Unravelling the Threads of State Responsibility: Tackling Human Rights Abuses by Transnational Corporations

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Abstract

This research article delves into the intricate relationship between states and transnational corporations (TNCs) concerning human rights responsibilities. Focused on the doctrine of state responsibility, the study explores the obligations of both host and home states in preventing and addressing human rights violations perpetrated by TNCs. Acknowledging the challenges within the state-centric framework, the research navigates through the complexities of regulating corporate behaviour in a globalized world. By scrutinizing the limitations of existing mechanisms and proposing alternative approaches, the article contributes to the discourse on enhancing private sector responsibility. This comprehensive analysis aims to unravel the threads of state responsibility, offering insights into potential avenues for addressing human rights abuses arising from corporate activities on the global stage.

Key words: State Responsibility, Transnational Corporations, Human Rights Violations, International Law, Corporate Accountability, Globalization, Non-State Actors

Introduction

In the realm of international law, the conventional standpoint on accountability maintains that only states and a select group of non-state actors bear direct responsibility for international transgressions. Many international treaties explicitly specify that, under international law, only states can be held liable. Concurrently, there is a growing acknowledgment of the role played by non-state actors in international law, particularly in matters involving human rights violations. Nonetheless, the primary duty for safeguarding, advancing, and enforcing human rights consistently lies with the respective states. This commitment is underscored in documents like the Vienna Declaration and Programme of Action, which accentuates that the foremost responsibility for the protection and promotion of human rights rests with governments. International human rights bodies, through various case laws, have also affirmed the centrality of the state's acknowledgment of itself as a party and the consequent responsibility for human rights violations. Consequently, the paper delves into the imperative examination of the doctrine of state responsibility concerning human rights violations perpetrated by private entities such as Transnational Corporations (TNCs).

TNCs typically operate beyond the conventional regulatory scope of international law, prompting a significant debate among international law scholars regarding the extension of

international law rules to corporations.[1] The doctrine of state responsibility, a fundamental principle in international law, asserts that states owe each other specific obligations. The pivotal question arises: Can TNCs be indirectly regulated through the medium of the state by virtue of the doctrine of state responsibility? This doctrine assumes significance in addressing the transnational acts and violations committed by TNCs. It delineates the obligations states owe each other, the circumstances precipitating state responsibility, and the conditions for invoking the doctrine concerning the conduct of private actors like TNCs.

The essence of international law is rooted in rules, emanating from states as the bedrock of the international legal system. The Permanent Court of International Justice emphasizes that these rules govern relations between independent states and are established to regulate their interactions. Originally conceived to address self-help issues, international law evolved in the twentieth century, assigning states responsibility for events within their territory and the actions of their citizens abroad. The doctrine of state responsibility emerged as a mechanism to deal with violations of international law, predominantly focusing on the protection of aliens and their rights regarding person and property.[2]

The doctrine of state responsibility, while integral, has evolved into a complex issue over time. The International Law Commission (ILC) dedicated fifty years to drafting a set of articles on state responsibility. This doctrine introduces critical questions, particularly regarding state responsibility for private acts. Key inquiries include determining the triggers for state responsibility, the nature of such responsibility (absolute or contingent on fault), and whether liability is strict or contingent on blameworthiness. The pertinent question in this context is the attribution of responsibility for acts, specifically addressing whether a state can be held responsible for human rights violations committed by TNCs and whether states can be accountable for the activities of corporations beyond their territorial boundaries.

This paper will delve into the comprehensive work of the International Law Commission on state responsibility to elucidate the concept of attribution of responsibility to states for private acts, with a specific focus on the responsibility of states for international wrongs committed by private actors, including TNCs.

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[1] Steven R Ratner, "Corporations and Human Rights: A Theory of Legal Responsibility", 111 *Yale Journal of International Law* at p. 471.

[2] Malcolm N Shaw, *International Law*, Cambridge University Press, Cambridge, 7th Edn. (2014) at p. 566.

Definition of State Responsibility

The concept of state responsibility is an enduring principle in international law designed to safeguard the rights of aliens. When a state commits an international wrong, it incurs responsibility. This rule has been recognized as a fundamental principle of international law, as articulated by the Permanent Court of International Justice, which defines it as a comprehensive legal concept mandating reparations for any breach of engagement. Reparation is deemed indispensable when a convention is not applied, and it is not obligatory for such a requirement to be explicitly stated in the treaty. The doctrine of state responsibility originates from the nature of the international legal system, relying on the roles of states in creating and implementing rules, and emanates from the doctrines of state sovereignty and equality among states.[3]

According to the International Law Commission (ILC) Draft on State Responsibility, two conditions must be proven to establish state responsibility. Firstly, there must be an act or omission by the state that constitutes conduct attributable to the concerned state. Secondly, there must be a violation of an international obligation by the conduct of the state in question. It can be inferred that state responsibility hinges on the connection between the state and the wrongful act. To attribute responsibility to states for private acts, the conduct of private actors must meet the criteria of being considered an "act of a state," necessitating a detailed examination.

The Draft Articles on State Responsibility and Attribution of Conduct to the State

The Draft Articles aim to systematize international regulations concerning state responsibility, marking the International Law Commission's endeavour to codify these principles. By 2001, the ILC had successfully codified the Draft Articles, a project initiated when the ILC was established in 1949. The first reading of the Draft Articles was completed in 1996, consisting of two parts: one addressing the conditions leading to international responsibility, and the other dealing with the consequences arising from such responsibility. Subsequently, from 1998 to 2000, the second reading occurred, where the provisions were scrutinized. In August 2001, during its 53rd session, the ILC adopted the Draft Articles alongside commentaries, totalling 59 articles divided into four parts: (i) the internationally wrongful act of a state, (ii) content of

[3] Sucharitkul S., "State Responsibility and International Law Liability under International Law", 18 *Loyola of Los Angeles International and Comparative Law Review* (1996) at p. 823.

the international responsibility of a state, (iii) the implementation of the international responsibility of a state, and (iv) general provisions. Despite being conceptualized to enforce state responsibility for breaches of international law, the Draft Articles have not been ratified as a treaty, leading to concerns about their legal standing in international law.

As the Draft Articles lack the status of a binding treaty, they are not legally obligatory. Nevertheless, they are widely acknowledged as principles of customary international law due to their incorporation of existing case laws and state practices. Renowned publicists have also advocated for their authoritative force, and international tribunals have cited them with approval.

Several noteworthy concerns surround the Draft Articles. Primarily, their state-centric approach raises challenges in an era witnessing an increase in the number and influence of non-state actors like TNCs. Moreover, the absence of treaty adoption, coupled with the protracted drafting process, has rendered the Draft Articles susceptible to criticisms of being outdated, considering the evolving landscape of international law over the fifty-year period.

Article 1 of the Draft Articles establishes the foundational principle that a state incurs international responsibility for every wrongful act it commits. The Draft Articles detail various elements of state responsibility, encompassing acts by non-state actors under specified circumstances. Article 2 outlines the conditions for when state responsibility arises, necessitating both an act or omission by the state constituting a breach of an international obligation and that the breach is attributable to the state in question in international law.

Article 4 delves into the attribution of conduct to a state, specifying that if an organ exercises any governmental function, regardless of its position or character within the state, it is considered an organ under international law. However, this definition poses challenges when applying it to non-state entities like TNCs, which are typically not considered state organs.

For private acts, Article 5 provides that responsibility can be attributed to a person or entity empowered by law to exercise governmental authority, given they acted in that capacity. Professor James Crawford suggests that this rule encompasses various bodies, including public corporations and private companies, which, empowered by state law, can be held accountable for their actions.

Article 8 discusses state responsibility when private conduct is directed and controlled by the state, emphasizing that authorization by the state entails responsibility for the private persons

involved. The concept of "de facto organs" is introduced, wherein groups or individuals, while not formally state organs, are closely linked to and operating at the instigation of the state.

The burden of establishing state control is emphasized in cases under Article 8. The Nicaragua Case sets a high threshold, requiring effective control over military operations for state responsibility. However, the Prosecutor v. Tadic Case suggests a more lenient standard, considering overall control beyond mere funding or supply of equipment.

Article 9 addresses state responsibility for private persons or groups exercising governmental authority in the absence or default of official authorities, particularly in circumstances demanding government authority. This provision is applicable in situations like war, natural disasters, or failed states.

Article 10 introduces state responsibility for acts of insurrectional movements, provided the movement establishes a new government or state. If the movement fails, the state is only responsible if guilty of negligence in suppressing the insurrection.

Finally, Article 11 stipulates that a state may be responsible for conduct not otherwise attributable to it if the state acknowledges such conduct. Express approval by the state of private acts results in state responsibility.

Therefore, while general rules recognize state responsibility for acts committed by the state and its agents, the Draft Articles provide limited scenarios where state responsibility extends to acts by private or non-state actors. A sufficient nexus between the state and the private actor's conduct must exist for state responsibility to be attributed.[4]

Private Acts and State Responsibility

The ILC Draft Articles, following their initial review by the Commission in 1996, included a pertinent article addressing state responsibility for private acts. The provision explicitly states that the actions of private individuals are not inherently considered acts of the state. Paragraph 2 of this provision clarifies that this rule does not undermine exceptions outlined in articles 5 to 10, where the conduct of persons or groups may be deemed an act of the state.

This indicates that state responsibility for private acts is contingent on the circumstances specified in articles 5 to 10. In all other situations, the actions of private individuals are not

[4] *U.K v. Albania* (*Corfu Channel Case*, ICJ Rep. (1949) at p. 23. The International Court of Justice found Albania liable for a failure to act because it knew or should have known of the illegal conduct involved.

attributed to states, and consequently, responsibility cannot be imputed to states. Article 11 was removed during the 1998 session of the Drafting Committee as it was deemed unnecessary and potentially misleading to retain provisions explaining when certain private conduct is not attributable to states. The current version of the Draft Articles does not explicitly state that private conduct cannot incur state responsibility. The ILC's position on state responsibility for private acts can be gleaned from the commentary on the now-repealed Article 11.

The ILC distinguishes three schools of thought on this matter. The first school contends that private actors' conduct is attributable to the state, regardless of the state organs' stance. However, this viewpoint lacks widespread support. The second school adheres to the theory of complicity, suggesting that private acts can be attributed to the state if other elements are involved, especially a failure by state organs to prevent or respond. The third school maintains that acts and omissions by private individuals are not attributable to the state, a perspective reflected in the deleted Article 11.

Acts by private entities, such as private companies causing harm to foreign states, may constitute an internationally wrongful act by the state. This wrongful act stems from the conduct of state organs, and the state is accountable for breaching its obligation to provide protection. Therefore, state responsibility arises not from the private entities' conduct but from the state's failure. There must be an external event empowering the private entity's specific conduct. The ILC's discussions on reparation underscore that damages should consider the state's violation, not the private entity's. The two delinquencies – the state's violation and the individuals' violations – differ in origin, character, and effect.

Therefore, private acts violating international law can lead to state responsibility in specific circumstances.[5] State responsibility for private entities' conduct can arise when private or non-state entities are empowered by law to exercise governmental authority, where a state has another state's organs at its disposal, where private conduct is directed or controlled by the state, where private conduct occurs in the absence of official authority, where an insurrectional movement becomes the new government, and where a state endorses private acts as its own. Additionally, state responsibility occurs when a state fails in its general obligation to protect or respond to private acts violating international law. It is crucial to note that the Draft Articles provide a narrow scope for state responsibility, particularly concerning the activities of TNCs.

[5] Sucharitkul S., "State Responsibility and International Law Liability under International Law", 18 *Loyola of Los Angeles International and Comparative Law Review* (1996)

The activities of TNCs generally fall outside the Draft Articles' purview, and invoking state responsibility requires adherence to international law rules; it does not automatically arise with each breach. States are encouraged to establish legal systems to ensure the protection of human rights within their jurisdiction and territory.

Invocation of State Responsibility:

The scope of state responsibility is observed to be limited, and the invocation of state responsibility is even more restricted. In general, legal processes are set in motion only when initiated by the aggrieved parties. This principle holds true for the doctrine of state responsibility as well, where international law processes related to state responsibility are typically initiated by the aggrieved parties. Thus, the concept of invocation becomes crucial in the context of the doctrine of state responsibility.

While the Draft Articles do not explicitly define the concept of invocation of state responsibility, James Crawford, in the commentary on the Draft Articles, describes invocation as the act of taking formal measures to raise or present claims before an international forum. Invocation serves as the key that initiates international law processes and remedies.

The concept of invoking state responsibility necessitates establishing a nexus or connection between the injured state and the violation that occurred. Article 42 outlines that a state is entitled to invoke the responsibility of another state if the violation is attributable to the state individually or to a group of states, including that state, or to the international community as a whole. Article 48 further states that a state, other than the injured one, may invoke state responsibility for the breach of an international obligation if the obligation violated pertains to a group of states, including the concerned state, and is established for the protection of a collective interest of the group or the obligation breached is owed to the whole international community.

Article 42 deals with breaches arising from bilateral treaties, empowering only the injured party to invoke jurisdiction. In contrast, Article 48 addresses breaches arising from multilateral treaties and obligations erga omnes, where the obligation is owed to the international community as a whole.

Articles 40 and 41 address situations involving serious breaches of peremptory norms of international law, requiring states to cooperate in lawful means to bring an end to such breaches. Article 44 outlines situations where a claim based on a breach of state responsibility may not

be invoked, such as not adhering to applicable rules on nationality claims or failing to exhaust local remedies. Article 45 states that state responsibility may not be invoked if the injured state has validly waived the claim or if the injured state is deemed to have consented to the lapse of the claim due to its conduct.

Article 48 allows a state invoking state responsibility against another state to request reparation, which can take the form of restitution, compensation, or satisfaction, either individually or in combination.

Upon examination of various provisions related to the invocation of state responsibility, it is evident that the Draft Articles make limited mention of non-state actors. While Article 33 mentions non-state actors, it does not empower them significantly within the state-centric system of international law. According to Crawford, Article 33 merely acknowledges the possibility for non-state entities to invoke state responsibility. The provision presents a potential avenue for non-state entities to invoke state responsibility, but the circumstances and conditions under which this possibility arises require clarification.[6]

In general, the activities of transnational corporations (TNCs) are not explicitly covered by the Draft Articles. International law traditionally dictates that the conduct of private individuals cannot be attributed to a state unless a special relationship exists between the private person and the state. The positivistic conception of international law, emphasizing state consent, influences the doctrine of state responsibility regarding private acts.

The foundation of the doctrine of state responsibility lies in the understanding that states are not inherently responsible for the conduct of private persons or entities. The exceptions outlined in the Draft Articles establish a narrow and limited scope within which state responsibility may arise for private acts. Acts of private entities, given their nature, may often escape scrutiny. The private sphere is also where many human rights violations occur. International law imposes obligations on states to respect, protect, and fulfill human rights within their territories and jurisdictions. This includes the obligation to protect individuals against human rights violations by private entities. States have positive obligations to take steps to prevent violations and to investigate and sanction such conduct.

[6] Viljam Engstrom, *Who is Responsible for Corporate Human Rights Violations?*, Institute for Human Rights, Abo Academy University, Finland(2002) at p. 13 available online at <http://www.abo.fi/instut/imr/norfa/ville.pdf>

Therefore, a detailed discussion is needed to explore the applicability of international law, particularly international human rights law, to state responsibility for human rights violations by private actors and TNCs. Such a discussion would clarify whether the doctrine of state responsibility can effectively regulate TNCs for human rights violations committed by them.

Doctrine of State Responsibility and Human Rights Violations by TNCs

A significant concern in the current international legal landscape revolves around how it addresses human rights violations arising from the private sphere. Traditional theory suggests that international law is divided into subjects and objects, with direct obligations imposed only on its subjects. Objects of the legal system indirectly bear obligations through the state.

A conceptual distinction is drawn between positive and negative human rights obligations. Negative obligations require refraining from causing harm or infringing on others' rights, while positive obligations necessitate taking affirmative action to realize specific rights. Transnational Corporations (TNCs), operating in the private sphere and traditionally not considered subjects of international law, lack direct obligations under the current international legal system.

The question arises regarding the application of the Draft Articles on State Responsibility to international human rights law, with Article 55 of the Draft Articles dealing with lex specialis being relevant. The debate on the applicability of general international law on state responsibility to human rights violations by private entities reveals opposing views. Andrew Clapham argues against applying rules on state responsibility to cases involving human rights violations by private entities. In contrast, Nicola Jagers and several authors contend that the state responsibility doctrine is applicable to human rights norms, supported by the practice of international bodies.

The law of state responsibility establishes a general obligation for states to protect and respond to private acts violating international law. A similar general obligation is found in international human rights law, evident in the case laws of international human rights bodies. The concept of due diligence emerges as an underutilized tool for addressing human rights violations resulting from corporate activity. The due diligence test, formulated in cases like Velasquez Rodriguez and Godinez concerning the American Convention of Human Rights, emphasizes a

state's duty to abstain from violating human rights, prevent violations by both state and non-state actors, and investigate and punish infringements by both parties.[7]

The Inter-American Court's decision in the Velasquez Case sets down the doctrine of due diligence in cases of human rights violations by non-state actors. This doctrine, though lacking a precise definition, has been referenced by human rights monitoring bodies in subsequent cases of human rights violations. In essence, a state can be held responsible for human rights violations by non-state actors if it fails to exercise due diligence in preventing, investigating, and punishing such violations within its jurisdiction.

States' Responsibility to Safeguard Human Rights

International human rights law outlines three primary duties for states: the duty to respect, protect, and fulfil human rights. State parties must ensure that citizens enjoy their human rights without infringement, and this includes taking positive actions to prevent violations by private actors or other states. A thorough analysis of various human rights instruments is essential to understand the nature and extent of the state's duty in addressing infringements committed by private actors.

Article 2 of the ICCPR mandates that states parties respect and ensure all rights within the Covenant for individuals within their territory. The duty to ensure implies that states are obligated to actively protect individuals' human rights. The Human Rights Committee, the ICCPR's treaty monitoring body, recognizes states' paramount duty to prevent wars, acts of genocide, and other mass violence causing arbitrary loss of life. Regarding the right to privacy, the Committee emphasizes the state's responsibility to ensure protection against interferences and attacks by both state organs and non-state actors.

The ICESCR Committee clarifies that states parties have obligations to prevent rights violations by private entities. The Maastricht Guidelines align with this perspective, specifying state obligations in cases of violations by private entities. The obligation to protect includes ensuring that private parties do not violate rights, and a state failing to exercise due diligence in regulating private parties becomes responsible for the failure.

The HRC asserts that states must provide a legislative framework prohibiting arbitrary and unlawful interference with privacy, family, home, and correspondence by both natural and legal

[7] Weiss EB, "Invoking State Responsibility in the 21st Century", 96 *American Journal of International Law* (2002)

persons. Concerning the right to privacy, states are duty-bound to regulate the gathering or holding of information by public or private entities. In terms of freedom of expression, states must ensure individuals' freedom of expression against acts by both public and private entities.

The CESCR reinforces the state's duty to ensure that private actors do not act against the right to food as enshrined in the covenant. States are obligated to control private parties to prevent violations of the right to food. In the context of the right to health, states must ensure that privatization does not threaten the availability, accessibility, acceptability, and quality of health facilities. States also have an obligation to regulate transactions in the medical field by third parties to ensure professionals receive the needed services.

Key regional human rights instruments, such as the European Convention, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights, impose duties on states to prevent and respond to human rights violations in the private sphere. The doctrine of drittwirkung underscores that the distinction between public and private actors is diminishing under international human rights law. While a state may not be directly responsible for every private act, it can be held accountable for failing to regulate private conduct.

The Due Diligence Standard

It has been demonstrated that the state's obligation to protect the human rights of all individuals within its jurisdiction and authority is broad and extensive. The question at hand is whether a state should be held responsible for every violation of human rights committed by private actors. The inter-American Court of Human Rights has clarified that a state would bear responsibility for violations in the private sphere only if it can be proven that the state failed to exercise due diligence in preventing and controlling such violations. An illustrative case involves over a hundred disappearances in Honduras between 1981 and 1984, where the government took no preventative measures. The court ruled that the government is liable for human rights violations committed by private individuals, not for the violation itself, but for failing to exercise due diligence in prevention.

The crucial factor is not the mere existence of a particular violation; such a violation alone does not establish that the state has neglected preventive measures. What is essential is that the state must take reasonable steps to prevent violations by private parties. In case a violation occurs, the obligation is to conduct thorough investigations, identify responsible individuals, impose suitable punishments, and ensure adequate compensation for the victims.

Therefore, due diligence pertains to whether the state's actions are reasonable and substantial. If the state takes reasonable and serious measures to prevent and respond to human rights violations in private relations, it will not be held responsible even if the outcomes are unsatisfactory. However, the state can be held liable if the steps taken prove ineffective in carrying out necessary investigations, punishing perpetrators, and providing remedies to the affected victims.

The due diligence standard has been embraced by other regional and international human rights bodies. The African Commission, in a case against Nigeria, applied this test, holding the government responsible for failing to regulate corporations that deposited toxic waste, causing serious environmental and health hazards. Similarly, the European Court of Human Rights, in Osman v. United Kingdom, held the state responsible for failing to take reasonable measures to prevent an armed attack by a private individual, thereby violating the right to life.

In conclusion, international instruments increasingly recognize the due diligence standard as a test to assess states' compliance with the obligation to protect human rights, even against actions by private actors.[8] This standard clarifies that the duty to protect human rights does not automatically make the state liable for all violations in the private sphere. State responsibility arises when the state neglects due diligence, requiring positive steps to prevent, control, regulate, investigate, prosecute, and provide remedies for human rights violations committed by private entities.

Home or Host State Responsibility?

The responsibility of states for the actions of corporations may emerge from a failure to diligently control corporate activities within their jurisdiction. States are obligated to implement sufficient measures to prevent and curb corporate activities. An additional complication with the concept of state responsibility is whether it arises solely for corporate actions committed within a state's territorial boundaries. Alternatively, states might need to ensure regulation of activities abroad by corporations incorporated within the state. Framed differently, the question arises: which state should be accountable for neglecting to regulate corporations? Should it be the host state, where the corporation operates on its territory, or the

[8] UN Human Rights Council, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Respect, Protect and Remedy' Framework", UN Doc.A/HRC/17/31(21 March 2011).

home state, where the Transnational Corporation (TNC) is incorporated, which fails to regulate the activities of TNCs within and beyond its territorial limits?

Holding home states accountable for the failure to control corporate activities abroad proves to be an effective method for overseeing corporations and addressing human rights violations. Host states may lack the power to act against corporations within their borders, especially if those corporations are more influential than the host states. Corporations operating in less powerful nations often generate revenues that surpass the Gross National Product (GNP) of the host states. In instances where the host country's government colludes with corporations to violate human rights, the host country may refrain from taking action against such violations.

Developed states, serving as homes to numerous TNCs, are better equipped with effective means and technical expertise to regulate and monitor corporate activities compared to developing or weaker host states. Parent corporations based in developed states may prioritize profits from host states over concerns about human rights violations resulting from their activities in those host states. Hence, it is crucial to assess whether home state responsibility can be established for neglecting to regulate the extraterritorial activities of TNCs.

Principle of Territoriality

Traditionally, the principle of territoriality dictates that a state can be held accountable for events occurring within its borders. This conventional perspective aligns with the work of the International Law Commission (ILC) on state responsibility, asserting that state responsibility arises only when the host state, where violations occur, neglects due diligence in overseeing the activities of corporations operating within its territory.[9] The pertinent question then emerges: Can a home state be held responsible for the actions of its corporate nationals conducted outside its territorial boundaries but within the host state's borders? Is a home state accountable if it fails to exercise due diligence in preventing a violation of international law in another country committed by its corporate nationals?

In the realm of international law, a state is not obligated to control private acts occurring outside its borders. However, there has been a departure from the traditional understanding of the territoriality principle, with arguments advocating for its liberalization in specific circumstances. Notable cases such as the Trail Smelter Case and the Corfu Channel Case contribute to this shift, recognizing that the criterion for state responsibility should be the

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physical control exercised by the state, rather than the sovereignty of any state. Consequently, a state bears the duty to regulate the activities of private entities within both its territory and beyond, in another country.

Thus, it can be asserted that a state is obliged to prevent harm caused by its corporate nationals within the territory of another nation. Therefore, the state is under an obligation to supervise corporations operating within its jurisdiction, and instances where these corporations cause harm in another state may give rise to state responsibility.

Limitations of the Doctrine of State Responsibility

The doctrine of state responsibility can significantly contribute to promoting compliance with human rights norms by private actors. According to this doctrine, the host state is obligated to exercise due diligence to prevent human rights violations by private actors through the regulation and control of their activities. The host state is further required to respond to human rights violations committed by private actors by conducting investigations, punishing the wrongdoers, and providing effective remedies to the victims.[10]

Similarly, the home state also bears the responsibility of ensuring that its nationals and other entities under its control respect human rights beyond the territorial limits of the home state. Recognizing the responsibility of the home state is crucial as it allows for legal action against corporations violating human rights in developing countries to be pursued in their home states.

However, the law of state responsibility for violations of human rights in the private sphere has certain limitations. Two significant limitations are identified.[11] Firstly, for state responsibility to arise, a connection must be established between the state and the conduct resulting in the violation of human rights. Given that relationships in the private sphere are inherently private, they often lack a strong connection to the state. Secondly, generally, only states can bring action against another state, and individuals or groups do not have legal standing. Nevertheless, there is a shift in international law, allowing non-state actors and individuals to have legal standing before international tribunals and bodies.

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[10] Surya Deva, "Human Rights Violations by Multinational Corporations and International Law: where from Here?", 19 *Connecticut Journal of International Law* (2003)

[11] Antonio Cassesse, "The Nicaragua and Tadic Tests Revisited in the Light of the Judgment on Genocide in Bosnia", 18 *European Journal of International Law* (2007)

The process of globalization has led to the proliferation of numerous non-state actors. As a result, not all their actions can be attributed to a state, making it challenging to invoke state responsibility. The doctrine of state responsibility limits the attribution of activities of non-state entities and corporations. Critically, the Draft Articles lack provisions addressing the proliferation of corporations and the invocation of state responsibility for private acts. Scholars, like Surya Deva, express skepticism about relying solely on states to hold transnational corporations (TNCs) accountable, citing seven reasons for this pessimistic view.

One concern is the difficulty in effective control over TNCs due to trans-border operations, as state governments operate within defined territories. Deva's argument raises valid points, but it overlooks the potential for states to establish legislations with extra-territorial jurisdiction under international human rights law. Additionally, the doctrine of state responsibility does not prevent states from promulgating laws with extra-territorial jurisdiction.

There are instances where states collaborate with TNCs, potentially leading to human rights violations. The gravity of the offense determines the solution, with serious violations allowing remedial measures to be sought by any state under international law. While states may be interested in establishing mechanisms for corporate accountability, their compliance is often driven by self-interest.[12] The attribution of indirect responsibility to states for private acts may face practical challenges.

Even if states wish to regulate TNCs, legal and economic limitations, particularly in weak and developing states, hinder their capacity to do so. However, some argue that even in relatively weak governments, the state remains a powerful entity exercising jurisdiction over its territory.[13]

The global presence of TNCs may lead to jurisdictional challenges in municipal courts, often hindered by the doctrine of forum non convenience. Regulatory mechanisms can overcome such hurdles. Friction between states may arise if the municipal law of one country is applied

[12] Scobbie I, "The Invocation of Responsibility for the Breach of obligations under Peremptory Norms of General International Law", 13 *European Journal of International Law*

[13] Rick Lawson, "Out of Control, State Responsibility and Human Rights: Will the ILC's Definition of the "Act of the State" Meet the Challenges of the 21st Century?", in Monique Castermans, Fried van Hoof and Jacqueline Smith (eds.), *The Role of the Nation State in the 21st Century: Human rights, International Organisations and Foreign Policy: Essays in Honour of Peter Baehr*, Kluwer Law International, The Hague, (1998) at pp.91-116.

to a TNC incorporated in another, highlighting the inconsistency in states' respect and enforcement of international human rights.[14]

As discussed, the major weakness of indirect responsibility in international law lies in its dependence on the state as a medium.[15] Generally, individuals and groups lack legal standing to enforce their rights in international tribunals and courts. If indirect accountability fails, especially when the state collaborates with TNCs, victims may lack recourse to effective remedies. Consequently, alongside indirect accountability, there is a growing need to make TNCs directly accountable under international law for human rights violations.

Conclusion

International law places an obligation on states to safeguard individuals against human rights violations, extending this obligation to include protection against violations by Transnational Corporations (TNCs). States are required to diligently enact legislation and other measures to regulate corporate activities and prevent human rights violations by corporations. The doctrine of state responsibility plays a crucial role in encouraging private actors, such as TNCs, to comply with human rights standards, allowing responsibility to be attributed to both host and home states for corporate human rights violations.[16]

According to international law, host states are obligated to exercise due diligence in preventing human rights violations by private actors by regulating and controlling them. States are further instructed to respond to human rights violations by conducting investigations, punishing wrongdoers, and providing effective remedies to the victims of such violations.

Home states, on the other hand, have an obligation to ensure that their nationals and other entities under their control respect human rights abroad. State responsibility may arise for corporate activities conducted in another state's territory, compelling home states to enact legislation controlling TNCs' activities abroad. The evolving landscape of international law indicates a growing obligation on home states to regulate the activities of TNCs outside their

[14] Andrew Clapham, "The Drittwirkung of the Convention", in Franz Matscher, R. St. John Macdonald and Herbert Petzold (eds.), *The European System for the Protection of Human Rights*, Nijhoff, Boston (1993) 163

[15] RudigerWolfrum, "State Responsibility for Private Actors: An Old Problem of Renewed Relevance" in M. Ragazzi (ed.), *International Responsibility Today: Essays in Memory of Oscar Schachter*, Brill Publishers, Leiden (2005)

[16] Celina Romany, "State Responsibility Goes Private: A Feminist Critique of the Private/Public Distinction in Human rights Law" in Rebecca Cook (ed.), *Human Rights of Women: National and International Perspectives* (1994) 85

borders. Recognizing home state responsibility is crucial, enabling effective legal action against TNCs violating human rights in developing states within their home jurisdictions.

While the doctrine of state responsibility offers various measures for states to fulfill their international obligations, particularly concerning TNCs' activities, it has limitations. The state-centric nature of this doctrine becomes challenging when states lack the political will to implement measures to control TNCs. Recognizing these limitations, coupled with issues like voluntary and soft law mechanisms, underscores the need to explore alternative approaches for enhancing private sector responsibility. In conclusion, state responsibility presents a compelling yet underutilized tool for addressing human rights violations stemming from corporate activities. Overcoming the challenges in applying this doctrine requires exploring alternative approaches to tackle this complex issue.
