moral persons is problematic because it confers moral status to an organization similar to that conferred to a human agent. I shall argue that corporations are not moral persons. But as collective bodies created, operated, and perpetuated by individual human moral agents, one can ascribe to corporations secondary moral agency as organizations. This ascription, I conclude, makes sense of the normative business responsibilities outlined in the Guiding Principles without committing one to the view that corporations are full moral persons

Keywords: corporate moral agency, corporate moral rights, human rights

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Giuliani, Elisa. "Human rights and corporate social responsibility in developing countries' industrial clusters." *Journal of Business Ethics* 133, no. 1 (2016): 39-54.

A recent preoccupation in scholarly research is the capacity of firms in developing country industrial clusters to comply with international corporate social responsibility (CSR) policies and codes of conducts. This research is at an early stage and draws on several—often quite distinct—scholarly traditions. In this paper, we argue that future work in this area would benefit from a more explicit examination of the connection between cluster firms and human rights defined according to the 1948 Universal Declaration of Human Rights and subsequent covenants and treaties. We argue that cluster firms' adoption of CSR policies, often indiscriminately imposed by global buyers, should be differentiated from firms' actual human rights practices. Based on this distinction, we elaborate a typology of industrial clusters (low-road, window-dressing, rights-oriented) and identify a set of factors likely to influence their practice. Against this background, we discuss an agenda for future research and elaborate on the potential methodological intricacies related to research on the interface between industrial clusters and human rights.

Keywords: human rights, corporate social responsibility (CSR), industrial clusters, developing countries

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Couttenier, Mathieu, and Sophie Hatte. "Mass media effects on non-governmental organizations." *Journal of Development Economics* 123 (2016): 57-72.

Globalization has raised concerns that multinational firms develop commercial activities at the expense of the environment or human rights, especially in developing countries. As firms' practices are not fully observable by stakeholders, NGOs have applied pressure on firms by organizing information campaigns. This paper studies how media coverage affects how effective NGOs are in monitoring firms. We make use of large media shocks, generated by big sports events, that crowd out media coverage of firms' practices in event host and participant countries, and increase coverage of sponsors. We find NGOs to respond consistently. NGOs are more likely to disseminate critical coverage of firms sponsoring sports events, and are less likely to spotlight firms' practices in the event host and participant countries. We also find that NGOs take advantage of sports events to increase their impact on sponsors, since campaigns about sponsors trigger a significant negative reaction in the stock market.

Keywords: developing countries, globalization, media, multinational, multinational firm, NGO, stock market, stocks

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Osuji, Onyeka K., and Ugochukwu L. Obibuaku. "Rights and corporate social responsibility: Competing or complementary approaches to poverty reduction and socioeconomic rights?." *Journal of Business Ethics* 136, no. 2 (2016): 329-347.

Following the situation of poverty in the rights paradigm, this paper explores the links between the rights-based and corporate social responsibility (CSR) approaches to the realization of socioeconomic rights in the broader context of an emerging recognition of CSR as private regulation of business behaviour. It examines complex theoretical and practical dimensions of responsibility and potential contributions of businesses to poverty alleviation and clarifies the apparent paradox of legal compulsion of essentially voluntary CSR activities. Rather than treat rights and CSR as parallel approaches to protecting socioeconomic rights, it is argued that CSR can be part of a coherent framework of laws and policies for legally translating broad human rights commitments to poverty reduction into concrete programmes. The paper demonstrates how legally propped CSR arrangements can support poverty reduction and appropriate task-specific contextualised definitions and boundaries of CSR that complement the rights-based approach. It is argued that human rights principles have normative dimensions to guide and help formulate policies, programmes and practices, which in turn allow for a creative use of and legal prop to CSR. The conceptualization of human rights is not restricted to one implementation method, and CSR can partly satisfy states' human rights obligations and transcend the narrow conventional human rights discourse on obligations of non-state actors.

Keywords: capability approach, corporate social responsibility, development, globalization, poverty, socioeconomic rights

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Posner, Michael. "Business & human rights: a commentary from the inside." *Accounting, Auditing & Accountability Journal* 29, no. 4 (2016): 705-711.

Purpose - The purpose of this paper is to first, provide an overview of the genesis of the business and human rights agenda; second, to identify key areas of focus in the emerging business and human rights agenda; and, finally, to argue for an approach to engaging business in the human rights agenda that is both challenging and practically orientated.

Design/methodology/approach - The paper draws on the author's ethnographic experiences both as a human rights advocate with Human Rights First (1978-2009) and as Assistant Secretary of State for the Bureau of Democracy, Human Rights and Labor at the US State Department (2009-2013).

Findings - The paper links the business and human rights agenda to the growth in size and power of corporations. It identifies six key areas of focus in this emerging agenda,

specifically, supply chains and labor rights, the extractive industries especially relating to security, information technology and issues of freedom of expression, agriculture and issues of child and forced labor, and investment and socially responsible investors. The paper contends that business schools have a crucial role to play in engaging businesses in a challenging and practical way to provide them with workable solutions to these challenges.

Research limitations/implications - The paper contends that we have come to the end of the beginning of the discussion of business and human rights and are now in the phase of defining what the rules are in this twenty-first century global economy. The paper provides important considerations for taking this phase forward.

Originality/value - This paper provides original insights into the emergence of the business and human rights agenda. It identifies key areas of focus along with a valuable approach to making progress in these areas.

Keywords: corporations, state, business schools, business and human rights

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Keenan, J. C., D. L. Kemp, and R. B. Ramsay. "Company–community agreements, gender and development." ***Journal of Business Ethics*** **135, no. 4 (2016): 607-615.**

Company-community agreements are widely considered to be a practical mechanism for recognising the rights, needs and priorities of peoples impacted by mining, for managing impacts and ensuring that mining-derived benefits are shared. The use and application of company-community agreements is increasing globally. Notwithstanding the utility of these agreements, the gender dimensions of agreement processes in mining have rarely been studied. Prior research on women and mining demonstrates that women are often more adversely impacted by mining than men, and face greater challenges in accessing development opportunities that mining can bring. Nonetheless, there is currently little guidance for companies, government or communities in bringing a gender perspective to the fore in mining and agreement processes. It is undisputed in human development literature that investment in women and sensitivity to gender delivers long-term health, education and local development outcomes. In mining and development, a number of key factors remain unexplored. These include: women's participation in agreement processes, the gendered distribution of agreement benefits, and the extent to which impacts and benefits influence women's development and economic inclusion. This paper presents the results of the first phase of an applied research project undertaken by the Centre for Social Responsibility in Mining (CSRM) at The University of Queensland and funded by the Minerals Council of Australia (MCA) and the Department of Foreign Affairs and Trade (DFAT). The project sought to connect with experienced practitioners who had been directly involved in mining and agreement processes to document and analyse grounded perspectives on gender dynamics and agreements, and connect those experiences with the broader literature. Findings from this study have implications for the role of mining companies and governments in promoting gender equality and

empowerment as part of their commitments to sustainable development. They also have implications for community groups and their representatives in terms of how they might engage in agreement processes to maximise women's participation and influence. In many social contexts, a key challenge will be navigating the territory of cultural norms and gender equality, particularly in cultures where women's influence in the public sphere is not strong. The authors argue that without consideration of a gender perspective, including gender's intersection with other factors such as class, race, poverty level, ethnic group and age, mining agreements will not be inclusive, may exacerbate gender inequalities, and fail to contribute to long-term sustainable development.

Keywords: females, research, participation, economic development, enterprises, international relations, international trade, poverty, empowerment, equality, ethics, investment, sex, sexual inequality, gold mining, health education, social class, mining industry, public sphere, race, social responsibility, strip mining, sustainable development, universities

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McPhail, Ken, and Carol A. Adams. "Corporate respect for human rights: meaning, scope, and the shifting order of discourse." ***Accounting, Auditing & Accountability Journal*** **29, no. 4 (2016): 650-678.**

Purpose - Drawing on Fairclough (1989, 2005), the purpose of this paper is to explore how respect for human rights is emerging and being operationalized in the discourse of 30 Fortune 500 companies in the mining, pharmaceutical and chemical industries at two key points in the recent evolution of the UN's business and human rights agenda. Specifically the paper explores the scope of rights for which corporations are accountable and, more specifically, the degree of responsibility a company assumes for enacting these rights.

Design/methodology/approach - The authors draw on Fairclough (1992) and Mashaw (2007) in a critical discourse analysis of corporate human rights disclosures of ten companies in each of the chemical, mining and pharmaceutical industries at two points in time coinciding with: first, the publication in 2008 of the Protect, Respect, Remedy policy framework; and second, the endorsement by the UN in 2011, of a set of Guiding Principles designed to implement this framework.

Findings - The study finds four grammars of respect and three different scopes of rights within specific corporate accountably disclosures on their responsibility to respect rights. Corporate constructions of human rights are broad: from labour rights, through social and political rights, to the right to health and a clean environment. The corporate discourse is one of promoting, realizing and upholding rights that construct the corporation as an autonomous source of power beyond the state.

Practical implications - The paper contends that the structuring of this emerging discourse is important, not only because the meaning and scope of corporate respect for rights

affects the lived experience of some of the most vulnerable in society, but also because it reflects a shifting the relationship between the state, business and society (Muchlinski 2012).

Originality/value - The authors develop a way of conceptualizing business human rights responsibilities and contend that the corporate human rights discourse of respect reflects a significant reconfiguration of political power.

Keywords: human rights, United Nations, discourse analysis, Guiding Principles on Business and Human Rights, Ruggie

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Jilles Hazenberg, *Transnational Corporations and Human Rights Duties: Perfect and Imperfect*, 17 HUM. RTS. REV. 479 (2016).

This paper aims, firstly, to bridge debates on human rights and Transnational Corporations (TNCs) within practical philosophy and those within the business and human rights literature and, secondly, to determine the extent to which human rights duties can be assigned to TNCs. To justifiably assign human rights duties to TNCs, it is argued that these duties need to be grounded in moral theory. Through assessment of two approaches from practical philosophy, it is argued that positive duties cannot be assigned to TNCs because their bindingness cannot be grounded in moral theory. A positive argument is introduced to interpret TNCs' human rights duties as corresponding to virtues rather than rights. Though such duties are indeterminate regarding what constitutes adequate performance, they can be made more determinate through legal instruments outside of positive human rights law. An approach is introduced exemplifying how such approaches can achieve the end of TNCs compliance with human rights norms.

Keywords: transnational corporations, human rights, philosophy, perfect duties, imperfect duties

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Olsen, Tricia, Kathleen Rehbein, and Michelle Karen Westermann-Behaylo. "Business and Human Rights: Decoupling Policy from Practice in the Oil and Gas Sector." *Academy of Management Proceedings*, 2016, no. 1 (2016): 10675.

Drawing from the decoupling literature, we employ a multilevel framework, including firm and external (including country level) factors, to investigate whether oil and gas firms with corporate social responsibility, human rights, and/or specific issue policies are more likely to align policy with actual practice. We develop a unique dataset combining two secondary data sources, Sustainalytics and the Corporations and Human Rights Database, to empirically examine industry behavior. We find that external factors such as 1) the level of rule of law and respect for democracy in the firm's home country, and 2) the intervention of non-governmental organizations, both strongly predict whether firms

will face allegations of human rights violations. Firm level factors such as 1) membership in specific global governance mechanisms, 2) length of time a firm has had a human rights policy, and 3) firm policies on specific issues such as indigenous people and the environment, all make it more, not less likely that firms will face allegations of human rights violations. We find convincing evidence of decoupling in the oil and gas industry when it comes to implementing human rights policies. Our findings suggest that policies are not enough; indeed, policies do not seem to transform corporate behavior as many would hope. There is a strong need for a robust rule of law in the home country and active monitoring by NGOs to ensure that firms fulfil their responsibility to respect human rights.

Keywords: business and human rights, decoupling, oil & gas industry

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Nurhayati, Ratna, Grantley Taylor, and Greg Tower. "The impact of international brands and awards on Indian textile and apparel firms' social disclosure practices." ***The Journal of Developing Areas*** **50, no. 5 (2016): 157-169.**

This study empirically investigates the extent of corporate social disclosure (CSD) practices by Indian textile and apparel (TA) listed firms for the 2010-2012 time period. In spite of an upward trend in CSD practices by Indian TA listed firms, the results indicate a consistent low level of such important disclosure practices over the three year period with an overall mean disclosure of 10.44%. The overall low extent of CSD by Indian TA firms and the potential large adverse impact of this sector to the country's social environment have major implications for future development of social reporting standards. Further analysis reveals that Indian TA listed firms commonly communicate social information relating to 'labor practices and decent work' while disclosure of 'human rights' is virtually non-existent. The finding may indicate that Indian TA firms place increasing importance in communicating labor practices related information as a possible strategy to alleviate tension amongst stakeholders in order to secure their societal legitimacy. Potential concern arises from noncommunication of social activities and related risks. Poor or non-existent disclosure may lead to questions whether Indian firms and their international brand-name affiliations have been transparent and accountable regarding their production and supply activities. The dearth of social disclosure by Indian TA firms has implications for foreign purchasers of branded products as international companies have been implicated in numerous sub-optimal social practices or incidents, at times leading to fierce criticism. The findings on the significant and positive influence of international brands and the interaction of this variable and international awards obtained on disclosure practices imply that such international exposures may put a higher level of pressure on Indian TA firms to communicate more social information as part of an overall package to better address global concerns on such crucial issues. The affiliation with international brand-name firms perhaps is the ultimate driver for the firms to provide more social information as a response to the growing awareness on such issues of their foreign renowned buyers. Firm characteristics control variables firm size, profitability and year of reporting are

positively associated with the extent of CSD whereas CEO duality is negatively associated with the extent of CSD.

Keywords: India, international brands and awards, social disclosure

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Shapiro, Brian. "Using traditional narratives and other narrative devices to enact humanizing business practices." *Journal of Business Ethics* 139, no. 1 (2016): 1-19.

This study examines how organizations may embed humanizing narrative devices and related activities in their management control systems to enact humanizing business practices. As defined here, narrative devices include complete stories as well as story fragments that may under certain circumstances invoke a shared narrative context. Humanizing narrative devices respect a person's dignity and capacity for personal growth, respect human rights, promote care and service for others, and improve an organization's ability to serve the common good rather than only narrow special interests. The first section discusses the sense-making and action-guiding properties of narrative devices, and then discusses principles for applying them in a manner that respects others in a diverse workplace. The second section adapts Simons' (Levers of control 1995) management accounting and control framework to trace interdependencies among an organization's narrative devices and related activities. The third section applies the combined narrative devices and systems framework to illustrate how an actual company has articulated, debated, revised, and enacted its core values over time. The concluding section discusses the analysis, its contributions to the literature, and implications for future research.

Keywords: business practice, humanizing values, narratives, storytelling

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van der Ploeg, Lidewij, and Frank Vanclay. "A tool for improving the management of social and human rights risks at project sites: The Human Rights Sphere." *Journal of Cleaner Production* 142 (2017): 4072-4084.

This paper identifies and addresses the challenges of implementing the corporate responsibility to respect human rights in practice at project sites. To support on-ground operational staff, we offer the Human Rights Sphere (HRS), a practical tool we developed from empirical research in three large-scale projects and from an analytical literature review. The tool is consistent with the United Nations Guiding Principles on Business and Human Rights (UNGP). The HRS comprises seven steps through which the understanding and addressing of the social and human rights impacts of projects and corporate human rights due diligence procedures can be enhanced. The HRS describes the various groups of rights-holders to be considered, the social and environmental impacts they may experience, and how these impacts can be linked to actual or potential human rights impacts. The HRS shows how corporate mitigation and compensation practices have to be improved to prevent human rights harm to workers

and communities. The HRS presents a comprehensive picture of the human rights side of projects and is presented as a practical tool that can be utilized by operational staff at all project phases. By utilising the HRS, multinational corporations will be better equipped to address the adverse human rights impacts of large projects. The Human Rights Sphere is a tool to help project staff manage human rights issues. The tool is based on the UN Guiding Principles on Business & Human Rights. Projects can cause social and environmental harm leading to human rights impacts. Rights-holder participation is essential in avoidance, mitigation and remediation. The tool's 7 steps enable staff to comprehend and address human rights impacts.

Keywords: social impacts, social risks, social impact assessment, human rights based approach, social licence to operate, corporate social responsibility

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Methven O'Brien, Claire, and Sumithra Dhanarajan. "The corporate responsibility to respect human rights: a status review." ***Accounting, Auditing & Accountability Journal*** **29, no. 4 (2016): 542-567.**

Purpose - The purpose of this paper is to discuss a wide range of significant developments that have emerged in the wake of the UNs endorsement of the Guiding Principles on Business and Human Rights (GPs) in June 2011. In particular, the paper offers a preliminary assessment of how the GPs' corporate responsibility to respect human rights has been interpreted and to what extent it has been operationalised through government action, business behaviour and the praxis of other social actors.

Design/methodology/approach - The paper provides a comprehensive assessment of a number of key developments related to Pillar 2 of the GPs - concerned with the corporate responsibility to respect human rights. More specifically, the paper considers a range of elements relating to corporate human rights due diligence, including: establishing a corporate human rights policy; the undertaking of human rights impact assessment; integrating findings of impact assessment, and; corporate human rights reporting.

Findings - Based on the assessment of recent developments and initiatives, the paper suggests that the corporate responsibility to respect human rights, as expressed in Pillar 2 of the GPs, embodies the culmination of significant progress in the sphere of corporate accountability. In doing so, the paper documents a plethora of innovations in regulation and praxis, led by actors in government and the corporate sector, civil society organisations, labour unions and others, in the areas of human rights due diligence, impact assessment and reporting. Yet overall, change is slow and partial and the results achieved are still unsatisfactory. Severe business-related human rights abuses remain endemic in many industry sectors and in many countries.

Research limitations/implications - The implementation of the GPs is at a key stage of development, with a multitude of initiatives and actors attempting to develop and

influence new forms of corporate governance. This paper provides an overview and assessment of these key developments.

Originality/value - This paper provides an important assessment and synthesis of key developments related to corporate responsibility for human rights.

Keywords: human rights, supply chain, impact assessment, due diligence, corporate accountability, UN Guiding Principles on Business and Human Rights

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Siddiqui, Javed, and Shahzad Uddin. "Human rights disasters, corporate accountability and the state: Lessons learned from Rana Plaza." ***Accounting, Auditing & Accountability Journal*** **29, no. 4 (2016): 679-704.**

Purpose – The purpose of this paper is to examine the state-business nexus in responses to human rights violations in businesses and questions the efficacy of the UN guiding principles on human rights in businesses, in particular in the ready-made garments (RMG) industry in Bangladesh. Drawing on Cohen's notion of "denial" and Black's (2008) legitimacy and accountability relationships of state and non-state actors, the study seeks to explain why such "soft" global regulations remain inadequate.

Design/methodology/approach – The empirical work for this paper is based on the authors' participation in two multiple-stakeholder advisory consultation meetings for the RMG sector in Bangladesh and 11 follow-up interviews. This is supplemented by documentary evidence on human rights disasters, responses of the state and non-state actors and human rights reports published in national and international newspapers.

Findings – The paper provides clear evidence that the state-business nexus perpetuates human rights disasters. The study also shows that the Bangladeshi state, ruled by family-led political parties, is more inclined to protect businesses that cause human rights disasters than to ensure human rights in businesses. The economic conditions of the RMG industry and accountability and legitimacy relationships between state and non-state actors have provided the necessary background for RMG owners to continue to violate the safety and security of the workplace and maintain inhumane working conditions.

Research limitations/implications – Complex state politics, including family, kinship and wealthy supporters, and economic circumstances have serious implications for the efficacy of the UN guiding principle on human rights for business. This paper calls for broader political and economic changes, nationally and internationally.

Originality/value – The study highlights the perpetuation of corporate human rights abuses by the state-business nexus, and indicates that human rights issues continue to be ignored through a discourse of denial. This is explained in terms of legitimacy and accountability relationships between state and non-state actors, bounded by complex political and economic conditions.

Keywords: Bangladesh, human rights, state, corporate accountability

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Tamo, Atabongawung. "NEW THINKING ON TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS TOWARDS A MULTI-STAKEHOLDER APPROACH." ***Netherlands Quarterly of Human Rights*** **34, no. 2 (2016): 147-173.**

Although Transnational Corporations (TNCs) enjoy rights alongside sovereign States, such as the right to arbitrate in international investment disputes, the idea of holding them to account for alleged human violations has been elusive. While there are renewed efforts at the UN Human Rights Council towards an international legally binding instrument aimed at holding TNCs accountable for violations of international human rights standards, this article explores and analyses the usefulness of a Multi-Stakeholder Initiative (MSI) approach in this process. Accordingly, it seeks to reformulate the debate on the accountability of TNCs by affirming a MSI engagement as a workable complementary process, which – although it is being downgraded in most literature on TNCs and human rights accountability – might nevertheless provide best possible outcomes for such a heated subject. Drawing on examples from the Kimberley Process and the global fight against conflict diamonds, it will be argued that despite that fact that MSIs are not an entire replacement of hard-law solutions to global regulatory challenges, they do in principle offer a legitimate and useful approach to the human rights accountability of TNCs.

Keywords: corporate social responsibility – models, stakeholder theory – usage, multinational corporations -- social policy

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Brenkert, George G. "Business Ethics and Human Rights: An Overview." ***Business and Human Rights Journal*** **1, no. 02 (2016): 277-306.**

In the last several decades a diverse movement has emerged that seeks to extend the accountability for human rights beyond governments and states, to businesses. Though the view that business has human rights responsibilities has attracted a great deal of positive attention, this view continues to face many reservations and unresolved questions.

Business ethicists have responded in a twofold manner. First, they have tried to formulate the general terms or frameworks within which the discussion might best proceed. Second, they have sought to answer several questions that these different frameworks pose: A. What are human rights and how justify one's defence of them?; B. Who is responsible for human rights? What justifies their extension to business?; and C. What are the general features of business's human rights responsibilities? Are they mandatory or voluntary? How are the specific human rights responsibilities of business to be determined?

Within the limited space of this article, this article seeks to critically examine where the discussion of these issues presently stands and what has been the contribution of business ethicists.

Keywords: business ethics, complicity, human rights, Ruggie, sphere of influence

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Jiang, Min. "Chinese Internet Business and Human Rights." ***Business and Human Rights Journal*** **1, no. 01 (2016): 139-144.**

The dubious human rights record of foreign internet companies in China has been the subject of popular and scholarly scrutiny.1 This article surveys three recent developments in the intersection of information technology and human rights in China: (i) the rise and fall of Chinese social media firms (Sina Weibo and WeChat) and the prospect for advancing human rights via Chinese tech companies; (ii) the social impacts of foreign internet firms currently operating in China; and (iii) Chinese internet businesses' 'going out' strategy and its human rights ramifications abroad.

Keywords: China, Google, human rights, internet business, social media

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GÖTZMANN, Nora. "Human Rights Impact Assessment of Business Activities: Key Criteria for Establishing a Meaningful Practice." ***Business and Human Rights Journal*** **(2016): 1-22.**

This article considers the emerging practice of human rights impact assessment (HRIA) in the field of business and human rights. As HRIA is relatively new, current approaches vary considerably, indicating that there is a need for the business and human rights community to engage in further dialogue and debate about what good practice HRIA can and should entail. I propose five key criteria for HRIA of business activities: (1) applying international human rights standards; (2) considering the full scope of impacts; (3) adopting a human rights-based process; (4) ensuring accountability; and (5) addressing impacts according to severity. It is suggested that these criteria should form the basis of methodologies used to assess human rights impacts of business activities, with the view to developing HRIA practice that meaningfully contributes to preventing and addressing adverse impacts of business activities on the human rights enjoyment of workers and communities.

Keywords: corporate social responsibility, due diligence, Guiding Principles on Business and Human Rights, human rights-based approach

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Arnold, Denis G. "Corporations and human rights obligations." ***Business and Human Rights Journal*** **1, no. 02 (2016): 255-275.**

The claim that corporations have human rights obligations remains contentious and can be fraught with confusion. This article synthesizes existing corporate human rights theory and responds to objections to the idea that transnational corporations (TNCs) have human rights obligations. The argument proceeds in three stages. The first section describes the different forms TNCs take and explains why TNCs are properly understood as moral agents responsible for their policies and practices. The second section reviews and explains different philosophical theories of corporate human rights obligations. The third section articulates and responds to objections to the idea that corporations have human rights obligations. The main conclusion of this article is that there are multiple, compelling and overlapping justifications of corporate human rights obligations.

Keywords: corporate ontology, corporate moral agency, human rights obligations, corporate social responsibility, international business ethics

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Shlomit Azgad-Tromer, *The Virtuous Corporation: On Corporate Social Motivation and Law*, U. PA. J. BUS. L. (forthcoming 2016).

Available at SSRN: https://ssrn.com/abstract=2843723

Above and beyond their traditional financial roles, contemporary corporations are increasingly assuming a normative role, promoting social agendas. The myriad normative roles assumed by the corporation, from profit-centered corporate goodness, to environmental and human rights corporate agendas and to corporate philanthropy, comprise an emerging corporate social identity. This article asks what induces corporations to pursue social agendas and provides an initial taxonomy for corporate social motivation, showing that the incentives to normative corporate conduct are often rooted in the business purpose itself. Central policy challenges are discussed, outlining the promise and the peril of emerging corporate social identities.

Keywords: sustainability, benefit corporation, corporate goodness, corporate social responsibility, impact investments, socially responsible investments, conscious consumers, employee engagement, corporate social motivation, conscious capitalism, benefit corporation

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Zore, Mira, Majda Bastič, and Matjaž Mulej. "Seven or Fewer Core Contents of Social Responsibility?." *Naše gospodarstvo/Our economy* 62, no. 3 (2016): 29-38.

Corporate social responsibility (CSR) replaces causes of the current crisis by principles of accountability, transparency, ethics, and respect for organizational stakeholders, the law, international standards, and human rights (International Organization for Standardization, 2010). Interdependence and a holistic approach link them and CSR's core contents. We examined if Slovene companies involve all seven CSR core contents of ISO 26000 (CSR to employees, customers, local community, environment, human rights,

ethical behavior, and leadership). The analysis united three of them-CSR to employees, ethical behavior, and human rights-into CSR leadership to employees.

Keywords: CSR, customers, employees, ISO 26000, leadership, M140, Slovenia

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Cui, Jinhua, Hoje Jo, and Manuel G. Velasquez. "Community religion, employees, and the social license to operate." ***Journal of Business Ethics*** **136, no. 4 (2016): 775-807.**

The World Bank recently noted: "Social license to operate has traditionally referred to the conduct of firms with regard to the impact on local communities and the environment, but the definition has expanded in recent years to include issues related to worker and human rights" (World Bank 2013). In this paper, we examine a factor that can influence the kind of work conditions that can facilitate or obstruct a firm's attempts to achieve the social license to operate (SLO). Specifically, we examine the empirical association between a company's employee practices and the religiosity of its local community by investigating their fixed and endogenous effects. Using a large and extensive U.S. sample, we find a positive association between the "employee friendly" practices of a firm and the religiosity of the local community after controlling for several firm characteristics. In addition, after mitigating endogeneity with the dynamic panel system generalized method of moment and after employing several other econometric tests, we still find a robust positive association between the religiosity of the local community and employee-friendly practices. Since recent research has shown that the firm's treatment of its stakeholders is a key to achieving an SLO, and since employees constitute a highly significant stakeholder group, we interpret our results as supporting the view that religion is an important influence on the kinds of employee practices that can increase the likelihood that a firm will acquire the SLO.

Keywords: communities, banking, human rights, working conditions, religiosity, interest groups

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Wirth, Herbert, Joanna Kulczycka, Jerzy Hausner, and Maciej Koński. "Corporate Social Responsibility: Communication about social and environmental disclosure by large and small copper mining companies." ***Resources Policy*** **49 (2016): 53-60.**

Corporate Social Responsibility (CSR) is now well known concept which is widely used in practice by mining companies, both large and small. The main role of CSR for mining companies is to ensure a responsible business venture to reduce potential risks arising from safety issues and a potential negative environmental footprint and to attract better employees and gain acceptance among local society. However the scope and function of CSR activities depend not only on the profile and size of companies, but also on the area where they conduct their mining operations (value to society), so sometimes it could be unclear what function CSR plays in developing economies. Therefore the aim of the

paper is to discuss how multinational corporations have developed their CSR policies, and to what extent they have adopted these policies in developing countries. Moreover the goal of this article is to compare their activities with small and medium enterprises (SMEs) operating in different regions of the world. It was shown that large copper producers have a long term policy on CSR and conduct a wide scope of CSR activities which depend on local needs, whereas SMEs are focused on solving ad-hoc issues rather than developing long-term strategic relations. SMEs have already recognised the need to strengthen their social policies on engaging with communities in order to protect their human rights and avoid negative outcomes, mostly in more remote locations. At the same time the companies analysed recognise the fact that as demand for resources increases, the potential for a negative impact on communities and social conflicts also rises.

Keywords: copper, developing countries, mining, multinational, resources, social responsibility

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Kamminga, Menno T. "Company Responses to Human Rights Reports: An Empirical Analysis." *Business and Human Rights Journal* 1, no. 01 (2016): 95-110.

How do companies respond to their critics? Are there significant differences in responsiveness between industrial sectors, between the countries in which companies are based, and between the companies themselves? Do responses reflect the belief that companies have a responsibility to respect human rights? Do companies that participate in the UN Global Compact react more responsibly than those that do not? This article attempts to answer these questions by examining company responses to civil society reports contained in the company response database of the Business & Human Rights Resource Centre. The analysis covers responses to 1877 requests made by the Resource Centre from 2005–2014.

Keywords: civil society, company response rate, corporate due diligence

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Aizawa, Motoko, and Salil Tripathi. "Beyond Rana Plaza: Next Steps for the Global Garment Industry and Bangladeshi Manufacturers." *Business and Human Rights Journal* 1, no. 01 (2016): 145-151.

Keywords: Bangladesh, exports, garments, Rana Plaza, workers

Bryden, Alan, and Lucía Hernández. "Addressing Security and Human Rights Challenges in Complex Environments." *Business and Human Rights Journal* 1, no. 01 (2016): 153-158.

Keywords: business, complex environment, human rights, private actors, security

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Kemp, Deanna, and John R. Owen. "Grievance handling at a foreign-owned mine in Southeast Asia." ***The Extractive Industries and Society*** **4, no. 01 (2017): 131-139.**

This article provides grounded insights about an operational-level grievance mechanism at a foreign owned mine in Southeast Asia. The authors argue that mining companies cannot claim neutrality in contexts where States exercise high levels of authority. Companies must take an active role in understanding the socio-political context, and their role in influencing that context. Without this knowledge, companies cannot claim to discharge their responsibility to respect human rights under the UN Guiding Principles on Business and Human Rights (UNGPs). Across Southeast Asia, there are a range of complex human rights-related issues associated with resource extraction, including, regulatory architecture, institutional capacity, corruption, political freedoms, use of security forces, involuntary land acquisition and resettlement. At this stage, little is known about the degree to which these and other human rights considerations are being integrated into due diligence processes, or whether, in fact human rights due diligence is a being undertaken by businesses operating in the region. This article provides grounded insights about an operational-level grievance mechanism at a foreign owned mine in Southeast Asia. The authors argue that mining companies cannot claim neutrality in contexts where States exercise high levels of authority.

Keywords: mining, remedy, community relations, human rights, grievance mechanisms

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Camilleri, Mark. "Corporate Citizenship and Social Responsibility Policies in the United States of America." ***Sustainability Accounting, Management and Policy Journal*** **8, no. 1 (2017): 77-93.**

Purpose – The aim of this case study is to outline relevant regulatory guidelines on environmental, social and governance issues in the USA. This contribution includes a thorough analysis of several institutional frameworks and guiding principles that have been purposely developed to foster corporate citizenship behaviours.

Design/methodology/approach – A case study methodology involved a broad analysis of US regulatory policies, voluntary instruments and soft laws that have stimulated organisations to implement and report their responsible behaviours.

Findings – This contribution ties the corporate citizenship behaviours with the institutional and stakeholder theories. The case study evaluated the US's federal government, bureaus and its agencies' policies on human rights, health and social welfare, responsible supply chain and procurement of resources, anticorruption, bribery and fraudulent behaviours, energy and water conservation practices as well as environmental protection, among other issues.

Research limitations/implications – Past research may have not sufficiently linked corporate citizenship with the corporate social responsibility (CSR) paradigm. This research reports how different US regulatory institutions and non-governmental organisations are pushing forward the social responsibility, environmental sustainability as well as the responsible corporate governance agenda.

Originality/value – This research critically analyses US policy and regulatory instruments including relevant legislation and executive orders that are primarily intended to unlock corporate citizenship practices from business and industry. It has also provided a conceptual framework for the corporate citizenship notion. In conclusion, it implies that there are business and political cases for corporate citizenship.

Keywords: corporate citizenship, environmental responsibility, social responsibility, stakeholder engagement, sustainability, USA CSR policy

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Götzmann, Nora, Frank Vanclay, and Frank Seier. "Social and human rights impact assessments: what can they learn from each other?." *Impact Assessment and Project Appraisal* 34, no. 1 (2016): 14-23.

We examine key commonalities and differences between social impact assessment (SIA) and human rights impact assessment (HRIA) conducted for private sector projects to consider what these two fields might learn from each other. As HRIA is an emerging practice, current approaches are diverse and there is a lack of a robust understanding about how HRIA and SIA relate to each other. We suggest that the two fields have much in common in terms of: their objective to identify and address adverse impacts; their focus on process as well as outcomes; and their consideration of how to ensure the meaningful inclusion of vulnerable individuals and groups. However, there is also significant divergence in terms of: the standards applied; the relevance of project benefits; and the recognition of stakeholders as rights-holders and duty-bearers. We suggest that the further exploration of these areas of difference has the potential to create valuable cross-learning between SIA and HRIA, as well as the potential to open up spaces for joint initiatives where the two fields might address current shortcomings together.

Keywords: corporate responsibility to respect, due diligence, social licence to operate, United Nations Guiding Principles on Business and Human Rights

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Bianchi Martini, Silvio; Corvino, Antonio; Doni, Federica. "Investigating the Respect of Human Rights within Corporate Social Responsibility Reporting: Evidence from the European Oil and Gas Sector." *International Journal of Business Research* 16, no. 2 (2016): 135-151.

Recent collapses, corporate frauds and the crisis of investors' confidence have moved things toward the development of ethical codes and the companies' orientation in the direction of a more sustainable behavior, which is now building up all over the world. In 2011, United Nations (UN) claims that companies have to "seek to prevent or to mitigate adverse human rights impacts that are linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts" (Guiding Principles, No. 13, p. 14). In this perspective, Human rights (HRs) principles are becoming a crucial theme in embedding sustainability issues in key company functions. Indeed, companies should be prepared to disclose actions to address their HRs impacts through a formal communication especially to affected stakeholders. The form and the frequency of this communication may provide suitable and accessible information giving an adequate measure of transparency and accountability to firms' audiences that may be impacted or to other relevant stakeholders (i.e. investors and so on). Building on these reflections, the research question of the present study pertains the influence of firm approach about the Corporate Social Responsibility (CSR) reporting on firm commitment towards the safeguard of HRs. The foregoing research question is explored through six hypotheses into which the other determinants investigated are: firm profitability, corporate governance model and firm size. From an empirical standpoint, a longitudinal analysis, covering the time frame 2010-2014, is carried out on a sample of 42 European listed large-size companies operating in the oil & gas industry. Supportive empirical evidence ensues from the adoption of random effects (RE) regression models for panel data.

Keywords: accountability, corporate governance, ethical, firm, firm size, firms, gas, governance, oil, social responsibility

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Jeremy S Goldstein, *CSR Best Practice for Abolishing Child Labor in the Travel and Tourism Industry*, 44 DENV. J. INT'L L. & POL'Y 475 (2016).

The United Nations Guiding Principles on Business and Human Rights ("UNGP") states that "business enterprises should respect human rights[,]" and that "the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate." An effective CSR program which ensures that corporate activities respect human rights can have a significant positive impact on the way a corporation interacts with its customers, the communities in which it operates, its investors, and other stakeholders. CSR requires that corporations adopt policies, plan initiatives, and regulate their corporate environment in a manner which utilizes a triple bottom-line approach that considers the impact its business activities have on people and planet, not just profit. It requires that corporate policy be drafted in adherence to available codes of conduct, and include reliable certification and transparent reporting. It also requires that corporations take action to remedy violations of their internal policy. CSR policies which enumerate prohibitions on child labor throughout the supply chain, consistent, at minimum, with international standards, can be "invaluable weaponry in the battle against the exploitation of children."

Following this introduction, section II discusses the fundamental rights of children and the international standards for child labor rights, and presents relevant statistics on child labor worldwide, paying particular attention to developing nations with a significant tourism sector. It highlights the fundamental consequences associated with child labor, including the short-term and long-term effects on child laborers' health, wellbeing, and livelihoods. Section III discusses the T&T industry, highlighting its contribution to development, international co-operation, and education, and the negative impact it has on people and planet. It discusses the impact of T&T on child labor rights and presents available statistics on child labor in the industry, the types of jobs performed by child laborers in the industry, and the economic, cultural, and environmental impacts of tourism which affect children. Section IV discusses CSR in detail, including its definitions and international founding documents, focusing on guidelines with child labor protections and documents with specific guidance for the T&T industry. Section V presents examples of best practice CSR initiatives and policies in the T&T industry, paying specific attention to policies and initiatives directly addressing child labor, including the CSR policies of industry leaders Accor hotels, Marriott hotels, and Intrepid Travel. Section VI concludes with the authors' opinion and a call for awareness and action.

Keywords: criminal law & procedure, criminal offenses, crimes against persons, domestic offenses, children, penalties, energy & utilities law, mining industry, pensions & benefits law, governmental employees, U.S. Civil Service Retirement System

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Dana Raigrodski, *Creative Capitalism and Human Trafficking: A Business Approach to Eliminate Forced Labor and Human Trafficking from Global Supply Chains*, 8 WM. & MARY BUS. L. REV. 71 (2016).

A great amount of revenue generated by businesses in the global economy can be linked to the trafficking and enslavement of human beings. Yet, the current discourse on human trafficking fails to recognize the magnitude of benefit consumers, businesses, and economies gain from the work of forced and trafficked labor. Moreover, the limited efforts that seek to address this situation have focused on ways to encourage businesses to voluntarily adopt more socially responsible practices. These measures have had only limited success, and are generally believed to be in tension with the for-profit purposes of businesses. Hence, the task of convincing businesses to truly unearth and remedy human trafficking in their supply chains seems an uphill battle. This article challenges these prevailing views and offers a business approach to eliminate forced labor and human trafficking from global supply chains. Relying on a series of business studies that encourage strategic use of corporate social responsibility in order to increase competitiveness and pursue shared value, this Article makes the case for businesses to pursue supply chains clean of forced and trafficked labor as a core business strategy which is consistent with--and even advances--their profit-seeking goals. Many successful companies have incorporated environmental sustainability into their business models and

achieved short-term profits and long-term added value. A few leading apparel manufacturers are similarly focusing on responsible yet profitable labor practices, and preliminary data from the International Labor Organization (ILO) Better Work Program demonstrates linkages between better work conditions and improved market competitiveness. Using this data, this Article shows that business policies that minimize the incentives to use forced and trafficked labor do not inherently compromise profits and can also improve a business's bottom line. In doing so, it suggests that the task of convincing business leaders to adopt better policies may be less challenging if framed as a core business strategy in the pursuit of profit.

Keywords: human trafficking, slavery, forced labor, corporate citizenship, corporate social responsibility (CSR), supply chains, human rights, global trade, business management, profit missions, benefit corporations

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Scott J. Shackelford, Timothy L. Fort and Danuvasin Charoen, *Sustainable Cybersecurity: Applying Lessons from the Green Movement to Managing Cyber Attacks*, 2016 U. ILL. L. REV. 1995 (2016).

The multifaceted cyber threat is increasingly impacting the bottom lines of firms and is spilling over into larger issues of geopolitical importance including international security. Firms, in particular managers and boards of directors, are at the epicenter of this storm, but so far surveys have revealed that few businesses are taking the necessary steps to safeguard their private data and enhance cybersecurity. As Howard A. Schmidt, the former U.S. Cybersecurity Coordinator, stated: "[W]hile there is a cost to doing more to improve cybersecurity, there is a bigger cost if we do not and that cost is measured not only in dollars, but in national security and public safety." This Article argues that organizations should treat cybersecurity as a matter of corporate social responsibility to safeguard their customers and the public, such as by securing critical national infrastructure. It is in corporations own, long-term self-interest (as well as that of national security) to take such a wider view of private-sector risk management practices so as to encompass less traditional factors akin to what companies have done with respect to sustainable development.

Keywords: corporate social responsibility, cybersecurity, cyber attack, sustainability, environmental law and policy

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Barnali Choudhury, *Social Disclosure*, 13 BERKELEY BUS. L.J. 183 (2016).

Globally, there is a growing interest in using disclosure rules in corporate and securities law to achieve social policy goals. The blending of corporate law with social issues is a transformation of disclosure obligations, which have traditionally focused on reducing information asymmetries and instilling confidence in the market. At the same time, the amalgamation of disclosure requirements with social goals signals a convergence of

private and public goals. Private corporations are now being asked to take on a role in promoting social policies — a role traditionally allocated to governments.

Against this background, this article examines the utility of disclosure rules to promote social policies. The article finds that the role for public issues in the private area of corporate and securities law is limited, but concludes — from a comparative perspective — that disclosure rules which are narrow in scope and boast a high degree of specificity can be effective supplementary devices for curing corporate ills.

Keywords: comparative corporate law, corporate social responsibility, corporate accountability, disclosure, human rights, non-financial disclosure

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Alina S. Ball, *Social Enterprise Governance*, 18 U. PA. J. BUS. L. 919 (2016).

The social enterprise movement has ushered in a promising new wave of companies using market-based strategies to advance social and environmental change. The longevity and growth of social enterprises will be determined by their ability to balance the complex and often competing interests within these unique business entities. The established corporate governance regime, which predominately addresses the characteristics of public companies, does not provide adequate oversight for promoting good corporate governance within the social enterprise sector. This Article argues that the benefit reporting requirements in hybrid-corporation statutes offer an innovative mechanism for encouraging and maintaining good social enterprise governance. Using the benefit reporting requirements within hybrid-corporation statutes as a model, this Article provides a normative framework and establishes the implementation principles for social enterprise governance across various legal entities. By counseling social enterprises on how to promote participatory democracy and increase the company's capacity to detect and address problems, corporate lawyers serve a critical function in developing social enterprise governance. Using an approach guided by corporate lawyers and informed by social enterprise practitioners would build on the traditional corporate governance paradigm to develop narrowly tailored mechanisms that facilitate a more resilient social enterprise sector.

Keywords: corporate governance, social enterprise, benefit corporation, benefit reporting, new governance theory

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Mani, V., Rajat Agarwal, Angappa Gunasekaran, Thanos Papadopoulos, Rameshwar Dubey, and Stephen J. Childe. "Social sustainability in the supply chain: Construct development and measurement validation." *Ecological Indicators* 71 (2016): 270-279.

Research on social sustainability in developing countries has recently gained importance for both academics and practitioners. Studies in the supply chain management field take

either a supplier or a manufacturer perspective that address predominantly corporate social responsibility (CSR) issues referring to the internal stakeholders. Our research integrates the literature on supplier, manufacturer, and customer responsibility and proposes the concept of supply chain social sustainability (SCSS) that refers to addressing social issues within the overall (upstream and downstream) supply chain. Furthermore, we develop and empirically validate scales for measuring SCSS using in-depth interviews and a survey in the Indian manufacturing industry. Our results suggest that SCSS consists of six underlying dimensions, namely equity, safety, health and welfare, philanthropy, ethics, human rights, in a 20-item valid and reliable scale. We discuss the implications of the findings for research and practice and suggest future research avenues.

Keywords: sustainability, social sustainability, supply chain social sustainability, supply chain, India, manufacturing

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Makarem, Suzanne C., and Haeran Jae. "Consumer boycott behavior: an exploratory analysis of twitter feeds." *Journal of Consumer Affairs* 50, no. 1 (2016): 193-223.

Boycott movements are often one of the most effective anticonsumption tactics used against companies that engage in practices deemed unethical or unjustified. This research explores the motives, causes, and targets of consumer boycott behavior using content analysis of Twitter feeds. Additionally, human sentiment analysis is used to investigate the relationship between boycott motives and the emotional intensity of boycott messages. The findings from analyzing a sample of 1,422 tweets show that while human rights issues constitute the leading cause of boycotts, business strategy decisions and corporate failures are also frequent causes, with for-profit providers of products and services being the most common boycott targets. The results also indicate that although consumer boycott messages are more commonly motivated by instrumental motives, noninstrumental motives have higher emotional intensity. This study provides a deeper understanding of consumer boycott behavior, and offers implications for consumers and businesses.

Keywords: research, enterprises, boycotts, human rights, services, consumers, content analysis

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Shaukat, Amama, Yan Qiu, and Grzegorz Trojanowski. "Board attributes, corporate social responsibility strategy, and corporate environmental and social performance." *Journal of Business Ethics* 135, no. 3 (2016): 569-585.

In this paper, we draw on insights from theories in the management and corporate governance literature to develop a theoretical model that makes explicit the links between a firm's corporate social responsibility (CSR) related board attributes, its

board CSR strategy, and its environmental and social performance. We then test the model using structural equation modeling approach. We find that the greater the CSR orientation of the board (as measured by the board's independence, gender diversity, and financial expertise on audit committee), the more proactive and comprehensive the firm's CSR strategy, and the higher its environmental and social performance. Moreover, we find this link to be endogenous and self-reinforcing, with superior CSR performers tending to further strengthen their board CSR orientation. This result while positive is also suggestive of the widening of the gap between the leads and laggards in CSR. Therefore, the question arises as to how 'leaders' are using their superior CSR competencies seen by many scholars as a source of corporate (at times unfair) competitive advantage. Stakeholders of corporations therefore need to be cognizant of this aspect of CSR when evaluating a firm's CSR activities. Policy makers also need to be cognizant of these concerns when designing regulation in this field.

Keywords: board of directors, corporate governance, corporate social responsibility (CSR), resource based view (RBV), resource dependence theory (RDT), structural equation modeling (SEM)

Gilad, Sharon, Saar Alon‐Barkat, and Alexandr Braverman. "Large‐Scale Social Protest: A Business Risk and a Bureaucratic Opportunity." ***Governance*** **29, no. 3 (2016): 371-392.**

The public versus private nature of organizations influences their goals, processes, and employee values. However, existing studies have not analyzed whether and how the public nature of organizations shapes their responses to concrete social pressures. This article takes a first step toward addressing this gap by comparing the communication strategies of public organizations and businesses in response to large-scale social protests. Specifically, we conceptualize, theorize, and empirically analyze the communication strategies of 100 organizations in response to large-scale social protests that took place in Israel during 2011. We find that in response to these protests, public organizations tended to employ a "positive-visibility" strategy, whereas businesses were inclined to keep a "low public profile." We associate these different communication strategies with the relatively benign consequences of large-scale social protests for public organizations compared with their high costs for businesses.

Keywords: values, protest movements, risk

Russell, Cristel Antonia, Dale W. Russell, and Heather Honea. "Corporate Social Responsibility Failures: How do Consumers Respond to Corporate Violations of Implied Social Contracts?." ***Journal of Business Ethics*** **136, no. 4 (2016): 759-773.**

This research documents consumers' potential to monitor corporations' License to Operate through their consumption responses to corporate social responsibility failures.

The premise is that the type of social contracts or standards in place may determine how consumers, through their individual and collective behaviors, can play a direct role in influencing corporate behavior, when corporations fail to meet social responsibility standards. An experiment conducted with a large sample of consumers in the United States shows that consumers respond differently to a company's failure in its social responsibilities depending on whether the violated standard is a government mandate or a voluntary commitment and depending on the consumers' own environmental consciousness. The findings highlight the potential power of individual consumers and consumer collectives in narrowing the governance gaps relative to social and environmental issues and reducing the likelihood of CSR failures.

Keywords: corporate social responsibility, ethical consumers, individual boycotts, social contract, collective action

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III. POLITICAL SCIENCE/ GOVERNMENT

Payne, Leigh A., and Gabriel Pereira. "Corporate Complicity in International Human Rights Violations." ***Annual Review of Law and Social Science*** **12 (2016): 63-84.**

Two literatures—business and human rights and transitional justice—can be usefully combined to consider the issue of corporate complicity in past human rights violations in dictatorships and armed conflicts. But although the transitional justice literature emphasizes the positive role that international pressure plays in advancing justice, the business and human rights literature identifies international constraints in the area of corporate abuses. These include the lack of settled law establishing businesses' human rights responsibilities, the absence of courts to adjudicate corporate human rights violation cases, and the international focus on voluntary principles over legal obligations. Despite this unpropitious international climate, civil society mobilization and judicial innovation have advanced accountability efforts and overcome the strong veto power of business in some countries, often creatively blending international and domestic law. These efforts from below provide access to justice for victims and potential models for overcoming the current accountability gap.

Keywords: human rights, business, corporations, transitional justice, truth commissions, voluntary principles

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Turkuler Isiksel, ***The rights of man and the rights of the man-made: corporations and human rights*****, 38 HUM. RTS. Q. 294 (2016).**

The Citizens United and Hobby Lobby decisions of the US Supreme Court stoked the longstanding controversy over the court's doctrine that corporations are persons entitled to certain constitutional rights on the same basis as citizens. It is less widely noted that, in some fields of international economic law, firms are increasingly considered not just legal persons but bearers of human rights. This article critically examines the incipient arrogation of human rights discourse in the context of international investment arbitration, where the claims of firms are often articulated and adjudicated with language and standards borrowed from human rights law. This development, which the article describes as the dehumanization of human rights, is part of a larger process whereby international economic institutions accord legal recognition and certain protections to private economic actors. The article traces the important implications of business corporations being considered as bearers of human rights for determining the proper scope and purpose of international human rights norms, and for conceptualizing their relationship to constitutional democracy.

Keywords: international law and human rights, human rights, international business enterprises -- law and legislation

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Upendra, Baxi. "Human Rights Responsibility of Multinational Corporations, Political Ecology of Injustice: Learning from Bhopal Thirty Plus?." *Business and Human Rights Journal* 1, no. 1 (2016): 21-40.

This article addresses human rights responsibilities of multinational corporations (MNCs) in the light of what I describe as the four Bhopal catastrophes. More than thirty years of struggle by the valiant violated people to seek justice is situated in the contemporary efforts of the United Nations to develop a new discursivity for human rights and business—from the Global Compact to the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, the Guiding Principles on Business and Human Rights, and the more recent process to elaborate a legally-binding international instrument.

Keywords: Bhopal, Guiding Principles on Business and Human Rights, justice, mass torts, UN Draft Norms

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de Schutter, Olivier. "Towards a new treaty on business and human rights." *Business and Human Rights Journal* 1, no. 01 (2016): 41-67.

This article examines the legal as well as political feasibility of four potential options for a legally-binding international instrument in the area of business and human rights. The four options that the open-ended intergovernmental working group may wish to consider while negotiating an instrument are: (i) to clarify and strengthen the states' duty to protect human rights, including extraterritorially; (ii) to oblige states, through a framework convention, to report on the adoption and implementation of national action plans on business and human rights; (iii) to impose direct human rights obligations on corporations and establish a new mechanism to monitor compliance with such obligations; and (iv) to impose duties of mutual legal assistance on states to ensure access to effective remedies for victims harmed by transnational operations of corporations. As these options are not mutually exclusive, the author argues that a hybrid instrument building on elements of the first and the fourth option may be the best way forward both in terms of political feasibility and improving access to effective remedies for victims.

Keywords: access to effective remedies, corporate veil, extraterritorial duty to protect, international treaty, mutual legal assistance

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McPhail, Ken, Robert Ochoki Nyamori, and Savitri Taylor. "Escaping accountability: a case of Australia's asylum seeker policy." *Accounting, Auditing & Accountability Journal* 29, no. 6 (2016): 947-984.

Purpose – The purpose of this paper is to address two questions: first, what contracts, instruments and accounting activities constitute Australia's offshore asylum seeker

processing policy in practice? Second, how are notions of legitimacy and accountability mediated through the network constituted by this policy?

Design/methodology/approach – The paper is located in the critical interpretivist approach to accounting research. It is based on an exhaustive documentary analysis. Policy documents, contract documents, records of parliamentary inquiries (Hansard) and legislation were analysed drawing on a network policy perspective.

Findings – The paper finds that the Australian Government has sought to escape its accountability obligations by employing a range of approaches. The first of these approaches is the construction of a network involving foreign states, private corporations and non-government organizations. The second is through a watered down accountability regime and refusal to be accountable for the day-to-day life of asylum seekers in offshore processing centres through a play with the meaning of "effective control". Yet while the policy network seems designed to create accountability gaps, the requirement within the network to remain financially accountable undermines the governments claims not to be responsible for the conditions in the detention camps.

Research limitations/implications – The paper focuses largely on the period starting from when Kevin Rudd became Prime Minister to the death in Papua New Guinea of asylum seeker Reza Barati on 17 February 2014. Earlier periods are beyond the scope of this paper.

Practical implications – The paper will result in the identification of deficiencies inhuman rights accountability for extra-territorialized and privatised immigration detention and may contribute towards the formulation of effective policy recommendations to overcome such deficiencies. The paper also provides empirical data on, and academic understanding of, immigration detention outsourcing and offshoring.

Social implications – The paper will inform debate regarding treatment of unauthorized maritime arrivals and asylum seekers generally.

Originality/value – The paper provides the first detailed and full understanding of the way Australia's offshore asylum seeker processing policy is practiced. The paper also provides an empirical analysis of the way national policy and its associated accountability mechanisms emerge in response to the competing legitimacy claims of the international community and national electorate.

Keywords: accountability, asylum seekers, human rights, policy networks

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Barnali Choudhury, *Spinning Straw into Gold: Incorporating the Business and Human Rights Agenda into International Investment Agreements*, U. PA. J. INT'L L. (forthcoming).

Available at SSRN: https://ssrn.com/abstract=2778076

The adoption of the U.N. Guiding Principles on Business and Human Rights represents a watershed moment in the business and human rights movement. Nevertheless, despite its achievements, the work to align business and human rights issues remains.

One approach to furthering the work in this area has been to focus on the establishment of a new international binding treaty on business and human rights issues. Treaty proponents view a binding treaty as a mechanism by which existing gaps in human rights protection can be closed. Yet critics are skeptical. They point to the lack of treaty support by states which are headquarters for multinational corporations and worry about the diminishment of aspired treaty rights during the treaty negotiation process as evidence of their concerns.

This article questions whether there is a need for a "new" international business and human rights treaty. Instead it argues that the linkage of business and human rights issues can be made by way of international investment agreements (IIAs). Given the bilateral or regional nature of IIAs, multilateral state support is lessened, facilitating adoption of new principles or rights. Moreover, IIAs offer a robust enforcement mechanism, through international arbitration, which can provide effective remedies. In addition, because multinational corporations are often reliant on IIAs to gain access to new markets, IIAs can be used as a tool to impose human rights obligations onto corporations from the outset before abuses occur. Most importantly, reconfiguring IIAs to adopt the BHR agenda ensures that norm development in business areas does not undermine human rights issues when these two areas intersect and that corporate rights stand in parallel to corporate obligations.

Keywords: international law, business and human rights, foreign investment, international investment agreements, human rights, international arbitration, business and human rights treaty

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Palmer, Claire. "What can Post-Democracy tell us about TNCs and Extraterritorial Violations of Human Rights?." ***The Political Quarterly*** **87, no. 2 (2016): 76-80.**

This article considers the problem of extraterritorial human rights violations committed by transnational corporations (s), and draws on Crouch's framework in to illustrate why the issue has proved so difficult for states to regulate. I begin by examining the problem of corporate regulation more generally, and set out Crouch's analysis to show why and how corporations have become so influential. The second section considers the area of business and human rights, and explains why there is 'a governance gap' in relation to extraterritorial human rights violations committed by corporations. The third section describes efforts at the international and domestic levels to regulate corporations in relation to this issue. It concludes that while new international principles and innovative hybrid schemes are playing a valuable role in norm creation and standard-setting, the

enforcement of these principles remains limited. Corporations have largely succeeded to date in their lobbying efforts to remain free of any direct obligations under international law.

Keywords: post-democracy, business and human rights, extraterritorial regulation of transnational corporations /multinational corporations, corporate violations of human rights

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Backer, Larry Catá. "Fractured Territories and Abstracted Terrains: Human Rights Governance Regimes Within and Beyond the State." ***Indiana Journal of Global Legal Studies*** **23, no. 1 (2016): 61-94.**

The problem of representation has become a central element for the development of human rights norms, not just within international organizations, but within states as well. The problem has been made acute by two significant changes in the organization of power that became visible after the 1950s. On one hand, the idea of the individual became more abstract. Mass democracy became symptomatic of a general trend toward the dissolution of the individual within a mass population, which was incarnated as the aggregation of its group characteristics, its statistics, and data. On the other hand, states were becoming less solid; the constitution of states, and of state power, formerly quite distinct in their forms and secure within their territories, gave way to a polycentric order in which national territory no longer defined and contained a compulsory and singular legal order sitting atop a hierarchy of governance. These two trends have had a noticeable impact, not just on law and governance generally, but more importantly, on the way that representation is understood and practiced. Today, the representation of individuals has become more problematic at the national level as it gives way to other bases of sovereign power derived from international norms. At the international level the individual loses representative capacity. The will of the consensus of states has supplanted that of the citizens of the state in ways that may undermine the legitimacy of governance systems. This paper considers the problem of representation within these intertwined phenomena. To that end, the paper considers the manifestation of these two macrotrends in the context of the governance of global business and human rights regulatory regimes. In the context of the first trend, the problem of who legitimately represents is considered within international organizations producing norms for transposition to the domestic legal orders of states. The specific context will be the public forums of the U.N. Working Group on Business and Human Rights. In the context of the second, the problem of what is the object of representation is considered at the national level, now the site of transposition of international norms. The specific context is the rise of multiple legal regimes each with a fidelity to a distinct representational community. The boundaries of statehood have been redefined and with them the nature and object of representation. Where states once existed, territories serve as “bowls” in which several national legal orders may operate through individuals and entities. Where international organizations once served the community of states, they now serve as vessels that contain mass interests re-incarnated as representative organizations that produce or negotiate formal law and societal norms

for self-application. Within this context, simpleminded projects, and in particular the move toward a single comprehensive public law treaty on business and human rights, becomes an anachronistic exercise.

Keywords: human rights, international organization, democracy, international law, United Nations

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Michael Nesbitt, *Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act*, 48 OTTAWA L. REV. (forthcoming 2017).

In the Fall of 2016, the House of Commons Standing Committee on Foreign Affairs and International Development began a critical review of Canada's "unilateral" sanctions legislation, the Special Economic Measures Act (the SEMA). It is the first meaningful review of the SEMA since 1992 and one that is long overdue. While the impetus for the re-evaluation of the legislation is the debate around the so-called Magnitsky Act — amendments to allow for the sanctioning of human rights abusers abroad, particularly in Russia — the Standing Committee should go much further when conducting the review. It is time not only to consider amending the SEMA to clarify that sanctions can be promulgated where gross human rights abuses are taking place abroad, but also to allow for "double" extraterritorial sanctions against covert "sanctions-busters." That is, the legislative amendments should take account of modern business practice — and recognize that Canada is a hub for sanctions-busting — and close the loop-hole that currently exists in the SEMA and prevents Canada from targeting companies in non-sanctioned countries that are in the business of transshipping goods between Canada and sanctioned countries. Moreover, the Standing Committee's review is an opportunity to take a broader look at the SEMA legislation and particularly the practice of enacting and enforcing new sanctions. This paper recommends a sanctions coordination unit to ensure proper inter-departmental security cooperation on the SEMA sanctions file, coupled with proper governmental oversight or review, and statutorily-mandated review of all sanctions listings every two years. It is time to bring the SEMA into the twenty-first century and with it government practice implementing and enforcing the legislation. This will require some changes to the legislation, but also myriad changes to government practice on the file.

Keywords:

Li, Yingru, and John McKernan. "Human rights, accounting, and the dialectic of equality and inequality." *Accounting, Auditing & Accountability Journal* 29, no. 4 (2016): 568-593.

Purpose - The United Nations Guiding Principles locate human rights at the centre of the corporate social responsibility agenda and provide a substantial platform for the

development of business and human rights policy and practice. The initiative gives opportunity and focus for the rethinking and reconfiguration of corporate accountability for human rights. It also presents a threat: the danger, as we see it, is that the Guiding Principles are interpreted and implemented in an uncritical way, on a "humanitarian" model of imposed expertise. The critical and radical democratic communities have tended to be, perhaps rightly, suspicious of rights talk and sceptical of any suggestion that rights and the discourse of human rights can play a progressive role. The purpose of this paper is to explore these issues from a radical perspective.

Design/methodology/approach - This paper uses insights taken from Jacques Rancière's work to argue that there is vital critical potential in human rights. There is an obvious negativity to Rancière's thought insofar as it conceives of the political as a challenge to the existing social order. The positive dimension to his work, which has its origins in his commitment to and tireless affirmation of the fact of equality, is equally important, if perhaps less obvious. Together the negative and positive moments provide a dynamic conception of human rights and a dialectical view of the relation between human rights and the social order, which enables us to overcome much of the criticism levelled at human rights by certain theorists.

Findings - Rancière's conception of the political puts human rights inscriptions, and the traces of equality they carry, at the heart of progressive politics. The authors close the paper with a discussion of the role that accounting for human rights can play in such a democratic politics, and by urging, on that basis, the critical accounting community to cautiously embrace the opportunity presented by the Guiding Principles.

Originality/value - This paper has some novelty in its application of Rancière's thinking on political theory to the problems of critical accounting and in particular the critical potential of accounting and human rights. The paper makes a theoretical contribution to a critical understanding of the relationship between accounting, human rights, and democracy.

Keywords: accounting, human rights, politics, democracy, humanitarianism

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Williams, Carmel, and Alison Blaiklock. "Human rights discourse in the sustainable development agenda avoids obligations and entitlements: Comment on" rights language in the sustainable development agenda: Has right to health discourse and norms shaped health goals?"." *International journal of health policy and management* 5, no. 6 (2016): 387-390.

Our commentary on Forman et al paper explores their thesis that right to health language can frame global health policy responses. We examined human rights discourse in the outcome documents from three 2015 United Nations (UN) summits and found rights-related terms are used in all three. However, a deeper examination of the discourse finds the documents do not convey the obligations and entitlements of human rights and

international human rights law. The documents contain little that can be used to empower the participation of those already left behind and to hold States and the private sector to account for their human rights duties. This is especially worrying in a neoliberal era.

Keywords: human rights, right to health, climate change, Sustainable Development Goals (SDGs), international human rights law, discourse analysis, neoliberalism

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Augenstein, Daniel, and Hans Lindahl. "Introduction: Global Human Rights Law and the Boundaries of Statehood." ***Indiana Journal of Global Legal Studies*** **23, no. 1 (2016): 1-14.**

Whatever the true historical origins and philosophical foundations of human rights -- questions to which the contributors to this collection of essays give different answers -- their protection has taken a distinctive form in the modern state legal order and, by extension, in the state-centered conception of international law. Human rights retained their state-centered focus with their appearance on the international stage after World War II, now in the form of international declarations and covenants established by and for independent states endowed with sovereign equality and national collective self-determination. The global expansion of human rights in this period thus reaffirmed, rather than undermined, the central role of the state in their creation, interpretation, and enforcement. From an analytical perspective, this state-centrism of human rights can be usefully captured by two sets of distinctions that structure their legal operation in the international order of states: that between the public and the private and that between the territorial and the extraterritorial.

Keywords: human rights, globalization, public goods

Joseph, Sarah. "'Is Fox News a Breach of Human Rights?': The News Media's Immunity from the Guiding Principles on Business and Human Rights." ***Business and Human Rights Journal*** **1, no. 02 (2016): 229-253.**

The business and human rights debate has essentially bypassed the media industry. This article addresses that gap in the debate by applying the Guiding Principles on Business and Human Rights to the media. Application of human rights responsibilities to the media in accordance with the Guiding Principles is significantly complicated by the existence of media rights of freedom of expression. It is argued that the application of the Guiding Principles to the media industry leaves significant scope for it to be involved with serious and systemic human rights violations. This conclusion indicates that the Guiding Principles are an inadequately theorised tool for dealing with human rights responsibilities of the media. It may reveal deeper flaws in the Guiding Principles, which extend to industries other than the media. At the least, a dialogue between the human rights community and the media industry must commence in order to work out how

human rights might apply in the context of the responsibilities of one of the world's most important and powerful industries.

Keywords: freedom of expression, Guiding Principles on Business and Human Rights, journalism, media, news

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Lopez, Carlos, and Shea, Ben. "Negotiating a Treaty on Business and Human Rights: A Review of the First Intergovernmental Session." *Business and Human Rights Journal* 1, no. 01 (2016): 111-116.

The first session of the open-ended intergovernmental working group (OEIGWG) on transnational corporations and other business enterprises with respect to human rights took place in Geneva during 6–10 July 2015. The mandate of the OEIGWG is set in Human Rights Council Resolution 26/9, adopted in June 2014: 'to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises'. 1 The first two (annual) sessions of the OEIGWG are meant to be broad constructive discussions about the scope and content of the prospective treaty. This first session, which was relatively well attended, raised expectations, especially from a wide array of civil society organizations, despite concerns of a likely boycott of the process by Western states. After all was said and done, the first session could be described as a qualified success. Although state participation was low and many discussions proved more political than legalistic, there was some meaningful progress. This article reviews the debate during this first meeting, describing the meeting itself, recounting the main substantive debates, and discussing the process and challenges going forward.

Keywords: business, human rights, intergovernmental working group, resolution 26/9, transnational corporations

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O'BRIEN, Claire METHVEN, Amol Mehra, Sara Blackwell, and Cathrine Bloch Poulsen-Hansen. "National Action Plans: Current Status and Future Prospects for a New Business and Human Rights Governance Tool." *Business and Human Rights Journal* 1, no. 01 (2016): 117-126.

National Action Plans (NAPs) on business and human rights are a burgeoning phenomenon. In 2011, the European Union (EU) requested member states to develop NAPs to support implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) and, in 2014, the UN Human Rights Council (UNHRC) followed suit. Prompted by these and other initiatives, a steadily increasing number of governments and non-state actors have now launched NAPs or NAPs-related processes: more than forty are underway across Europe, the Americas, Africa, and Asia. This emerging trend is to be welcomed. Every NAP process affirms the UNGPs' essential tenet that human rights apply within the business sector and indicates a political commitment to bring domestic

laws, policies, and practices into alignment with this norm. Just four years after the arrival of the UNGPs, this is an impressive and significant result for a soft law instrument.

Keywords: corporate accountability, governance, human rights, national action plans, UN Guiding Principles on Business and Human Rights

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Paul A. Gowder, Jr. & Maya Steinitz, *Transnational Litigation As A Prisoner's Dilemma*, 94 N.C. L. REV. 751 (2016).

In this Article we use game theory to argue that perceptions of widespread corruption in the judicial processes in developing countries create ex ante incentives to act corruptly. It is rational (though not moral) to preemptively act corruptly when litigating in the courts of many developing nations. The upshot of this analysis is to highlight that, contrary to judicial narratives in individual cases — such as the (in)famous Chevron–Ecuador dispute used herein as an illustration — the problem of corruption in transnational litigation is structural and as such calls for structural solutions. The article offers one such solution: the establishment of an international court of civil justice.

Keywords**:** transnational litigation, Chevron, Ecuador, corruption, judgment enforcement, corporate social responsibility, Alien Tort Claims Act, ATCA, Kiobel, prisoner's dilemma

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Peters, Anne. "Corruption as a Violation of International Human Rights." *Max Planck Institute for Comparative Public Law and International Law* 18 (2016).

It is a fact that states with a high corruption rate (or a high corruption perception) are at the same time those with a poor human rights record. Beyond this coincidence, the paper seeks to identify a concrete legal relationship between corruption and deficient human rights protection. This is in practical terms relevant, because the extant international norms against corruption have so far yielded only modest success; their implementation could be improved with the help of human rights arguments and instruments.

This paper therefore discusses a dual question: Can corrupt behaviour be conceptualised as a human rights violation? Should it be categorised and sanctioned as a human rights violation? My answer is that such a reconceptualization is legally sound, and that its normative and practical benefits outweigh the risk of reinforcing the anti-Western skepticism towards the fight against corruption. This assessment leads to the practice recommendation of a mutual mainstreaming of the international anti-corruption and human rights procedures. I conclude that the re-framing of corruption not only as a human right issue but as a potential human rights violation can contribute to closing the implementation gap of the international anti-corruption instruments.

Keywords: anti-corruption, grand corruption, petty corruption, bribery, human rights violation, criminal law, state, social rights, right to health, right to education, causality, ultra vires, omission, human rights mainstreaming

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Qingxiu Bu, *Migrant labour standards and human rights of multinational companies' supply chains: reshaping a playing field in China: part I*, 37 BUS. L. REV. 129 (2016).

It is imperative to ensure effective protection of migrant labour rights in the emerging global market. This is the second part of a two-part article discussing labour standards in China. Although some private rule-making institutions have increased their governance role in a cross-border regulatory scenario, a more viable governance regime is still arguably perceived as a national rather than a global phenomenon. Given the ineffective enforcement of labour standards in China, some authoritative standards, like the UN Tri-Pillar Framework, hold the keys to an emerging internationally recognized regime for global labour governance. It remains a challenge to strike a balance between hard law and soft law, so as to ensure multinational companies (MNCs)'s profit maximization and the protection of human rights. With an examination of counter-conventional approaches to legal pluralism and globalized supply chains, it is proposed that more multipronged forms of governance may incentivize foreign MNCs to improve labour practices across various governance levels. MNCs will need to operate beyond merely abiding by Chinese law, and contribute more by self-regulation along with other stakeholders in the implementation of human rights standards.

Keywords: standard-setting organizations, migrant labor -- economic conditions, China -- economic conditions

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Qingxiu Bu, *Migrant labour standards and human rights of multinational companies' supply chains: reshaping a playing field in China: part II*, 37 BUS. L. REV. 181 (2016).

It is imperative to ensure effective protection of migrant labour rights in the emerging global market. This is the second part of a two-part article discussing labour standards in China. Although some private rule-making institutions have increased their governance role in a cross-border regulatory scenario, a more viable governance regime is still arguably perceived as a national rather than a global phenomenon. Given the ineffective enforcement of labour standards in China, some authoritative standards, like the UN Tri-Pillar Framework, hold the keys to an emerging internationally recognized regime for global labour governance. It remains a challenge to strike a balance between hard law and soft law, so as to ensure multinational companies (MNCs)'s profit maximization and the protection of human rights. With an examination of counter-conventional approaches to legal pluralism and globalized supply chains, it is proposed that more multipronged forms of governance may incentivize foreign MNCs to improve labour practices across various governance levels. MNCs will need to operate

beyond merely abiding by Chinese law, and contribute more by self-regulation along with other stakeholders in the implementation of human rights standards.

Keywords: standard-setting organizations, migrant labor -- economic conditions, China -- economic conditions

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Fox, Oliver, and Peter Stoett. "Citizen Participation in the UN Sustainable Development Goals Consultation Process: Toward Global Democratic Governance?." *Global Governance: A Review of Multilateralism and International Organizations* 22, no. 4 (2016): 555-574.

In September 2015, the United Nations adopted the 2030 Agenda, a transformative plan of action for people, planet, and prosperity containing seventeen Sustainable Development Goals. To inform and animate the negotiations, the UN launched an ambitious series of consultations, involving inter alia governments, civil society, business, knowledge-based institutions, and citizens. This article contributes to the debate on democracy and global governance, drawing on democratic theory and the lessons of the elite donor-driven process that led to the Millennium Development Goals. It argues that, in the age of globalization, citizen participation is vital for the effectiveness and legitimacy of global governance. It then assesses the nature and extent of such participation in three UN 2030 Agenda consultation channels: the High-Level Panel, the national consultations, and the MY World citizen survey. The latter, in particular, exceeded the expectations of stakeholder democracy and ventured into a more direct participatory realm. The article concludes that the 2030 Agenda process has opened new paths toward the establishment of global democratic governance, though we remain far from the ideal participatory democracy many would prefer to see.

Keywords: citizen participation, civil society organizations, human rights, participatory democracy, stakeholder consultation, Sustainable Development Goals, UN 2030 Agenda

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Kaufman, Jonathan, and Katherine McDONNELL. "Community-Driven Operational Grievance Mechanisms." *Business and Human Rights Journal* 1, no. 1 (2016): 127-132.

Keywords: community-led grievance mechanisms, human rights remedy gap, Myanmar, Third Pillar, UN Guiding Principles

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Hertel, Shareen, and Allison MacKAY. "Engineering and Human Rights: Teaching Across the Divide." *Business and Human Rights Journal* 1, no. 01 (2016): 159-164.

Keywords: Global Compact, labour rights auditing, life cycle assessement (LCA)

Melissa J. Durkee, *The Business of Treaties*, 63 UCLA L. REV. 264 (2016).

Business entities play important and underappreciated roles in the production of international treaties. At the same time, international treaty law is hobbled by state-centric presumptions that render its response to business ad hoc and unprincipled.

This Article makes three principal contributions. First, it draws from case studies to demonstrate the significance of business participation in treaty production. The descriptive account invites a shift from attention to traditional lobbying at the domestic level and private standard-setting at the transnational level to the ways business entities have become autonomous international actors, using a panoply of means to transform their preferred policies into law. Second, the Article analyzes the significance of these descriptive facts, identifying an important set of questions raised by business roles in treaty production. Specifically, business participation could affect the success or failure of treaties along a number of different axes that this Article identifies: participation, process, substance, and compliance. Third, observing that scholars and lawmakers could seize an opportunity to design a theoretically principled legal response to business roles in treaty production, the Article identifies both potential legal structures and reasons why law in this arena could be beneficial. Among other reasons, law could facilitate treaty effectiveness along the dimensions this Article identifies; enhance treaty legitimacy by ensuring that decisionmakers are accountable to the relevant stakeholders; and foster rule of law values such as certainty and procedural stability, which could aid public and private participants alike.

Ultimately, the facts the Article describes present a choice: International law can respond in real time to business roles in treaty production, or it can let those roles evolve as they will, with uncertain and possibly enduring results.

Keywords: international law, authority to regulate, international law, treaty formation, international trade law, trade agreements, intellectual property provisions

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Graham Markiewicz, *The Logical Next Step: Motivations on the Formation of a Business and Human Rights Treaty*, 26 MINN. J. INT'L L. 63 (2017).

Despite a sinister history of abuse, the global human rights campaign continues to advance. In 2011 the United Nations published the Guiding Principles on Business and Human Rights ("UNGP"). This soft-law document provided a framework for multinational corporations ("MNC") and other non-state actors to interact with and support human rights globally. Following the passage of the UNGP, the next logical step is for the adoption of a legally binding instrument that would hold multinational corporations accountable for human rights violations they are involved with regardless of the jurisdiction. Strangely, as discussed below, proponents of a Business and Human

Rights ("BHR") treaty are some of the worst human rights violators, while those who would ostensibly have the most to gain from this treaty are against it.

This Article examines the motives behind positions for and against the idea of a BHR treaty. It attempts to discover what a binding instrument would mean for state signatories and why they may or may not support such a treaty. It first examines the processes leading to the UNGP and looks at corporate accountability in context. Next, it determines key players and allocates them across the divide for and against the treaty movement. The core of this Article analyzes motivations behind each side's treaty stance, with a focus on those reasons aside from a desire to respect human rights. These motivations include how a binding treaty and its drafting processes itself affect national bargaining power and reputational risks. Further motivations are increasingly underhanded; they include the desire to obfuscate, distract from human rights discourse, and shift blame away from state actors. Additionally, this Article explores how a binding instrument can counterintuitively offer more flexibility than a broad, encompassing voluntary one, and allows the reader to draw his or her own conclusion as to whether, in the face of these motivations, the path towards a BHR treaty can still lead to a net positive gain for human rights principles.

Keywords: civil rights law, international law, sovereign States & individuals, human rights, torture, torts, business torts

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Aravind Ganesh, *The European Union's Human Rights Obligations towards Distant Strangers*, 37 MICH. J. INT'L L. 475 (2016).

The European Union has perfect, legally enforceable human rights obligations towards distant strangers, i.e. noncitizens outside of the territory of its member states. These include "positive" obligations to "protect" and "fulfill," - that is, to prevent third parties from causing human rights violations, and to establish mechanisms for the vindication of those rights - rather than just "negative" obligations to "respect" human rights. The argument has two limbs: (1) in order to achieve its goals in numerous policy areas, the European Union asserts not just power extraterritorially, but authority; and (2) the entire spectrum of human rights obligations potentially arises from relationships of political authority and obedience.

Section I begins by setting out certain provisions added by the Lisbon Treaty requiring the European Union to promote human rights, democracy, and the rule of law in all its "relations with the wider world." Section II then recounts a recent interpretation of these provisions, which understands them primarily as mandating compliance with international law, and thus largely denies extraterritorial human rights obligations to protect. While the fundamentals of this "compliance" reading are correct, Section III demonstrates that the notion of international law involved here entertains an expansive view of prescriptive jurisdiction, that is, a political institution's authority to prescribe rules binding conduct. Indeed, despite precedent from the General Court claiming

otherwise, the European Union regularly creates legal effects outside its borders, and has always done so. This is reflected both in the jurisprudence of the Court of Justice of the European Union (CJEU), as well as in EU legislation, particularly in areas such as competition, financial, and environmental regulation, all of which have profound implications for the human rights of distant strangers. Section IV argues, from a premise of human dignity as lying in autonomy, that human rights obligations arise only in relations of political authority, not mere factual power. By reference to Strasbourg case-law on extraterritorial human rights jurisdiction, it demonstrates that the creation of legal effects abroad is both necessary and sufficient to give rise to human rights obligations there, and rejects accounts of human rights jurisdiction based upon aspects of factual power, such as the "state control" and "capability" theories. If, as this paper argues, the European Union regularly governs persons overseas, this raises the specter of imperialism, which is touched upon in the conclusion.

Keywords: civil procedure, jurisdiction, subject matter jurisdiction, civil rights law, international law, sovereign states & individuals, human rights

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A. Claire Cutler, *Transformations in Statehood, the Investor-State Regime, and the New Constitutionalism*, 23 IND. J. GLOBAL LEG. STUD. 95 (2016).

This paper examines the changing boundaries of statehood resulting from transformations in the nature and operation of public and private authority over local and global politico-legal orders. Transformations in the political purposes of states are being driven by powerful elites who advance a new form of constitutional governance. New constitutionalism, as evidenced by the investor-state regime, subordinates the interests, purposes, and rights of national citizens to those of foreign, transnational politico-legal, and economic elites. This regime is a highly privatized order that is expanding in influence, both in terms of the commercial activities under its remit, and in terms of its procedural operation and its normative influence. The specific focus of this paper is on the investor-state regime, which is contributing to the expansion of private power and authority in the settlement of investment disputes. This regime is effecting two transformations in the scope and nature of statehood. One transformation involves the imposition of severe limits upon the legislative and policy autonomy of national governments that are being developed and enforced by private commercial actors without public accountability. In agreeing to protect the private property rights of foreign investors against legislation or public policy that might impair foreign investment, states are also limited in their abilities to ensure the protection of the social, economic, or human rights of their peoples. However, this expansion of private power and authority is generating a countermovement in the form of resistance to the regime. This resistance is giving rise to a conflicting transformation in statehood as national governments seek to regain their policy and legislative autonomy. In some cases, the impetus comes from local sources, while in others it emanates from global and international human rights fora. This paper begins with an overview of the operational nature of the investor-state regime and new constitutionalism, revealing how the procedural and substantive provisions of

the regime reach deep inside states to set clear limits on their legislative and policy autonomy. It then examines a selection of cases before investor-state tribunals that reveal contestation and resistance to the regime through the reassertion by state governments of their sovereignty and through the influence of international human rights. It concludes with an exploration of the potential for this regime to advance human rights protections and suggests a few changes that might enhance the regime's democratic legitimacy.

Keywords: contracts law, types of contracts, investment contracts, international law, sovereign states & individuals, human rights, international trade law, dispute resolution, arbitration

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Mikko Rajavuori, Governing the Good State Shareholder: The Case of the OECD Guidelines on Corporate Governance of State-Owned Enterprises, EUROPEAN BUS. L. REV. (forthcoming 2017).

Available at SSRN: https://ssrn.com/abstract=2900799

The newly revised Guidelines on Corporate Governance of State-Owned Enterprises (2015) by the OECD are fast emerging as a new regulatory paradigm for administration of State-owned enterprises and organization of State ownership function. This article analyses the Guidelines' policy prescriptions, governance strategies and integration into global governance. Noting that the instrument operates by governing shareholder's internal make-up, decision-making and objective-setting, the article argues that the Guidelines amount to a robust model for ideal State shareholder – the Good State Shareholder. Efficient, engaged and accountable, the Good State Shareholder emerges as a critical actor in the contemporary global economy where States continue to amass and command immense shareholder power. However, when juxtaposed with recent attempts by the UN to adopt State ownership as an instrument of human rights governance, the fault lines of the Good State Shareholder model, as well as emerging techniques of shareholder governance, are exposed.

Keywords: state ownership, OECD, corporate governance, regulation theory, UN, business & human rights, stewardship

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IV. ECONOMICS/ FINANCE/ ACCOUNTING

Doron Narotzki, *Corporate Social Responsibility and Taxation: The Next Step of the Evolution*, 16 HOUS. BUS. & TAX L. J. 167 (2016).

This paper will be focused on the evolution of the corporate tax world and how Corporate Social Responsibility (CSR) may affect the tax planning of multinational companies. An analysis of the history of reform to the United States tax system will be done starting with its inception in the early 1900s. The system has changed drastically in order to improve the way business is conducted and based on these reforms, it is anticipated that there will continue to be major changes to the system in order to keep up with the way companies continue to evolve the global business world.

Keywords: taxation, corporate social responsibility, CSR

Christensen, Darin, and David K. Hausman. "Measuring the Economic Effect of Alien Tort Statute Liability." *Journal of Law, Economics, and Organization* 32, no. 4 (2016): 794-815.

In Kiobel v. Royal Dutch Petroleum Co., the US Supreme Court dramatically restricted the scope of the Alien Tort Statute (ATS), holding that the statute does not permit victims of human rights abuses to sue foreign corporations for violations of international law that took place entirely abroad. We draw on three unique characteristics of the decision to estimate its effect on companies' valuations. First, we show that extractive industry firms with headquarters abroad experienced larger cumulative abnormal returns following the ruling. By contrast, similar US-based firms--which generally remain subject to ATS liability--did not benefit from the decision. Second, we demonstrate that foreign-based firms benefited both on the final decision date and on the earlier date when the Court slated the case for reargument on the issue of extraterritoriality. Third, we show that this effect varied with the human rights records of host countries: mining firms based abroad with subsidiaries in countries with poor human rights records benefitted most. Although our results cannot resolve debates over the merit of ATS suits, we do show that the Kiobel decision mattered: for foreign firms, it decreased the cost of doing business under regimes with records of human rights violations.

Keywords: mineral industries, Kiobel v. Royal Dutch Petroleum Co., tort theory, statutes, courts

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Evans, Jessica. "The Record of International Financial Institutions on Business and Human Rights." *Business and Human Rights Journal* 1, no. 02 (2016): 327-332.

As lenders to both governments and corporations, International financial Institutions (IFIs) have the sway and responsibility to prevent and address human rights abuses

perpetrated by businesses. Alternatively, however, they can support a culture in which such abuses are ignored and allowed to continue. Working in some of the most challenging contexts, where rule of law is weak and public criticism is quashed, IFIs' corporate clients have been linked to various human rights abuses—from forced evictions to killings—and host governments have been either unwilling or unable to prevent these abuses or hold companies to account.

This article draws on the UN Guiding Principles on Business and Human Rights 'Protect, Respect, and Remedy' framework to measure IFIs' business and human rights performance. It describes how IFIs do very little to encourage or support governments to protect their people from corporate abuse, shy away from human rights due diligence, and, with the exception of their independent accountability mechanisms which capture a tiny fraction of their mistakes, fail to ensure remedy for abuse. It then sets forth a path for change.

Keywords: corporate accountability, development, human rights, international financial institutions, International Finance Corporation, World Bank

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Neglia, Maddalena. "The UNGPS-Five Years On: From Consensus to Divergence in Public Regulation on Business and Human Rights." ***Netherlands Quarterly of Human Rights*** **34, no. 4 (2016): 289-317.**

The United Nations Guiding Principles on Business and Human Rights were endorsed in 2011 by the UN Human Rights Council. Since then they have become a normative platform and have led to widespread convergence of national and international regulatory initiatives. Focusing on Europe, this articles shows that the consensus reached, in particular on human rights due diligence, has been a driving force behind the influence the Principles have had on public regulation of business and human rights. One example is offered by the EU's approach to integrating UNGPs into legal and policy instruments, including the 2011 Communication on CSR and the EU Directive no. 2014/95 on non-financial reporting. But this has been accompanied by recent developments in EU Member States' public regulation of business and human rights, including the UK Modern Slavery Act and the French bill on 'devoir de vigilance'. The article concludes that, despite the emergence of a piecemeal regulatory approach, coherence in the public regulation of business violations of human rights is urgently needed in Europe. It further shows that, if properly led, this process could entail reinforcement of the EU's commitment to the UNGPs' implementation.

Keywords: business and human rights, European law, Modern Slavery Act, nonfinancial reporting, public regulation, transnational companies

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McPhail, Ken, and John Ferguson. "The past, the present and the future of accounting for human rights." ***Accounting, Auditing & Accountability Journal*** **29, no. 4 (2016): 526-541.**

Purpose - The purpose of this paper is to discuss a number of important recent developments in the area of business and human rights and considers the impact of these developments for accounting, assurance and reporting. Following the UN endorsement of the Guiding Principles on Business and Human Rights (the Guiding Principles) in June 2011, initiatives related to their implementation have advanced at a rapid pace. Despite the centrality of accounting, assurance and reporting to some of the key initiates - accounting research has, hitherto, lagged behind this growing momentum. In order to address this lacunae, this paper develops an agenda for future research in the area of accounting and human rights. In doing so, the paper provides an overview of the important contributions advanced by the other papers in this special issue of Accounting, Auditing and Accountability Journal (AAAJ).

Design/methodology/approach - This paper draws together and identifies key issues and themes related to the rapidly evolving research and policy domain of business and human rights and considers the relevance of these issues to accounting research.

Findings - The paper highlights the wide-ranging impact the Guiding Principles and other developments in business and human rights have for accounting practice and draws attention to potential areas of research for accounting scholars. In particular, the paper highlights the emergence of business and human rights due diligence requirements, including their management and reporting. Further, the paper draws attention to the development of business and human rights reporting and assurance practice - which, while still in its infancy, has gathered considerable momentum and support.

Research limitations/implications - The paper provides important insights into emerging issues and developments in business and human rights that have clear relevance to accounting research and practice.

Originality/value - This paper, and the other contributions to this special issue of AAAJ, provide a basis and a research agenda for accounting scholars seeking to undertake research in this significant and emerging field.

Keywords: human rights, accountability, reporting, assurance

Giuliani, Elisa, Grazia D. Santangelo, and Florian Wettstein. "Human rights and international business research: A call for studying emerging market multinationals." ***Management and Organization Review*** **12, no. 3 (2016): 631-637.**

The article presents the study that investigates the implications of human rights on the emerging multinational market. The topics discussed include the implications

of human rights on multinationals' quality of work, their access to education and water and the reasons why business international scholars should carry out research on human rights.

Keywords: emerging markets, right to work, human rights, right to water, scientific community

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Carter, Russell A. "Sustainable Development: Miners Seek Ways to Maintain Momentum." *Engineering and Mining Journal* 217, no. 8 (2016): 56-61

It's easy to suspect that the lofty principles and high expectations that often accompany sustainable development (SD) initiatives might not have top billing in the strategic agenda of a mining company currently focused on trimming overall costs to the bone. However, in today's environment, a company simply can't afford to ignore or short-change SD issues. A recent Deloitte report, for example, pointed cut that Despite the recent ills in the mining sector, many governments have not softened their stances around resource nationalism. The global mining industry is in the unique position of providing commodities that are essential for living, yet having to compete against itself, other industries and society in general for the land, water, and energy needed to mine and refine those commodities. Economic pressures stemming from the industry's current slump have resulted in mine closures, project cut-backs and worker layoffs -- all of which add fuel to an already volatile atmosphere.

Keywords: mining industry, noise, equity financing, capital expenditures, social responsibility, sustainable development, international organizations, civil society

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Darcy, Shane. "'The Elephant in the Room': Corporate Tax Avoidance & Business and Human Rights." *Business and Human Rights Journal* (2016): 1-30.

This article addresses tax avoidance by companies in the context of the emerging field of business and human rights. It describes the mechanics of corporate tax avoidance and the human costs of such practices. It then considers the extent to which tax issues have been addressed by corporate social responsibility, before turning to business and human rights and assessing the potential value of the United Nations Guiding Principles on business and human rights in this context. The article draws on the experience of Ireland, given the country's connection to abusive tax practices associated with large multinational corporations and its support for the United Nations Guiding Principles on business and human rights.

Keywords: corporate social responsibility, corporate tax avoidance, Ireland, tax abuse, tax justice

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Erragragui, Elias, and Christophe Revelli. "Is it costly to be both shariah compliant and socially responsible?." *Review of Financial Economics* 31 (2016): 64-74.

Positive ethics associated with socially responsible investments (SRI) is challenging the limits of Islamic investments' conservative approach to promote corporate social responsibility. In this study, we test the integration of social performance measures (companies the most virtuous or high-rated in terms of environmental, social, and governance [ESG] issues) in Islamic portfolios using KLD social ratings. We seek to determine the financial price of complying both to Islamic investment and SRI principles. To do so, we measure the financial performance of self-composed Islamic portfolios with varying ESG scores. The results indicate no adverse effects on returns due to the application of ESG screens on shariah-compliant stocks during the 2007-2011 periods while reporting substantially higher performance for the portfolios with good records in governance, products, diversity, and environment issues. On the opposite, a negative performance is associated with an SRI strategy of disengagement from shariah-compliant stocks with community and human rights controversies. Our performance measures are controlled for market sensitivity, investment style, momentum factor, and sector exposure.

Keywords: ethics, portfolio, social responsibility

McPhail, Ken, Kate Macdonald, and John Ferguson. "Should the international accounting standards board have responsibility for human rights?." *Accounting, Auditing & Accountability Journal* 29, no. 4 (2016): 594-616.

Purpose – The purpose of this paper is to explore the basis for, and ramifications of, applying relevant human rights norms – such as the United
Nations Guiding Principles on Business and Human Rights – to the International Accounting Standards Board (IASB). In doing so, the paper seeks to contribute to scholarship on the political legitimisation of the IASB's structure and activities under prevailing global governance conditions.

Design/methodology/approach – The paper explores three distinct argumentative logics regarding responsibilities for justice and human rights vis-à-vis the IASB. First, the authors explore the basis for applying human rights responsibilities to the IASB through reasoning based on the analysis of "public power" (Macdonald, 2008) and public authorisation. Second, the authors develop the reasoning with reference to recent attempts by legal scholars and practitioners to apply human rights obligations to other non-state and transnational institutions. Finally, the authors develop reasoning based on Thomas Pogge's (1992b) ideas about institutional harms and corresponding responsibilities.

Findings – The three distinct argumentative logic rest on differing assumptions – the goal is not to reconcile or synthesise these approaches, but to propose that these approaches offer alternative and in some ways complementary insights, each of which contributes to

answering questions about how human rights obligations of the IASB should be defined, and how such a responsibility could be "actually proceduralised".

Originality/value – The analysis provides an important starting point for beginning to think about how responsibilities for human rights might be applied to the operation of the IASB.

Keywords: IASB, United Nations Guiding Principles

David Zaring, *Financial Reform's Internationalism*, 65 EMORY L.J. 1255 (2016).

Financial reform has rebalanced the power of international engagement, reducing the role of the President and his diplomats, and increasing that of Congress and independent agencies. In so doing, the reforms have readjusted a balance that many believe was skewed by the government's response to the financial crisis. The international policy of financial reform has doctrinal implications as well: Congress has supplemented traditional international law with an endorsement of international regulatory cooperation. Because of this supplementation, the things that customary international law used to do - in particular enabling international cooperation and creating innovation in human rights - are now being done by financial regulators wielding the power of informal agreements. The privileging of regulatory cooperation, and the entry into human rights through financial regulation, is evidenced by the so-called Conflict Minerals and Resource Extraction Rules that Congress has directed the Securities and Exchange Commission to promulgate.

Keywords: international law, sources of international law, treaty formation, international trade law, trade agreements, intellectual property provisions

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Jun, Hannah. "Corporate governance and the institutionalization of socially responsible investing (SRI) in Korea." *Asia Pacific Business Review* 22, no. 3 (2016): 487-501.

The past few decades have seen a marked increase in socially responsible investing (SRI), an investment strategy that incorporates environmental, social and governance (ESG) issues in the decision-making process. While there has been substantial investment and research in predominantly advanced economies, we have seen striking growth in key Asian markets in recent years, suggesting broader proliferation of more responsible corporate and investment practices. Because socially responsible investors take both financial and social considerations into account when allocating investments, this raises questions about the viability of SRI as an investment strategy and motivations behind individuals and institutions engaging in it. To investigate this further, this study analyses the emergence of the SRI market in South Korea given very public corporate governance concerns following the Asian financial crisis of the late 1990s and

recent visibility of SRI investments by the country's largest institutional investor, the National Pension Service (NPS). This study contributes to corporate governance and new institutionalist theory by highlighting that the need to address gapsin corporate governance has served as an important motivation for investment and research institutions to enhance socially responsible investments in Korea. Supported by anecdotal evidence from leading members of the local SRI community, this study suggests that while we have seen the primacy and evolution of existing institutions in the SRI market, SRI growth has been buttressed by the emergence of new institutions, such as research organizations and the Korean Sustainability Investing Forum, and reinforcement by international institutions in the form of the UN-backed Principles for Responsible Investment, global indexes and international CSR guidelines. As such, this study provides a more nuanced understanding of SRI's emergence in Korea by highlighting institutional layering and dynamics that have led to changes in the local market while eschewing the idea that the emergence of SRI was simply the result of a deliberate effort to 'westernize' institutions. Indeed, in Korea's case, while SRI is a borrowed concept, its primary function has been to address corporate governance issues rather than to generate superior financial returns. In addition to theory-building, findings also highlight practical implications, including opportunities for more rigorous corporate social performance analysis and investment advisory, greater market coordination and awareness-building, and the need to monitor corporate social performance and financial performance going forward.

Keywords: business ethics, corporate social responsibility (CSR), Korea, National Pension Service (NPS), new institutionalism, socially responsible investing (SRI)

V. ENVIRONMENT/ AGRICULTURE

Satyavathi, A. R. and Rao, V. Chandra Sekhara. "Corporate Environmental Responsibility in Public Sector Organisations: A Study of the Singareni Collieries Company Limited." ***International Journal of Research in Commerce and Management*** **7, no. 3 (2016): 4-7.**

Globalization made the world a small village and with the revolution of communication technology, the distance among the nations was further narrowed. This led to the growth of large scale/multinational companies whose concentration is on huge production utilizing the natural and human resources in large quantity. This led to the destruction of environment and violation of human rights, from which the term 'corporate social responsibility' (CSR) arises. CSR includes the responsibility of the business organization towards the employees, society and environment. The concept 'Corporate Environment Responsibility' is gaining importance these days due to the continuous degradation of natural resources that lead to Global Warming and Green House effects. This paper focuses on the corporate responsibility on environment, how the public sector organizations concentrate on protection of environment and in reduction of the environment pollution which is the inherent part of the Brundtland Report of 1987, in the light of amendment of Indian Companies Act in 2013.

Keywords: environment, multinational, natural resource, pollution, public sector, resources, social responsibility, technology

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Sara L. Seck and Michael Slattery, ***Business, human rights and the IBA Climate Justice Report*****, 34 J. ENERGY & NAT. RESOURCES L. 75 (2016).**

The 2014 Climate Justice Report by the International Bar Association (IBA) makes many recommendations designed to contribute to the fight against climate change. One important step forward is its explicit recognition of the responsibility of business to respect human rights affected by climate change. This commentary explores the extent to which the IBA's approach to this issue aligns with the business responsibility to respect human rights as described in the 2011 United Nations Guiding Principles on Business and Human Rights. The commentary also considers other international standards that incorporate business responsibilities for human rights in order to determine whether sufficient guidance has yet emerged for businesses to effectively address human rights and climate concerns.

Keywords: climate change, corporate responsibility, human rights, jurisdiction, principles, cooperation, funding, due diligence, environmental law, sanitation

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Sharon Mascher, ***Climate change justice and corporate responsibility: commentary on the International Bar Association Recommendation*****, 34 J. ENERGY & NAT. RESOURCES L. 57 (2016).**

This commentary considers the International Bar Association's recommendations on corporate responsibility in its Task Force Report Achieving Justice and Human Rights in an Era of Climate Disruption. In so doing, this commentary explores the key recommendations in the report relating to corporate responsibility – namely implementation of the UN Framework on Corporate Responsibility to Protect Human Rights, corporate reporting and the regulation of corporations, at home and abroad – which together provide important mechanisms to address the growing calls for corporate responsibility in the quest for climate justice.

Keywords: fossil fuels, emissions, climate change, greenhouse effect

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Kaitlin Y. Cordes and Anna Bulman, *Corporate Agricultural Investment and the Right to Food: Addressing Disparate Protections and Promoting Rights-Consistent Outcomes*, 20 UCLA J. INT'L L. & FOR. AFF. 87 (2016).

Over the past decade, the world has witnessed heightened corporate interest in large-scale land-based agricultural investment. While such investments can potentially have positive effects for local communities, they also can have wide-ranging negative impacts on human rights, including through forced displacement and the loss of livelihoods. This Article examines the impact of large-scale corporate agricultural investment on the right to food, as well as on human rights more generally. It considers the protections offered by the investment and human rights legal regimes to both corporations and individuals, including recent international developments relating to transnational corporate accountability and efforts to integrate human rights considerations into investment treaties and arbitration. The current legal regimes, however, offer imbalanced protections, and emphasize remedial solutions for human rights abuses rather than pre-emptive protection of rights. While improving redress mechanisms is important, governments must also place greater emphasis on ensuring the sustainability and rights-compatibility of investments from the outset. This Article thus explores measures that could be taken by both host and home states to prevent right-to-food abuses in the context of large-scale agricultural investment. Greater efforts by host and home states to regulate and monitor investors could improve the design and implementation of such investments. Better investments, in turn, could result in more rights-consistent outcomes that promote, rather than harm, the right to food.

Keywords: civil rights law, international law, sovereign states & individuals, human rights, international trade law, trade agreements

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Judith Kimerling, *Habitat as Human Rights: Indigenous Huaorani in the Amazon Rainforest, Oil, and Ome Yasuni*, 40 VT. L. REV. 445 (2016).

This Article is based on a presentation to the Vermont Law Review Symposium, "Habitat for Human Rights: Environmental Degradation and Human Rights." It begins by highlighting three general scenarios where environmental and human rights laws intersect, and then examines the experience of Indigenous Huaorani (also spelled "Waorani" and "Waodani") in the Amazon Rainforest in Ecuador with environmental and human rights law and litigation. It includes a discussion of oil extraction operations by Texaco (now part of Chevron) in Ecuador, and the ongoing litigation that has come to be known as "the Chevron Ecuador litigation." It also includes a discussion of Ome Yasuni, an alliance of affected grassroots Huaorani communities who have organized themselves to defend their habitat as human rights in the area now known as Yasuni National Park and Biosphere Reserve.

Keywords: human rights, environment, indigenous peoples, oil, Amazon, Yasuni, Ecuador, Chevron, Texaco, Huaorani, Waorani, Tagaeri, Taromenani, Bameno, Ome Yasuni, voluntary isolation, Chevron Ecuador litigation, environmental law, missionaries, SIL, Waodani

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Thomas Clarke, *The Widening Scope of Directors' Duties: The Increasing Impact of Corporate Social and Environmental Responsibility*, 39 SEATTLE U. L. REV. 531 (2016).

First, the paper will consider the imminent global consequences of climate change and the implications for businesses, economies, and societies. In this context of clear and present global risk, the transformation to new paradigms of directors' duties is examined. This includes an examination of the consequences for directors' roles in combating climate change by mitigation and adaptation and the building of sustainable enterprises. The paper then considers the multiplicity of international initiatives for greater corporate social and environmental responsibility, the business and civil society agencies pressing for sustainable business development, and the market indices, which now measure corporate performance in sustainability and inform investors. Finally, the changing landscape of fiduciary duty is highlighted with new boundaries for risk, strategy, and investment.

Keywords: business & corporate law, corporations, directors & officers, environmental law, climate change, governments, fiduciary responsibilities

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Castro, Marcia C., Gary R. Krieger, Marci Z. Balge, Marcel Tanner, Jürg Utzinger, Maxine Whittaker, and Burton H. Singer. "Examples of coupled human and environmental systems from the extractive industry and hydropower sector interfaces." *Proceedings of the National Academy of Sciences* 113, no. 51 (2016): 14528-14535.

Large-scale corporate projects, particularly those in extractive industries or hydropower development, have a history from early in the twentieth century of creating negative environmental, social, and health impacts on communities proximal to their operations. In many instances, especially for hydropower projects, the forced resettlement of entire communities was a feature in which local cultures and core human rights were severely impacted. These projects triggered an activist opposition that progressively expanded and became influential at both the host community level and with multilateral financial institutions. In parallel to, and spurred by, this activism, a shift occurred in 1969 with the passage of the National Environmental Policy Act in the United States, which required Environmental Impact Assessment (EIA) for certain types of industrial and infrastructure projects. Over the last four decades, there has been a global movement to develop a formal legal/regulatory EIA process for large industrial and infrastructure projects. In addition, social, health, and human rights impact assessments, with associated mitigation plans, were sequentially initiated and have increasingly influenced project design and relations among companies, host governments, and locally impacted communities. Often, beneficial community-level social, economic, and health programs have voluntarily been put in place by companies. These flagship programs can serve as benchmarks for community–corporate–government partnerships in the future. Here, we present examples of such positive phenomena and also focus attention on a myriad of challenges that still lie ahead.

Keywords: impact assessment, community health, corporate social responsibility

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PARKING LOT

ISSUE: Canadian Mining Journal appears to be an industry publication rather than a peer-reviewed scholarly journal. Not available through Google Scholar or SSRN. However, the articles' subject matter seems to be on point.

Torrance, Michael, Human Rights violations can hurt a company's reputation, Canadian Mining Journal, Feb/Mar 2016, Vol.137(2), p.36

Human rights violations related to labor standards, contracted security, environmental conditions at work, and forced resettlement can be very damaging to the reputation of any business. Supply chain human rights issues are becoming a focal point of increased legislation and legal risks likely to affect the Canadian mining industry, requiring effective management and due diligence to manage such issues as part of broader enterprise risk. An important driver of these developments was the unanimous endorsement of the UN Guiding Principles on Business and Human Rights (the Guiding Principles) by UN Human Rights Council. Of importance to the Canadian mining sector, the Guiding Principles have been endorsed by the Canadian Government in the CSR Strategy for the Extractive Sector. Companies should also develop supplier codes of conduct that address key components of human rights due diligence in the supply chain.

Keywords: human rights, labor standards, mining industry, supply chains, violations, due diligence, corporate image

Torrance, Michael, Policy developments could affect CSR obligations of Canadian miners, Canadian Mining Journal, Aug 2016, Vol.137(6), p.52

Free Prior and Informed Consent Fully Supported by Government of Canada In May, the Government of Canada officially removed its "objector status" to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Inclusion of Human Rights in OECD Common Approaches Another important development for companies that may seek financing support from export credit agencies, is the release of the new OECD "Common Approaches," which sets standards for environmental and social governance for all OECD export credit agencies.

Keywords: project finance, native peoples, social responsibility, standards, human rights, consent, due diligence, freedom of religion

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ISSUE: Mineral Law Series: Rocky Mountain Mineral Law Foundation appears to be an industry publication rather than a peer-reviewed scholarly journal. Not available through Google Scholar or SSRN. However, the articles' subject matter seems to be on point.

Delecluse, Adrien Serge, Incorporating human rights into business decision making.(Special Institute on Human Rights Law and the Extractive Industries), Mineral Law Series: Rocky Mountain Mineral Law Foundation, Feb 18, 2016, Vol.2016(2), p.CH7(22)

Aftab, Yousuf, Anticipating and managing human rights risks: due diligence tailored to business risk (Special Institute on Human Rights Law and the Extractive Industries), Mineral Law Series: Rocky Mountain Mineral Law Foundation, Feb 18, 2016, Vol.2016(2), p.CH6(43)

Kassis, Cynthia Urda ; Newcomb, Danforth ; Orllac, Manuel A., Preserve and protect: transacting business during a corruption investigation. (Special Institute on Human Rights Law and the Extractive Industries), Mineral Law Series: Rocky Mountain Mineral Law Foundation, Feb 18, 2016, Vol.2016(2), p.CH16(25)

Rivkin, David W., The wise counselor and the frontiers of business and human rights.(Special Institute on Human Rights Law and the Extractive Industries), Mineral Law Series: Rocky Mountain Mineral Law Foundation, Feb 18, 2016, Vol.2016(2), p.CH1(58)

Ramasastry, Anita The Voluntary Principles on Security and Human Rights reach adolescence.(Special Institute on Human Rights Law and the Extractive Industries), Mineral Law Series: Rocky Mountain Mineral Law Foundation, Feb 18, 2016, Vol.2016(2), p.CH14(23)

ISSUE: Not on Google Scholar or SSRN. Impunity Watch does not appear to be a peer-reviewed journal.

Bartels, Max, Global Centre for the Responsibility to Protect - preventing corporate involvement in mass atrocity crimes: implementing the UN Guiding Principles on Business and Human Rights, Impunity Watch, March, 2016

ISSUE: Difficulty finding English version to check if scholarly article

Lucena Cid, Isabel Victoria, La implementación de los principios rectores sobre las empresas y los Derechos Humanos. implicaciones para los Estados = The implementation of the guiding principles on business and human rights. Implications for States, UNIVERSITAS. Revista de Filosofía, Derecho y Política, 01/31/2017, Vol.25(0)

ISSUE: Available on Google Scholar but not SSRN. Risk Management does not appear to be a peer-reviewed journal

Hodge, Neil, HUMAN RIGHTS AND CORPORATE WRONGS EXPOSING THE DARK SIDE OF CORPORATE SUPPLY CHAINS, Risk Management, Jul/Aug 2016, Vol.63(6), pp.32-36

According to PwC, 89 companies in the Fortune 500 average more than 100,000 suppliers each, which means that, "to protect human rights as part of the overall risk management strategy, it is essential to take a broad view of the extended business, including its supply chain partners," said Ian Livsey, CEO of the U.K.'s Institute of Risk Management. According to supply chain resilience firm Resilinc's recent white paper New Forced Labor Legislation Set to Impact Global Supply Chains, more than 60% of companies do not have visibility beyond their Tier-^ suppliers, and 79% of large enterprises cite this as a concern.

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