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THE LEGITIMACY OF INTERNATIONAL LAW IN GLOBALIZED CORPORATE STATE OF AFFAIRS

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ABSTRACT

The research paper talks about the relationship between human rights and corporations that are capacious. Many scholars have argued that the concept of corporate responsibility in international law is uncertain. The reason being every state has its own laws that govern various jurisdictions. So when it comes to international law it had been very problematic as to the consent of states attributing such responsibility. Various factors such as "State Sovereignty" come into the picture that dismisses the concept of independent corporate responsibility.

All the scholars have come up with the assumption that international law should be set aside from the State laws i.e. International law can be based on the practices outside the states consent. So the state law and international law both should be different[2]. This article argues about the importance of international law in corporations and how the states come to terms with the corporate responsibility in International Law.

The statement by the United Nations Sub-Commission's Draft on the Responsibility of Transnational Corporations and other Business Enterprises on the scope of human rights proved to be useful. Nonetheless, opponents were able to point out that the regulations go beyond the mandatory state obligation provisions of current international law.

In 2005, the Secretary General on the issue of human rights and transnational corporations was appointed to deal with the opponent and backers of the draft norms. After examining the draft he came up with the conclusion that the laws were exaggerated and ambiguous in nature which created a lot of confusion. In the later report, he concluded by saying that the use of soft laws would be of much potential use and would favor the interests of the states.

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[2] Richard Bilder, *'An Overview of International Human Rights'* (Univeristy of Wisconsin Law School) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1641167> accessed 10 December 2020

In these contexts, the incidence of human rights abuses by multinational corporations (MNCs), particularly in developing countries combined with the relative absence of host state control and the compliance, indicates that corporations should be governed under international law[3].

HUMAN RIGHTS AND MNCs

What is Human Rights?

In addition to the States, individuals are regarded as the real subjects and beneficiaries of International Law by virtue of having rights and duties flowing directly from International Law. Human rights are one such right which has been conferred to individuals by the State in modern International Law.

The idea of human rights is bound with the idea of human dignity. All those rights which are essential for the protection and maintenance of dignity of individuals and create conditions in which every human being can develop his personality to the fullest extent and may be termed as human rights.

The World Conference on Human Rights held in 1993 in Vienna[4] stated in the declaration that all human rights derive from the dignity and worth inherent in the person and this person is the central subject of human rights and fundamental freedoms.

The principle of the protection of human rights is derived from the concept of a man as aa person and his relationship with an organized society which cannot be separated from universal human nature.

The relationship between Human Rights and Corporations

Corporations can have impact on human rights through the relationships with their employees, consumers, communities around them and also through their supply chain relationships. For example, corporations that might have a supplier for forced labor in any country, there are people from different streams dealing with the challenges caused by corporate activity and human rights. What my research is trying to do is to see how the law can help, prevent, mitigate the

[3] Weissbrodt, David, and Muria Kruger, *'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights'* (*The American Journal of International Law*, vol. 97, 2003) <https://www.jstor.org/stable/3133689?seq=1> accessed 10 Decmber 2020.

[4] Dorothea Anthony, *'The World Conference on Human Rights: still a guiding light a quarter of a century later'* (Australin Journal of Human Right 2009), https://www.tandfonline.com/doi/abs/10.1080/1323238X.2019.1695083?af=R&journalCode=rjhu20 accessed 11 December, 2020

negative impacts of corporations on human rights and also provide positive impact on corporations.

In 2008, John Ruggie, UN Special Representative for Business and Human Rightsproposed a Policy Framework to the Human Rights Council[5]. The policy framework consists of three pillars, the first on is the States duty to protect against human rights abuses by third parties including business. Secondly, the corporate responsibility to respect human rights which I defined as a process of due diligence by companies to make sure that they don't interfere or infringe upon the rights of others and thirdly a need for access to remedy, both the traditional remedy and non-traditional remedy.

Traditional meaning courts and non-traditional meaning mediation or the grievance mechanisms. The Human Rights Commission then endorsed this framework and came up with operationalizing this framework meaning coming back with concrete guidance on what states should be doing and what companies should be doing in relation to those three principles. Along the way, I have found out that a number of government and other official entities have already picked up on the framework and have applied it in a variety of ways. Individual governments such as Norway and South Africa have used the framework to do their own policy assessments. They have actually created mechanisms to look at their own business in Human Rights Policy structure. The OECD (Organisation for Economic Co-operation and Development)[6]has guidelines for multinational corporations to which is attached as a complaints mechanism. But over the years, OECD has also started following the framework endorsed by the Human Rights Commission. The worst of the worst corporate related human rights abuses takes place in the form of conflict where there is fighting over territory or the government itself. This is the type of concept that elicits the enterprises who treat them as lawless souls. But even well-known firm can involve themselves in human rights abuse. Therefore, this is an area that is of particular concern to the mandate.

SOFT LAWS

The United Nations Global Compact is a United Nations initiative to encourage business worldwide, to adopt sustainable and socially responsible policies and to report on their

[5] Surya Deva, 'Guiding Principles on Business and Human Rights: Implications for Companies' (European Company Law, Vol. 9, 2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2028785 accessed 11 December 2020

[6]Ibid

implementations. The UN Global Compact is a principle based framework for businesses stating 10 principles in the areas of human rights, its labour, environment and anti-corruption[7]. Under the global compact, companies are brought together with UN agencies, labour groups and civil societies. Cities can join the global compact through the cities program. The UN Global Compact is the world's largest corporate sustainability initiative with thirteen thousand corporate participants and other stakeholders over 170 countries with two objectives. One is to mainstream the 10 principles in business activities around the world and analyze action in support of broadening UN goals, such as the millennial development goals, sustainable development goals. Moving forward, the UN Global Compact in its signatories are deeply invested and enthusiastic about supporting work towards the SDGs (Sustainable Development Goals). The UN Global Compact was then was announced by then the UN Secretary General Kofi Annan, in an address to the world economic forum in 1999 and was officially launched in the UN headquarters, New York. The office works on a mandate set out by the UN General Assembly as an organisation that promotes responsible business practices in UN values among the Global Business Community in the UN system. The UN Global Compact is a founding member of the United Nations sustainable stock exchanges initiative along with the principles for responsible investment.

HARD LAWS

The above discussions suggest that soft laws of their own are insufficient to maintain corporate accountability. The need for tough laws that have compliance seems to be necessary. Mechanisms and effective harassment punishments. National regulation has proven to be unsuccessful, especially in developing countries where either it does not exist or it is not implemented. The emphasis is now moving to International Law.

Till date there is no binding regulation which holds the corporations accountable of Human Rights. Probably, the most promising effort to govern MNCs worldwide was the proposed guidelines for all businesses, MNCs and other corporate investors.

According to the Lawyers' Committee on Human Rights, they combined human rights, civil rights, the environment, growth, anti-bribery concerns and consumer protection, and provided

[7] Lau, Cubie L.L. & Fisher, Cliff & Hulpke, John & Kelly, Aidan & Taylor, Susana, *'United Nations Global Compact: The Unmet Promise of the UNGC'*(Social Responsibility Journal, 2017), https://www.researchgate.net/publication/309662263_United_Nations_Global_Compact_The_Unmet_Promise_of_the_UNGC_disclaimer0 accessed 9 December 2020

the most detailed, action-oriented reaffirmation of the current human rights laws applicable to global companies till date. It may however be argued that, considering the good intentions of the Draft Norms, the critique of the validity of its binding methodology, the existence of its supervision and compliance processes and the assertion that it goes beyond the existing International Law on State responsibility which indicate the need to look elsewhere for legal authority for direct corporate responsibility[8].

DIRECT CORPORATE RESPONISIBILITY UNDER INTERNATIONAL LAW

The corporations should not be legally held responsible under International Law because it would affect the State Sovereignty and lack of legality in International Law.

If there is a breach of contract entered into by a state with aliens, then it does not give rise to any international responsibility. The alien person has the remedy to avail the local means available to him in the State law of the State concerned.

RELEVANT SOURCES OF INTERNATIONAL LAW

Oppenheim defines the term 'source of law' as the name for a historical fact out of which rules of conduct come into existence. The term 'source' refers to methods or procedures by which International Law is created.

Order of Use of Sources

An authoritative order of the use of sources of International Law is given in Article 38 of the Statute of International Court of Justice (ICJ).[9]Thus, the Court is expected to apply the sources in order in which they appear. Thus, International Conventions or Treaties are given preference and if not available then customs. General principles of law shall find place only in treaties and customs are not available. Judicial decisions and teachings have been regarded as subsidiary means for the determination of rules of law.

a. International Customs

International Custom is the oldest and most original source of International Law. According to Article 38 of the Statute of ICJ, International Custom should be the evidence of general practice

[8]Ibid

[9]Shagufta Omar, '*Sources of International Law in the Light of the Article 38 of the International Court of Justice'* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1877123> accessed 11 December 2020

accepted as law. This feeling on the part of States that acting as they do, they are fulfilling legal obligations which is called as *"opinio juris sive necessitatis"*.

The ICJ in the North Sea Continental Shelf Case that, for a State to constitute *"opinio juris sive necessitates"* not only must the Act amount to a settled practice but also be carried in such a way as to the evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it.

b. International Treaties

In the modern period, International Treaties are the most important source of International Law. Oppenheim defines International Treaties as agreements of a contractual character between states or organizations of states creating legal rights and duties.

Pacta Sunt Servanda

In nearly all the cases the object of the treaty is to impose binding obligations on the states who are parties to it. States are bound to fulfil in good faith the obligations assumed by them under treaties. The binding force of treaties is evident from the fact that treaties are pieces of International legislations and therefore, possess legislative authority.

The Preamble to the Vienna Convention on the Law of Treaties notes that the principle of *"pacta sunt servanda"* is universally recognized. Article 27 of the Convention strengthens the rule by providing that no party to a treaty might attempt to justify its failure to perform any of its International Treaty obligations by invocation of its internal law.

c. General Principles of Law

Article 38 (1) (c) of the statute of ICJ lists general principles of law recognized by civilized states as the third source of International Law[10].

By general principles of law we mean those rules and standards by which we find the same form in developed systems of law.

d. Judicial Decisions and Juristic Works

Article 38 (1)(d) of the statute of ICJ states that the Court shall apply judicial decisions and teachings of the most highly qualified publicists of various nations as subsidiary means for the determination of rules of law.

The decisions of ICJ have enormously influenced States and codifying agencies. Straight baseline system evolved in Anglo-Norwegian Fisheries Case[11] was accepted by the International Law Commission and incorporated in the UN Convention on the Law of Sea, 1982.

[10]Ibid

e. Resolutions of the General Assembly

The evolution of International Organization represents a significant stage in the history and development of modern International Law. The decisions and determinations of the organs are now recognized as an important source of law. The resolutions of the General Assembly which are concerned with mutual work of the UN organization are binding.

CONCLUSION

When it comes to International Law, the corporate responsibility cannot be separated from the States Practice. The sources of International Law must be looked upon while making these laws. Direct liability under international law can be specifically assigned to MNCs by statute, which can explicitly articulate the relevant standards and means or procedures for the implementation of those norms. At the end of the day, questions of clear corporate liability rest in the hands of the States, and maybe understandably so.

[11]United Kingdom v. Norway [1951]