

Forum: GA6

Issue: Responsibility of States for internationally
Wrongful acts perpetrated by transnational corporations
(TNCs)



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Introduction

In a society where global interactions are instrumental, the actions of Transnational Corporations (TNCs) have become a point of fixation within international relations and diplomacy. As we deliberate and attempt to simulate the Model United Nations' sixth General Assembly, the Legal committee, our attention is drawn to the compelling issue at hand—the responsibility of states for internationally wrongful acts committed by these corporations and conglomerates -- categorized as TNCs. This research report delves into the complex plethora of challenges, responsibilities, and potential solutions surrounding the interlinked relationship between state sovereignty and corporate accountability. Notably, transnational corporations' wrongdoings have an indisputably detrimental impact on a social, political and economic level, and must thereby be mitigated through prevention.

Definition of Key Terms:

Transnational Corporations (TNCs)

Transnational Corporations, often synonymous with multinational corporations, refer to large entities that operate in multiple countries, transcending national borders in their business activities. In the context of this report, TNCs are the focal agents whose actions may potentially give rise to internationally wrongful acts, raising questions about the accountability of both the corporations and the states involved.

Source: UNCTAD, "World Investment Report 2021."

Internationally Wrongful Acts

Internationally wrongful acts encompass actions or omissions by a state that violate its international obligations. In the realm of TNCs, these acts may include human rights abuses, environmental degradation, or breaches of international law, posing challenges in determining the responsibility of states in connection with the actions of transnational corporations.

Source: International Law Commission, "Articles on Responsibility of States for Internationally Wrongful Acts."

State Responsibility:

State responsibility refers to the accountability of a sovereign state for its actions or inactions in the international arena. In the context of TNCs, questions arise regarding the extent to which states are accountable for the activities of corporations within their jurisdiction and whether they should be held responsible for internationally wrongful acts perpetrated by these entities.

Source: Shaw, Malcolm N. "International Law."

Corporate Social Responsibility (CSR):

Corporate Social Responsibility involves the ethical and transparent behavior of corporations, considering the impact of their activities on society and the environment. In the context of TNCs, CSR becomes a pivotal aspect, influencing the discourse on whether voluntary corporate initiatives are sufficient or if a more robust regulatory framework is needed to address wrongful acts. Source: Carroll, Archie B. "The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders."

Extraterritorial Jurisdiction:

Extraterritorial jurisdiction refers to a state's authority to regulate and adjudicate matters beyond its national borders. In the context of TNCs, questions arise about the feasibility and legitimacy of states extending their legal reach to hold corporations accountable for wrongful acts committed outside their territorial boundaries.

Source: Restatement (Third) of the Foreign Relations Law of the United States.

Soft Law

Soft law consists of non-binding norms and principles that guide state behavior and expectations. In the context of TNCs, the reliance on soft law instruments, such as voluntary guidelines and codes of conduct, raises considerations about the effectiveness of such measures in ensuring corporate accountability for internationally wrongful acts.

Access to Remedy:

Access to remedy pertains to the ability of individuals or affected communities to seek redress for harm caused by TNCs. In the context of state responsibility, the issue of access to effective judicial or non-judicial mechanisms becomes crucial in addressing the consequences of internationally wrongful acts perpetrated by transnational corporations.

Source: UN Guiding Principles on Business and Human Rights.

Due Diligence

Due diligence involves the careful and thorough examination of the potential impacts of corporate activities to prevent harm. In the context of TNCs, due diligence emerges as a key concept in discussions about state responsibility, questioning whether states should impose and enforce due diligence obligations on corporations to prevent and remedy internationally wrongful acts.

Source: Ruggie, John Gerard. "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework."

General Overview

Evidently, this issue is centered around the interlinking dynamic between transnational corporations (TNCs), the legal sovereignty vested within recognised UN member states and this imperative legal principle of recognising accountability for wrong acts perpetrated at a global level. Through the rapidly increasing general pertinence as well as impact of globalization, TNCs have enabled considerable socioeconomic and political influence and power- operating through borders and impacting many states to the extent of questionability. Integrally, this dynamic has caused the surge of pressing questions concerning the responsibility of states exercising measures regarding the responsibility of these states when these wrongful acts are committed by these dominant conglomerates and corporate entities. This issue derives from the

subsequent question that this dynamic causes- which is essentially the extent to which these states should be held accountable for the fallacies and wrongdoings of these conglomerates which are situated within their diplomatic jurisdiction.

As established within the timeline of key events, through the decades, negotiations and recognised discourse directly pertaining to the role of TNCs has matured and evolved, imperatively being the primary causal factor within notable initiatives such as the Organization for Economic Co-operation and Development's (OECD) non-binding guidelines in 1976 and the United Nations Global Compact in 2000, both aspiring to facilitate and ultimately achieve a critical guidance of corporate behavior towards greater responsibility. However, the discernibly voluntary nature of these frameworks raises significant questions surrounding their relative efficacy in addressing severe internationally wrongful acts, perhaps demanding a greater degree of robust as well as pragmatically enforceable mechanisms.

The key institution and establishment of the United Nations Guiding Principles on Business and Human Rights in 2011 aptly demonstrated a significant stride forward within the mitigation of this issue- it achieved this through delineating the responsibilities of states and corporations in preventing and addressing human rights abuses associated with business activities. Albeit, the inherent non-binding nature of these principles underscores the tangible need for a more thorough and comprehensive approach. The UN treaty process initiated in 2014 signals a collective acknowledgment of the limitations of voluntary frameworks and seeks to establish a binding international instrument to hold states accountable for the wrongful acts committed by TNCs. Against the backdrop of national legislations as well as notable litigation efforts, this nuanced and evolving issue embodies the intricate dynamics between state sovereignty, corporate accountability, and the discernibly diplomatic responsibility to safeguard human rights and the global environment in an era of palpable, as well as rapidly evolving and progressing, global interdependence.

Indubitably, transgressions by these corporations are detrimental on many levels, and thus imperative to prevent. Definitively, allocating liability for these transgressions is imperative in preventing them, for a myriad of fundamental, substantiated reasons. Firstly, States are the primary actors in the intricate, complex model that is the international legal system- possessing as well as actively exercising the supreme sovereignty and authority to regulate, restrict and generally govern within their territories.

Acknowledging their responsibility for the actions of TNCs operating within their borders establishes a legal framework which extends beyond the stipulations of international law- to ensure that states exercise due diligence in monitoring and regulating corporate activities. This not only functions to cultivate accountability but in addition, acts as a strong deterrent for TNCs to engage in internationally wrongful acts, as states holistically progress to achieving a greater extent of proactivity within acknowledging and mitigating these wrongful acts.

Secondly, attributing responsibility to states serves as a means of providing genuine and tangible reparation, compensation and overall a means of remedy to the many victims of corporate misconduct and wrongdoings. Intrinsicly, states are vested with the ethical and legislative obligation to protect the human rights of individuals within their jurisdiction, and ergo holding them accountable for the actions of TNCs ensures that victims have a clear avenue for seeking . This can include legal recourse, reparations, and the implementation of measures to prevent future harm. Without acknowledging state responsibility, victims may be left without an adequate means of effectively acknowledging the harm and damage caused by TNCs and these large corporations on a global scale.

In addition to this, establishing state responsibility creates constant regulation, a system of checks and balances which effectively delivers encouragement to states to adopt comprehensive regulatory frameworks that align with international standards. This, in turn, contributes to the development of a more robust and greater harmonized global regulatory environment. By recognizing that states do play a pivotal role within preventing and addressing the wrongful acts of TNCs, the international community can foster a cooperative approach to corporate governance, ultimately mitigating the negative impacts of transnational corporate activities on a global scale. In conclusion, acknowledging state responsibility is essential in preventing and addressing internationally wrongful acts committed by transnational corporations, as it establishes a framework for accountability, provides remedies for victims, and encourages states to adopt effective regulatory measures For these aforementioned reasons, the issue of contention within this research report is indubitably vital.

Major Countries and Organizations Involved

Transnational Corporations (TNCs)

Transnational Corporations are major players in the issue at hand as they are the entities whose actions and operations transcend national borders, often impacting multiple states. Their

involvement is central to discussions on the responsibility of states for internationally wrongful acts, as TNCs can be both the perpetrators of such acts and subjects of state regulation.

TNCs wield significant economic and political influence, making them key actors in shaping global affairs. Their activities, ranging from resource extraction to manufacturing and service provision, have the potential to result in human rights abuses, environmental degradation, and other wrongful acts. This prompts an examination of the extent to which TNCs should be held accountable for their actions and how states should respond to and regulate their activities.

States

Sovereign states play a critical role in the international system, and their actions or inactions can have profound consequences on the global stage. In the context of TNCs, states are central to discussions about responsibility for internationally wrongful acts, as they have the authority to regulate and govern the activities of corporations within their jurisdiction.

States are involved in the issue both as potential wrongdoers if they fail to regulate or hold TNCs accountable, and as regulators with the authority to enforce laws and regulations governing corporate conduct. The question of whether and how states should be held responsible for the actions of TNCs within their borders is a key aspect of the broader debate on state sovereignty and corporate accountability.

International Organizations

International organizations, such as the United Nations and its specialized agencies, serve as forums for diplomatic discussions and the development of norms and principles that guide state behavior. They play a crucial role in shaping the international legal framework and providing a platform for addressing issues related to TNCs and state responsibility.

International organizations contribute to the discourse by developing guidelines, resolutions, and conventions that influence the behavior of states and TNCs. For instance, the United Nations Guiding Principles on Business and Human Rights provide a framework for addressing corporate human rights abuses. The involvement of international organizations underscores the collaborative nature of addressing the challenges posed by TNCs and internationally wrongful acts.

Civil Society Organizations (CSOs)

Civil Society Organizations act as advocates for human rights, environmental protection, and social justice. They often scrutinize the activities of TNCs and states, holding them accountable for any perceived wrongdoing. CSOs play a crucial role in raising awareness, mobilizing public opinion, and pushing for regulatory measures to address the negative impacts of TNCs.

CSOs are actively involved in monitoring and exposing instances of internationally wrongful acts committed by TNCs. Their engagement in the issue adds a layer of accountability outside traditional state-centric structures. CSOs contribute to the dialogue by proposing alternative mechanisms for holding both TNCs and states accountable and by advocating for greater transparency and corporate responsibility.

Affected Communities

The communities directly impacted by the activities of TNCs are integral to discussions on state responsibility for internationally wrongful acts. These communities often bear the brunt of human rights abuses, environmental degradation, and social disruptions caused by TNCs, making their perspective crucial in determining the legitimacy and effectiveness of regulatory measures.

Affected communities provide first hand accounts of the consequences of TNC actions, emphasizing the human rights dimension of the issue. Their involvement adds a moral imperative to the debate, urging states and TNCs to consider the human cost of corporate activities. Recognition of the rights and perspectives of affected communities is central to developing comprehensive and just solutions to the challenges posed by TNCs.

Timeline of Events

Date	Name	Description
1950s-1960s	Decolonisation Era	The decolonization era sees the emergence of new nations seeking to assert control over their

		resources, raising questions about the role of TNCs in resource extraction and economic exploitation.
1970s	UN Commission on Transnational Corporations	The UN Economic and Social Council establishes the UN Commission on Transnational Corporations, reflecting growing concerns about the impact of TNCs on global development and sovereignty.
1970s-1980s	Rise of neoliberal economic policies	The rise of neoliberal economic policies contributes to the expansion of TNCs, prompting debates on the balance between economic growth and corporate responsibility.
1998	UN Declaration on Human Rights Defenders	The UN adopts the UN Declaration on Human Rights Defenders, highlighting the importance of protecting individuals and groups advocating for human rights, a relevant consideration in the context of TNCs.
1999	UN Global Compact	The UN Global Compact is launched, encouraging businesses to adopt sustainable and socially responsible policies, signaling a shift toward voluntary corporate initiatives.
2003	UN Sub-Commission on the Promotion and Protection of Human Rights	The UN Sub-Commission on the Promotion and Protection of Human Rights establishes a working group on the issue of TNCs and human rights, acknowledging the need for specific attention to corporate accountability.

2011	Guiding Principles on Business and Human Rights	The UN Human Rights Council unanimously endorses the Guiding Principles on Business and Human Rights, outlining the responsibilities of states and corporations in preventing and addressing human rights abuses.
2015	Adoption of the Sustainable Development Goals	Adoption of the Sustainable Development Goals (SDGs) includes Goal 16, emphasizing the need for accountable and transparent institutions, recognizing the role of states in regulating corporate behavior.
2016	Open-ended intergovernmental working groupS	The UN Human Rights Council adopts a resolution establishing an open-ended intergovernmental working group to develop a legally binding instrument on transnational corporations and other business enterprises with respect to human rights
2020s	Ongoing discussions and negotiations on the proposed binding treaty continue	Ongoing discussions and negotiations on the proposed binding treaty continue, reflecting a growing global consensus on the need for a comprehensive legal framework to address the responsibility of states for internationally wrongful acts committed by TNCs.

Previous Attempts to solve the Issue

1) The OECD Guidelines for Multinational Enterprises (1976)

The Organization for Economic Co-operation and Development (OECD) introduced guidelines aimed at promoting responsible business conduct by multinational enterprises. While not legally binding, these guidelines serve as recommendations to member and non-member states on issues such as employment, environment, and human rights.

The OECD Guidelines have been praised for setting standards, but their non-binding nature has limited their enforcement. The guidelines lay the groundwork for responsible corporate behavior but fall short of providing mechanisms for addressing internationally wrongful acts.

Source: OECD Guidelines for Multinational Enterprises.

2) United Nations Global Compact (2000)

Launched in 2000, the UN Global Compact encourages businesses to adopt sustainable and socially responsible policies. Companies voluntarily commit to ten principles covering human rights, labor, environment, and anti-corruption.

While the Global Compact promotes corporate responsibility, its voluntary nature raises questions about effectiveness and enforcement. Critics argue that adherence to principles remains uneven, and the absence of binding commitments limits its capacity to address severe internationally wrongful acts.

Source: UN Global Compact.

3) United Nations Guiding Principles on Business and Human Rights (2011)

Endorsed by the UN Human Rights Council, these principles outline the respective duties of states and corporations in preventing and addressing human rights abuses linked to business activities. The framework emphasizes the state's duty to protect against abuses and the corporate responsibility to respect human rights.

While a step forward, the guiding principles are non-binding, leaving gaps in enforcement. Critics argue that the lack of legal obligations limits their impact, highlighting the need for more robust mechanisms to address the responsibility of states for TNCs' wrongful acts.

Source: UN Guiding Principles on Business and Human Rights.

4) United Nations Treaty Process (Ongoing)

In 2014, the UN Human Rights Council initiated a process to develop an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights. This treaty aims to address the accountability gap in the current frameworks.

The ongoing discussions involve member states, experts, and civil society organizations. The process reflects a collective effort to establish a more comprehensive and legally binding framework to hold states accountable for internationally wrongful acts committed by TNCs.

Source: UN Human Rights Council - Treaty Process

5) National Legislation and Litigation

Some countries have taken steps to address corporate accountability through domestic legislation and legal actions. These initiatives involve creating laws that hold corporations accountable for human rights and environmental abuses, allowing affected parties to seek redress in national courts.

While national efforts contribute to addressing the issue, the effectiveness varies. Some cases have led to significant legal precedents, but the lack of consistent international standards and enforcement mechanisms remains a challenge.

Previous attempts to resolve the issue demonstrate the complexity of balancing corporate interests with human rights, environmental concerns, and international law. The ongoing treaty process signals a collective acknowledgment of the limitations of voluntary frameworks and the necessity for a more robust and legally binding approach to address the responsibility of states for TNCs' wrongful acts.

Source: Various national legislations and legal cases.

Possible Solutions

This topic can be resolved by analyzing three separate sub-topics:

Sub-topic 1: Assessing Extraterritorial Jurisdiction and Accountability

Sub-topic 2: Accessing Remedies for Victims

Sub-topic 3: Establishing Corporate Social Responsibility (CSR) and Regulatory Frameworks

There are a number of ways that these sub-topics can be addressed including but not limited to:

Developing an International Binding Treaty

The ongoing UN treaty process initiated in 2014 aims to develop a binding international instrument on TNCs and human rights. This treaty could establish clear obligations for states to regulate and hold TNCs accountable for their actions, providing a robust framework for addressing wrongful acts.

Source: UN Human Rights Council - Treaty Process.

Strengthening National Legislation

Solution: Enhancing and harmonizing national laws that hold corporations accountable for human rights and environmental abuses can contribute to closing the accountability gap. This involves creating or reinforcing legislation that allows affected parties to seek redress in national courts for internationally wrongful acts.

Source: Various national legislations and legal cases.

Empowering Civil Society and Communities

Empowering civil society organizations (CSOs) and affected communities to monitor, expose, and advocate for corporate accountability can foster a bottom-up approach. Supporting initiatives that provide affected parties with access to information, resources, and legal representation enhances the likelihood of holding TNCs and states accountable.

Source: International Service for Human Rights.

Mandatory Human Rights Due Diligence

Imposing mandatory human rights due diligence on TNCs requires them to assess and mitigate the human rights impacts of their activities. Legislation mandating due diligence ensures that TNCs proactively address potential risks, preventing and mitigating wrongful acts.

Source: Ruggie, John Gerard. "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework."

Establishment of an International Court for Corporate Accountability

Creating an international court dedicated to corporate accountability could provide a neutral and specialized forum for adjudicating cases related to internationally wrongful acts by TNCs. This would address the current challenges associated with accessing justice across diverse legal systems.

Source: Deva, Surya. "The Case for an International Court of Civil Justice."

Incentivizing Responsible Corporate Conduct

Governments and international bodies can explore mechanisms to incentivize responsible corporate conduct. This may involve offering preferential treatment, tax incentives, or access to international markets for TNCs that demonstrate a commitment to ethical practices and adherence to international standards.

Source: International Institute for Sustainable Development.

These solutions, when implemented collectively, could potentially contribute to a more robust and effective framework for addressing the responsibility of states for internationally wrongful acts committed by transnational corporations. It requires a combination of legal, regulatory, and incentivization measures to create a comprehensive system that safeguards human rights, the environment, and global stability.

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