



University of  
Zurich<sup>UZH</sup>

Institute for International Law

# The UN-Framework for business and human rights

16 April 2014

Prof. Christine Kaufmann

Spring Term 2014



University of  
Zurich<sup>UZH</sup>

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## Exam Information

- Type: written exam, open books, no electronic devices
- Duration: two hours
- Date: 25 June 2014
- Time: 17:00 – 19:00
- Room: will be announced by the Dean's office



## Overview

- Increasing importance of non-state actors for the realisation of human rights
- Multinational enterprises (MNEs) / transnational corporations (TNCs) as non-state actors
  - Status of MNEs in general international law
  - Legal framework
- Responsibility of MNEs for implementing human rights
- New framework: protect, respect and remedy



## Law: new actors raise new issues

Privatisation of governmental functions	Are contractors bound by human rights?
Globalisation and trade liberalisation	Cross-border supply chains, regulatory competition
Increasing norm-setting activities of international organisations	Shift of competences away from governments to international organisations and from legislator to executive branch
Increasing influence of civil society	Representation, transparency issues arise
Growth of international organised crime (trafficking)	Affects more than one state



## Human Rights and Business – new rules of the game



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## Current state of affairs in the UN

- Guiding Principles for the operationalization of the protect, respect and remedy framework unanimously adopted by the HR Council on 16 June 2011 (A/HRC/17/L.17/Rev.1)
- Mandate of UNSRSG John Ruggie ended
- Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises:  
<http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>
- Forum on Business and Human Rights: takes place annually in Geneva (2013: approx. 1'500 participants)

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## Members of the Working Group



Dr Alexandra Guàqueta

(Current chair)



Dr Michael Addo

(Meeting in Geneva)



Dr Margaret Jungk



Puvan Selvanathan



Pavel Sulyandziga

For more information:

<http://www.ohchr.org/EN/Issues/Business/Pages/Members.aspx>

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## Law: new rules of the game UN Guiding Principles (A/HRC/17/L.17/Rev.1)

Duty to protect	States	<ul style="list-style-type: none"> <li>– Existing legal obligation</li> <li>– Prevent, investigate, redress and punish abuse by private actors</li> <li>– Extraterritorial scope is still unclear</li> </ul>
Responsibility to respect	Business	<ul style="list-style-type: none"> <li>– Act with due diligence to avoid infringing on the rights of others</li> <li>– Comply with national laws and respect human rights</li> </ul>
Access to remedy	States and business	<ul style="list-style-type: none"> <li>– Access to formal judicial systems difficult for victims</li> <li>– Develop non-judicial mechanisms</li> </ul>

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## Law: multidimensional fragmentation

- International level
  - Horizontal human rights obligation of states, but no specific binding framework; abundance of soft law
  - (Partial) Incoherence between human rights law and international economic law
- Variety of approaches in domestic law
  - Corporate law
  - Corporate liability for human rights abuses, remedies
- Within a domestic legal system
  - Different notions of due diligence across different areas of law
  - Incoherent concepts of corporate responsibility in corporate, criminal and human rights law



## State duty to protect (1/2)

- Compliance with international human rights obligations
  - Problem of overly broad investment agreements with stabilization clauses: Investor protection vs. safeguarding human rights obligations
  - Guidelines for investment agreements are necessary
- Compliance with human rights when doing business with business
  - Export credit and investment insurance agencies
  - Support host states in implementing regulatory environment



## State duty to protect

(2/2)

- Foster a corporate culture respectful of human rights at home and abroad
  - Corporate law
  - Promote corporate social responsibility
- Role of international cooperation
  - Civil wars and other conflicts
  - Guidelines for companies operating in conflict affected areas



## Corporate responsibility to respect

- Minimum requirement for companies
  - More concrete guiding principles for human rights due diligence
  - Demonstrate to stakeholders that they respect human rights (“knowing and showing”)
- Resolve major dilemmas for companies
  - In which situations do companies have human rights responsibilities greater than respect?
  - Address key challenges



## Corporate responsibility to respect: the scope of due diligence

- Comprises steps by companies to become aware of, prevent and address adverse impacts of their activities and relationships
- Due diligence depends on the potential human rights impacts of a company
- Guiding principles which companies should consider:
  - Understand the country contexts in which business activities take place
  - Know what human rights impacts business activities may have
  - Analyse whether the company might contribute to human rights abuses through relationships connected to its activities (e.g. supply chains)



## Corporate responsibility to respect: key challenges

- Supply chain challenges
- “Resource curse”
- Extraterritorial accountability challenge
- “Legal conflict” challenge
- Corruption and human rights
- Methodology challenge



## Access to remedy: shared duty of states and MNEs

- Judicial remedy
  - Barriers to judicial remedy
  - Focus on particularly salient barriers to victims of corporate-related human rights abuses
- Prevention and early resolution of disputes
  - Improve existing non-judicial grievance mechanisms
  - Explore new options
  - Pilot grievance mechanisms at the company level in four industries
  - Expand contribution of National Human Rights Institutions
  - Share information on existing mechanisms



## Implementation by the business sector

- What steps need to be taken?
- Who needs to be involved?
- Is there a generally applicable approach or is a sector or industry specific implementation necessary?