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# CORPORATE HUMAN RIGHTS LIABILITY IN INTERNATIONAL LAW: MOVING FROM SOFT LAW TO ENFORCEMENT

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## ABSTRACT

The increasing dominance of multinational corporations (MNCs) in the global economy has revealed significant structural flaws in the old state-centric model of international law, notably in terms of human rights protection. Although companies operate in several jurisdictions and have tremendous power over local populations, international legal duties have traditionally been addressed almost exclusively at nations. This has led to a persistent accountability gap. Soft law instruments, such as the United Nations Guiding Principles on Business and Human Rights (2011), have attempted to bridge this gap by outlining corporate accountability principles; but, their voluntary nature limits its practical application.

Recent developments, such as local laws mandating human rights due diligence and courts increased readiness to hear transnational corporate responsibility claims, point to a slow but significant trend toward enforceability. This paper critically assesses these trends and contends that international law is evolving toward a hybrid form of accountability in which state responsibilities, domestic enforcement, and judicial innovation all influence corporate responsibility. While major problems exist, notably in terms of jurisdiction and enforcement, the overall trend indicates a shift from aspirational norms to more tangible legal requirements.

**Keywords:** Corporate Liability, Human Rights, Multinational Corporations, International Law, Due Diligence, Soft Law

## INTRODUCTION

Over the last few decades, the growth of global marketplaces has increased the importance of multinational firms. These entities now wield economic power on par with sovereign states. While this expansion has encouraged investment and development, it has also raised severe concerns about corporate involvement in human rights violations, including exploitative labor practices, environmental damage, and displacement of indigenous populations.<sup>1</sup>

Despite these realities, the architecture of international law has not progressed at the same rate. Historically, it has been intended to control ties between states rather than private individuals.<sup>2</sup> Corporations face limited international legal requirements, resulting in a "governance gap."<sup>3</sup> Victims of corporate misbehaviour frequently face procedural and substantive impediments when seeking redress, especially in global circumstances.

In response, international organizations and academics have attempted to reset the legal system through soft law efforts. However, recent legislative and judicial trends indicate that the focus is shifting to enforceable responsibility. This article investigates whether these developments represent a genuine shift in international law or simply a gradual adaptation to existing limits.

## STATE-CENTRIC FOUNDATIONS OF INTERNATIONAL LAW

The traditional view of international law is strongly based on the doctrine of state sovereignty. States are recognized as the primary subjects of international law, with both rights and obligations.<sup>4</sup> Non-state actors, including companies, have long played a secondary role, with no independent legal obligations at the international level.

This approach is especially clear in the realm of human rights law. International treaties require states to protect the rights of individuals under their jurisdiction, but they do not directly regulate business activity.<sup>5</sup> As a result, corporate accountability is mediated by domestic legal systems, which vary greatly in their effectiveness.

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<sup>1</sup> Surya Deva & David Bilchitz eds., *Human Rights Obligations of Business* 12 (Cambridge Univ. Press 2013).

<sup>2</sup> Andrew Clapham, *Human Rights Obligations of Non-State Actors* 195 (Oxford Univ. Press 2006).

<sup>3</sup> Id.

<sup>4</sup> Malcolm N. Shaw, *International Law* 143 (8th ed. 2017).

<sup>5</sup> Id. at 210.

This structural limitation becomes especially problematic in cases involving transnational corporate activity. Where businesses cross many jurisdictions, no single state may be willing or able to govern effectively. Scholars have thus questioned whether the old state-centric model is still suitable in an era of globalized economic activity.<sup>6</sup>

## **SOFT LAW AND THE DEVELOPMENT OF CORPORATE RESPONSIBILITY**

The creation of soft law frameworks was a significant attempt to solve the constraints of traditional international law. The UN Guiding Principles on Business and Human Rights represent the most influential initiative to date.<sup>7</sup>

The UNGPs establish a three-pillar framework:

- States need to defend human rights,
- Corporations responsibility to respect those rights and,
- The necessity for effective remedies.

Although commonly accepted, these principles do not create binding legal obligations.<sup>8</sup> Their implementation depends largely on voluntary compliance and domestic adoption.

Similarly, The Organisation for Economic Cooperation and Development Guidelines for Multinational Enterprises advocate responsible business practices, but lack enforceability.<sup>9</sup>

Although soft law has played an important role in setting expectations and influencing behavior, its limitations are becoming evident. Without legal requirements or substantial punishments, firms may engage in selective compliance, adopting the language of responsibility without making substantive changes.<sup>10</sup>

## **GRADUAL SHIFT TOWARDS BINDING OBLIGATIONS.**

In recent years, there has been a significant shift towards the implementation of binding legal measures to regulate business behavior. Several governments have passed legislation mandating businesses to do human rights due diligence throughout their operations and supplier networks.

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<sup>6</sup> John Gerard Ruggie, 101 *Am. J. Int'l L.* 819 (2007).

<sup>7</sup> U.N. Doc. A/HRC/17/31 (2011).

<sup>8</sup> *Id.*

<sup>9</sup> OECD Guidelines (2011).

<sup>10</sup> Surya Deva, 29 *Hum. Rts. Q.* 69 (2007).

For example, the French Duty of Vigilance Law requires large enterprises to detect, prevent, and minimize human rights issues associated with their activities.<sup>11</sup> Similarly, the German Supply Chain Act places statutory responsibilities on businesses to comply with human rights norms.<sup>12</sup> The United Nations is currently negotiating a treaty on business and human rights.<sup>13</sup> While the outcome of these negotiations remains uncertain, they reflect a growing consensus that voluntary frameworks alone are insufficient.

These developments suggest an emerging trend toward extraterritorial regulation, where states seek to control corporate conduct beyond their borders. This represents a significant evolution in the legal landscape.

### JUDICIAL DEVELOPMENTS AND EXPANDING LIABILITY

Courts have increasingly played an important role in determining corporate accountability. Claimants have utilized strategic litigation to hold parent businesses accountable for harm caused by their subsidiaries abroad.

A significant example is *Vedanta Resources Plc v Lungowe*, in which the UK Supreme Court recognized that a parent business may owe a duty of care to individuals affected by its subsidiary's actions.<sup>14</sup> The Court underlined that responsibility is determined by the parent company's level of control and monitoring.

Similarly, in *Okpabi v Royal Dutch Shell Plc*, the Court confirmed that jurisdiction can be established when there is a reasonable claim against the parent company.<sup>15</sup>

In contrast, the decision in *Kiobel v Royal Dutch Petroleum Co*, limited the extraterritorial application of the Alien Tort Statute in the United States, highlighting the continuing divergence in judicial approaches.<sup>16</sup>

Taken together, these cases indicate that while progress is uneven, courts are increasingly willing to engage with questions of corporate liability in transnational contexts.

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<sup>11</sup> French Duty of Vigilance Law (2017).

<sup>12</sup> German Supply Chain Act (2021).

<sup>13</sup> U.N. Working Group (ongoing).

<sup>14</sup> [2019] UKSC 20.

<sup>15</sup> [2021] UKSC 3.

<sup>16</sup> 569 U.S. 108 (2013).

## SIGNIFICANT CHALLENGES IN ENFORCEMENT

Despite these advancements, considerable challenges remain. Jurisdictional complexity is a significant challenge in global litigation. Determining the relevant forum and applicable legislation is typically a complex legal analysis that can delay or derail procedures.<sup>17</sup>

The doctrine of *forum non conveniens* has frequently been used to dismiss claims lodged in industrialized jurisdictions and refer them to courts in host countries where access to justice may be limited.<sup>18</sup> This reduces the effectiveness of multinational lawsuits for accountability.

Economic concerns play an important influence. States may be hesitant to impose harsh regulatory requirements on firms due to worries about competitiveness and investment flows.<sup>19</sup> The conflict between economic and human rights concerns hampers efforts to create a cohesive global framework.

## TOWARD A HYBRID MODEL OF ACCOUNTABILITY

In light of these developments, it is becoming clear that a hybrid form of corporate accountability is emerging. Rather than putting direct duties on firms at the international level, this model use a combination of state regulation, domestic legislation, and court involvement.

According to this concept, states are supposed to control corporate behavior within their jurisdiction, including actions conducted abroad, while courts play a supporting role in ensuring accountability. This enables international law to adapt to changing circumstances without sacrificing its state-centric foundation.<sup>20</sup>

Although this approach has shortcomings, it provides a pragmatic response to the issues provided by global corporate activities.

## CONCLUSION

The issue of corporate human rights liability is at the crossroads of changing legal norms and entrenched institutional constraints. While international law has generally emphasized state

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<sup>17</sup> Meeran, 19 *Int'l J. Hum. Rts.* 247 (2015).

<sup>18</sup> *Id.*

<sup>19</sup> Kinley, *Civilising Globalisation* 145 (2009)

<sup>20</sup> Clapham, *Supra* note 2

accountability, the expanding power of transnational corporations has forced a rethinking of this approach.

The move from soft law to more enforcement procedures is neither straightforward nor complete. However, changes in domestic legislation, judicial practice, and international discussions indicate a significant shift in direction. Corporate accountability is increasingly being presented as a legal duty, rather than a voluntary commitment.

It is unclear if this course will eventually lead to a truly binding international regime. Nonetheless, current trends suggest that the governance gap is gradually shrinking.