



University of
Zurich^{UZH}

Institute for International Law

New UN-Framework for business and human rights

20 March 2013

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Spring Term 2013



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Exam Information

- Type: written exam, open books, no electronic devices
- Duration: two hours
- Date: 28 June 2013
- Time: 13:00 – 15:00
- 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**



Ruggie Report to HR Council 2008: Protect, respect and remedy

- State duty to protect
 - Prevent, investigate, redress and punish abuse by private actors
 - Extraterritorial scope is still unclear
- Corporate responsibility to respect
 - Act with due diligence to avoid infringing on the rights of others
 - Comply with national laws and respect human rights
 - Reflected in many soft law instruments
- Access to remedy
 - Access to formal judicial systems is difficult for victims
 - Therefore: Develop non-judicial mechanisms



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
- 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 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 (1/2)

- Supply chain challenges
- Resource curse challenge
 - Voluntary Principles
 - Problems with extracting industry, e.g. in Congo
- Engagement/divestment challenge
 - Dilemma of business interest vs. human rights
 - e.g. US law on Sudan
- Extraterritorial accountability challenge
 - e.g. HRC, Concluding observations 2012 on Germany, CCPR/C/DEU/CO/6, para. 16.
 - e.g. Shell Nigeria case



Corporate responsibility to respect: key challenges (2/2)

- Impact challenge
 - How to measure human rights abuses
 - Qualitative vs. quantitative approach
- “Legal conflict” challenge
 - Local law vs. human rights law
 - Local law vs. business standards
- Corruption and human rights
- Methodology challenge
 - Disclose impacts and methodology
 - e.g. Danish Institute for Human Rights, IFC



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: www.BASESwiki.org



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: 1st edition in December 2012 with participation of UZH Competence Center for Human Rights:
<http://www.menschenrechte.uzh.ch/news/unforumbusinesshumanrights.html>



Members of the Working Group



Dr Alexandra
Guàqueta



Dr Michael
Addo
Our speaker on
27 March 2013



Dr Margaret
Jungk



Puvan
Selvanathan
(Current chair)



Pavel
Sulyandziga

For more information:

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



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?



Room change for next week

- Next week's class is going to take place in room **KO2-F-152** (main building, right wing) and from **10:15 to 13:45**.

