

Business and human rights

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I. Summary

This Ph.D. thesis analyses the accountability of European home States for their failure to secure the human rights of host State's victims against transnational enterprises. It has the following three main purposes.

The first objective is to assess the legal remedies currently available to the victims of human rights abuses coming from host States against a holding company incorporated in a European home State. I conduct this first limb of analysis on the basis of three case studies where a holding company H is incorporated in the UK with subsidiaries incorporated in Bangladesh, Ecuador, and Nigeria. The issue is whether, under international, EU, and domestic UK law Bangladeshi, Ecuadorian and Nigerian stakeholders have effective means of redress against such UK holding company. I conclude that there are no such means of redress for the following reasons. International law does not set up a liability framework for holding multinational enterprises accountable for human rights abuses. The only sources that take into account the extraterritorial activities of multinational corporations are soft international law corporate codes of conduct, which are not binding. EU law is equally failing to regulate the accountability regime applicable to multinational corporations abusing human rights. However, it sets out the conflict of laws rules applicable to extraterritorial tort law cases directed against multinational companies. Such laws are not taking into any account human rights. As a result, European courts may apply the place of injury law notwithstanding the fact that such law could be a shield for the perpetrator of an extraterritorial human rights abuse. As it pertains to domestic tort and company laws, although they regulate the liability of corporations within their national system, they are of limited application to multinational enterprises incorporated in a number

of different countries. Two problems are relevant in this respect: the limited liability of holding companies for the human rights abuses perpetrated by their subsidiaries and the territoriality of domestic laws. UK tort law permits to hold a parent company accountable for the damages committed by its subsidiary or for its failure to prevent such damages only in limited cases. As a result, the victims of human rights abuses coming from developing countries have little chance to successfully hold European multinational enterprises accountable for human rights abuses. European States are not entitling them with effective remedies in domestic courts.

The second objective is to demonstrate that the failure of European States to secure the victims of human rights abuses against European multinational enterprises is a violation of the ECHR. I conduct this second limb of analysis on the basis of the UN Treaty Bodies and ECtHR's jurisprudence on the positive obligations of States to secure human rights. I refer to the distinction between the duty to protect and fulfil to set up two shades of such obligation to secure. The duty to protect requires States to establish a functioning State apparatus and therefore to provide victims of human rights abuses with effective remedies against private parties. The duty to fulfil is a *best effort* obligation for States to progressively prevent human rights abuses. I set up such duties as obligations to provide effective remedies against multinational enterprises and to progressively prevent corporations from abusing human rights. In addition, I argue that such obligations are applicable extraterritorially to European multinational businesses that, while maintaining their principal place of business in Europe, are abusing human rights in development countries. The thesis includes an analysis of the ECtHR case law and the scholarly debate on extraterritoriality. I refer to the Maastricht Principles as a conceptual basis to understand the applications of the ECtHR jurisprudence on the

extraterritorial human rights abuses committed by multinational enterprises. My conclusion is that European States have a positive obligation to secure the human rights of distant strangers against European multinational corporations. I apply such positive obligation to the three case studies concerning the holding company H incorporated in the UK which subsidiaries abuse human rights in Bangladesh, Ecuador and Nigeria. I argue that in such hypothetical cases, the victims of human rights abuses could file a complaint against the UK at the ECtHR for its failure to secure their rights against the holding company H.

The third objective is normative. I propose that human rights victims use strategic litigation at both the domestic and international level to push for a change of the current state of the law. The goal is to empower human rights victims coming from developing countries against European States, which are unwilling to hold multinational enterprises responsible for human rights abuses. I propose some avenues for legal reform that European States could implement to provide victims with effective remedies against multinational corporations and prevent the human rights abuses committed by such companies. These proposals include either recognising multinationals as subjects of international law with responsibilities for their actions at the international level, or, in the alternative, reforming the conflicts of laws, tort laws and companies laws at the domestic level so that they will regulate the extraterritorial activities of multinational enterprises. Furthermore, I propose to re-orient the trade and investment policies of European countries so that they take into consideration the impact that the extraterritorial activities of European multinational enterprises have on human rights.