

Home state obligations over multinational corporations in human rights treaties

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Summary

The global operation of MNCs could have negative effects on human rights in a host State. What can we expect from a home State with regard to this phenomenon? What obligations does a home State have under human rights treaties? The problem caused by private abusers could be addressed either by attributing more to States under secondary rules or by developing positive obligations under primary rules. This book addresses the problem of the human rights damage caused by a State-owned corporation by developing secondary rules on attribution issues, because a State-owned corporation has a close link to the State as an owner. The problem of the human rights damage caused by an ordinary company is tackled by exploring the scope of positive obligations under human rights treaties (primary rules).

The ILC Articles have provided a legal framework for the attribution issues in general. However, these articles have not settled the attribution issue in relation to State-owned corporations. A special rule for attribution is needed in the discourse about universal human rights treaties. The special rule can be designed as follows: ‘The conduct of a State-owned corporation should be directly attributed to the State which has the majority ownership in the corporation.’ Once the direct attribution can be proven, the extraterritorial application of human rights treaty does not face any obstacles according to the existing case law.

Home State obligations for ordinary companies concern the scope of positive obligations under human rights treaties. This book adopts a unified approach to address the scope of State obligations with regard to all human rights treaties regardless of whether the treaty contains a jurisdiction clause or not. This book has clarified the function of the expression ‘individuals within the jurisdiction of a State’ in human rights treaties. If a person falls within the jurisdiction of a State, then this person is entitled to positive obligations from this State. Alternatively, if a perpetrator who abuses or may abuse human rights falls within the jurisdiction of a

State, then the State should also punish this person or prevent this person from abusing human rights.

In the discourse of business and human rights, an MNC is headquartered in the territory of a home State and therefore within its jurisdiction. Human rights treaties should be interpreted as requiring States to control activities within their own territory in order to not infringe human rights in other countries. This interpretation has been endorsed by human rights treaty bodies. Therefore, home State obligations are possible when a company (a perpetrator) is within its jurisdiction, even if the individual victim is not considered to be within the jurisdiction of the home State.

This book also explored the possibility that individuals located in a host State are within the jurisdiction of a home State for the purpose of invoking a human right. It has argued that due regard should be given to international investment law in the course of the interpretation of jurisdiction in human rights law in order to mitigate the fragmentation of international law. It is submitted that individuals in a host State can be considered to fall within the jurisdiction of a home State to the extent that the home State has limited the regulatory power of the host State through international investment law practice. This interpretation of jurisdiction is specially applied to the obligation to protect and it does not deal with the obligation to fulfill. This approach to the jurisdiction over an individual victim in a host State could build a bridge between human rights law and investment law.