



Setting the pillars to enforce corporate human rights obligations stemming from international law

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Generally, under international law, States as the subjects and creators of international law have the primary obligation to protect the human rights of people under their jurisdictions¹. However, academic discussions on the nature and recognition of corporate entities as subjects of international law are still on-going. The Open-ended Intergovernmental Working Group on Business and Human Rights (OEIGWG) has taken these discussions further by debating on the possibility of expressly recognizing *international* human rights obligations for private entities.

During the First Session of the OEIGWG, different States and other stakeholders suggested that there is no **legal or technical barrier** to limit the recognition of the corporate legal personality under international law, but rather that there is a need to strengthen the obligations that corporations have to respect human rights and to

prevent, and be accountable for, any human rights violations resulting from such corporations' activities². According to some views, clarifying such obligations will not only benefit the protection of the rights of victims in such circumstances, but will also benefit corporations by introducing common human right standards with the objective of achieving greater certainty and clarity in the global market³.

Following such debates, in July 2018, the Permanent Mission of Ecuador in Geneva, on behalf of the Chairperson Rapporteur of the OEIGWG, released the Zero Draft of the Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises (Zero Draft)⁴, aimed at ensuring "an effective access to justice and remedy to victims of human rights violations in the context of business activities of transnational char-

Abstract

The release of the Zero Draft of the Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises by the Chairperson of the Open-ended Intergovernmental Working Group on Business and Human Rights (OEIGWG), is likely to revive discussions on the recognition of corporate entities as subjects of international law. The present brief examines corporate entities' human rights obligations in the context of the Zero Draft, taking into account the views and comments presented during the first three sessions of the OEIGWG and the need to advance the discussion on those entities' obligations under international law.

Il est fort possible que la publication, par le président du groupe de travail intergouvernemental à composition non limitée (OEIGWG), de l'avant-projet d'instrument juridiquement contraignant visant à réglementer les activités des sociétés transnationales et autres entreprises au regard du droit international des droits humains ravive les débats concernant la reconnaissance des entreprises comme sujets de droit international. Le présent rapport examine les obligations des entreprises en matière de droits humains dans le cadre de l'avant-projet, en tenant compte des points de vue et des observations présentés pendant les trois premières sessions du groupe de travail intergouvernemental et en soulignant la nécessité de faire progresser les discussions sur les obligations qui s'imposent à ces entités en vertu du droit international.

Es posible que la publicación por parte del presidente del Grupo de trabajo intergubernamental de composición abierta sobre las empresas transnacionales y otras empresas comerciales en materia de derechos humanos (OEIGWG), del borrador preliminar del instrumento jurídicamente vinculante para reglamentar las actividades de las empresas transnacionales y otras empresas en el derecho internacional de los derechos humanos, reactive los debates sobre el reconocimiento de las entidades empresariales como sujetos de derecho internacional. En este Informe sobre políticas se analizan las obligaciones en materia de derechos humanos de las entidades empresariales según el planteamiento del borrador preliminar, teniendo en cuenta las opiniones y observaciones presentadas en las primeras tres sesiones del OEIGWG y la necesidad de proseguir los debates sobre las obligaciones de dichas entidades en virtud del derecho internacional.

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acter, and to prevent the occurrence or repetition[s] of such violations”⁵.

The present brief aims to provide a non-exhaustive review on the subject of corporate obligations in the context of the Zero Draft. It analyzes some of views and comments discussed during the first three sessions of the OEIGWG on corporate human rights obligations, and identifies certain matters that could be considered in the upcoming substantial negotiation in the OEIGWG with the aim of advancing the discussion on corporate human rights obligations in international law.

Covering a broader ground: Focusing on business activities of transnational character

The determination of which business entities should be covered under the binding instrument has been a contentious matter during the last sessions of the OEIGWG. For some, the fact that domestic companies cannot evade their responsibilities under domestic law means that international law should focus on transnational corporations “including their subsidiaries, decision-making bodies and supply chain”⁶. For others, domestic businesses could also be responsible for human rights abuses, and therefore all businesses should be included under the future legally binding instrument⁷.

The Zero Draft seems to seek convergence among such views by introducing draft Article 3.1 which refers to the scope of application of the legally binding instrument encompassing “human rights violations in the context of any *business activities of a transnational character*”. Subsequently, draft Article 4.2 introduces the definition of “business activities of a transnational character” by defining it as for-profit business activities, independently of its form of incorporation or registry, and the geographical reach of such activities, “including activities undertaken by electronic means, that take place or involve actions, persons or impact in two or more jurisdictions”. The incorporation of activities “undertaken by electronic means” seems to be an added value brought by the Zero Draft which could be an attempt to respond to the fast evolution of the digital economy as a key economic sector that currently reaches 6.5% of the global gross domestic product (GDP)⁸.

As mentioned by one commentator, the draft will “please many and displease others”⁹. This seems to be the case with regards to the definition established in the aforementioned draft Article, as such definition, according to the same commentator, could limit the scope to transnational business operations, as it would exclude a broader scope that covers all business entities¹⁰. Similarly it has been suggested that such approach risks creating an uneven playing field for domestic and transnational enterprises “particularly those operating in states where the protection of human rights under domestic law is weak”¹¹. Others have recognized the

‘creative approach’ used in the Zero Draft by incorporating a preambular mention to the obligation of all business enterprises to respect human rights, while focusing on “business activities of a transnational character”, shifting the attention from the ‘actor’ to the ‘activity’, that in general terms implies that “all business enterprises are covered so long as their for-profit activities have a transnational character”¹².

The suggestion of the Chairperson of the OEIGWG to focus on the activity of the business entities, rather than the actor in such operations, appears to be following the approach taken in track one of the Accountability and Remedy Project of the United Nations Office of the High Commissioner for Human Rights (OHCHR) which recognizes the particular challenges posed by ‘cross-border’ cases to ensure accountability and access to remedy¹³, and defining a ‘cross-border’ case as “one where the relevant facts have taken place in, the relevant actors are located in or the evidence needed to prove a case is located in *more than one State*”. Furthermore, such an approach could facilitate the implementation of the the statement of purpose proposed in draft Article 2.1 (c) identifying the aim of advancing “international cooperation with a view towards fulfilling States’ obligations under international human rights law”.

Following such approach could also indicate that the intention in the Zero Draft was to correct the gaps existing in international law with respect to accountability and remedy for human rights violations committed in the context of transnational activities of businesses, as the use of corporate and contractual structures in some cases have allowed certain entities to escape responsibility with respect to human rights violations that they may have committed¹⁴. The focus on ‘activities’ would seem to indicate that even the conduct of domestically-owned companies participating in ‘transnational activities’ would also be covered under the draft legally binding instrument¹⁵.

Beyond the second pillar: Obligations for business entities

The number of transnational corporations (TNCs) in the top 100 economic entities (including States and corporations) jumped to 69 in 2015¹⁶, which implies that in 2016 TNCs were more than half of the top 100 economies in the world¹⁷ and that the foundational principles of corporate law have allowed certain companies to disregard “effective environmental and human rights management of the whole enterprise”¹⁸. This fact was one of the basis for insightful discussions during the first three sessions of the OEIGWG on the nature and role of corporate entities as subjects of international law. Indeed, the participation of corporations and other business entities in the commission of egregious violations of human rights during the Second World War¹⁹ or their involvement in the political, economic and military life of States, particularly in developing countries²⁰, have become one of the grounding motivations on the need to adjudicate on corporate responsibility of those companies involved in the commission of such acts.

The issue of corporate human rights obligations under international law has been addressed to a great extent by scholars and commentators²¹. Views shared during the first three sessions of the OEIGWG considered that a legally binding instrument could include human rights obligations for corporations, while clarifying and distinguishing obligations borne by States²². Similarly, a number of regional and international instruments on human rights recognize the duty of “all organs of society” to respect human rights. For example, the American Declaration of the Rights and Duties of Man recognizes that

[T]he fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty;

The Universal Declaration of Human Rights (Universal Declaration) is understood as “as a common standard of achievement for all peoples and all nations, to the end that every individual and *every organ of society*” shall strive to promote respect for human rights. Moreover, Article 28 of the Universal Declaration establishes that “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”.

Such wording has been interpreted as implying that the “respect of human rights applies to all societal relations locally, regionally and globally”²³. Likewise, some international tribunals have tried to provide avenues to impose international human rights obligations on private parties, by for example invoking that the principle limiting the recognition of corporations as subjects of international law “has lost its impact and relevance in similar terms and conditions as it applies to individuals”²⁴, and recognizing that, in order to guarantee the full enjoyment of human rights, it is necessary to “ensure that no other individual or entity, public or private, may act in disregard of such rights”²⁵, creating therefore a corresponding obligation under the basis of Article 30 of the Universal Declaration of Human Rights.

Although some commentators disagree with such understanding, arguing that this approach will weaken and limit State obligations under international law by shifting the burden to private entities²⁶, traditional treaty making has used different avenues to introduce such obligations in international law, either by proscribing certain acts in domestic legislation²⁷, or by introducing obligations of conduct for non-state actors²⁸. In general terms, there is no theoretical or legal basis to limit the possibility of recognizing human rights obligations of non-state or private actors or prescribing that such obligations could not be included under international law.

Following this approach, it is clear that all business enterprises are bound to respect all internationally recognized human rights. This is recognized in Principle

12 of the United Nations Guiding Principles on Business and Human rights (UNGPs)²⁹. The Zero Draft also includes such principle in the preamble, recognizing that:

(...) all business enterprises, regardless of their size, sector, operational context, ownership and structure shall respect all human rights, including by avoiding causing or contributing to adverse human rights impacts through their own activities and addressing such impacts when they occur.

Some commentators have argued that the treaty should recognize legally enforceable human rights obligations of companies³⁰ and that not doing so in prescribing such direct obligations for businesses corporations will mean that the treaty is failing to innovate beyond existing principles of public international law³¹. Others have argued that although natural or legal persons will not be directly bound by the provisions of the treaty, they would be subject to civil and criminal liability under the jurisdiction of the State party, which in turn will provide clarity under the principles of public international law³².

A comprehensive reading of the preamble and draft Article 2.1 (a) and (b) of the Zero Draft³³ seems to suggest that the Chairperson of the OEIGWG sought a balanced approach in the negotiating text that would allow for further development on the matter. The lack of express mention to ‘direct obligations’ for corporate actors (as natural or legal persons) in the Zero Draft does not preclude its recognition, rather the Zero Draft has followed the current evolution in international human rights law with respect to the role of the State in the implementation of international treaties.

Currently, the duty to implement and enforce international treaties rests in the States parties to such treaties whether as self-executing treaties (enforceable without the requirement of additional legislation) or as non-self-executing treaties (which will require domestic legislation to be enforceable) to make them enforceable³⁴. However, this should not limit victims’ right to seek direct remedy on the basis of obligations stemming from international human rights law³⁵. This view has been shared by regional courts recognizing that third parties can violate human rights³⁶. It will be important to consider if this approach will reflect the desired effects of limiting impunity in cases of violations of human rights committed in the context of business activities, while strengthening the role of the State for the regulation of such activities.

Similarly, the Zero Draft conveys the views on the need to address the prevention of human rights violations in the context of business activities of a transnational character. Article 9 of the Zero Draft requires States to impose due diligence regulations for such business activities taking place “under their jurisdiction or control”. It has been mentioned that such approach is “crucial for avoiding corporate negligence or willful disregard for people and nature”³⁷. Other commentators have, however, pointed out that language on prevention incorporated in the Zero Draft “is an extremely tall order for any due diligence requirement”³⁸, as it is requiring a standard of result, ra-

ther than a standard of conduct³⁹.

The text incorporated in the Zero Draft seems to build on, and not to depart from, the language of the UNGPs as it seems to bring together those principles and essential components of human rights due diligence requirements included in the operational principles of the Second Pillar of the UNGPs, while also incorporating mandatory language derived from the French *Devoir de Vigilance* (due diligence) law⁴⁰. This approach has been suggested by one commentator as “a natural but critical progression from the *human rights due diligence* principles in Pillar II of the UNGPs”⁴¹. The non-exhaustive list of due diligence obligations established in draft Article 9 seems to require legal or natural persons conducting business activities a duty to assess and prevent any violation of human rights. The main question would be if the intended effect behind this approach is to strengthen the ‘preventive’ component of human rights due diligence as an obligation of result, therefore directly enforceable, rather than focusing only on mitigation which is a standard of conduct limited to voluntary internal grievance mechanisms.

Clarifying standards for legal liability for business entities

One of the major gaps a binding instrument on business and human rights is called to fill is the provision of access to justice and remedy for the victims of violations of human rights committed by business enterprises. This gap has been reiterated by General Comment 24 of the Committee on Economic, Social and Cultural Rights, which discussed State obligations under the Covenant in the context of business activities⁴² and recognized that the way in which business entities and groups are organized allows them to escape liability by hiding behind the corporate veil or the principle of separate legal entity. By doing so, the parent company avoids liability for the acts of the subsidiary even when it would have been in a position to prevent such violation. In general terms, such difficulty arises from the hardship victims face in identifying a causal link between the damage and the conduct of the business entity when such violation occurs in a different jurisdiction than the one in which the parent company is located. This also gives rise to lack of jurisdiction of national courts because of the application of *forum non conveniens* or the need to apply the principle of *forum necessitates*, difficulties in accessing information to substantiate such claims, the difficulties or lack of mechanisms to address collective redress, the high cost for victims and the lack of legal aid or funding for transnational litigation, and the obstacles for the execution of judgments delivered in other States.

As mentioned by one commentator, the reading of this article in connection to draft Article 9 “signal the prospect of civil liability for foreseeable harm arising from due diligence failures by an MNC [multinational corporation] in respect of operations over which the MNC had control or was sufficiently closely related”⁴³,

which could “potentially extend and globalize the parent company duty of care principles”⁴⁴. Indeed, as another commentator mentions, the determination of liability of parent and controlling companies is an objective that is complementary to reinforcing compliance with States’ human rights obligations in respect of all business enterprises, including domestic undertakings⁴⁵.

The Zero Draft recognises in Article 10.1, the need for States parties to ensure that “natural and legal persons may be held criminally, civilly or administratively liable for violations of human rights undertaken in the context of business activities of transnational character.” Further, draft Article 10.6 establishes that “[A]ll persons with business activities of a transnational character shall be liable for harm caused by violations of human rights arising in the context of their business activities, including throughout their operations” and sets three separate layers to attribute such civil liability. The approach taken in the Zero Draft seems to have included principles from which legal liability will arise against corporations in cases when they exert control, there is a close relation with its subsidiary or entity in its supply chain and where there is strong and direct connection between its conduct, and when the risk was foreseen or should have been foreseen. By including such principles the Zero Draft seems to have sought to avoid the risk of categorizing types of violations or conducts and rather introduces principles which were considered to be common among many legal systems during the previous discussions of the OEIGWG. Similarly, the inclusion of draft Article 10.12 on the possibility of applying “effective, proportionate and dissuasive non-criminal sanctions” might allow a broader acceptance by States, and at the same time introduce mechanisms that could serve as deterrent for violations of human rights.

Conclusion: Advancing the discussion on corporate human rights obligations

The publication of the Zero Draft takes negotiations for a binding instrument on business and human rights to the next stage. States, and other stakeholders, will work on specific draft language that will be included in the future legally binding instrument. This language should be carefully analyzed considering not only its legal and technical background, but also the approach that the Chairperson-Rapporteur of the OEIGWG is bringing into the negotiation based on a “victims-oriented draft legally binding instrument on business activities and human rights violations in the context of business activities of transnational character.”

The Zero Draft seems to aim at strengthening domestic systems to cope with business enterprises liable for violations of human rights when involved in business activities of a transnational character. The preamble and draft Article 2.1 (a) and (b) make it clear that the intended approach of the Zero Draft is to strengthen “the respect, promotion, protection and fulfilment of human rights in the context of business activities of transnational character” by ensuring an effective access to justice and remedy to victims of human rights violations in the context of business activities

of transnational character, and preventing the occurrence of such violations.

The Zero Draft thus seeks to address the prevention of human rights violations in the context of business activities of a transnational character. The text seems to be built on, and not to depart from, the language of the UNGPs, particularly in relation to those principles and essential components of human rights due diligence requirements from the Second Pillar of the UNGPs, but it also incorporates mandatory language regarding preventive measures. Such an approach could clarify corporate due diligence obligations while allowing the State some flexibility to decide on the required regulation to impose such obligations according to their domestic needs and experiences.

Finally, the Zero Draft seems to have taken a flexible approach when addressing the human rights obligations of business enterprises as the Zero Draft does not preclude their recognition, but rather reinforces the States' regulatory competence *vis-à-vis* corporate actors. This approach was too conservative for some while for others such an approach was a necessary step to bring everyone to the negotiating table⁴⁶. What is important is that the Zero Draft has provided a clear textual foundation for constructive discussions and negotiations under the mandate of United Nations Human Rights Council Resolution 26/9 and thereby advance substantive negotiations towards the adoption of a legally binding treaty on business and human rights.

Endnotes:

¹ Vincent Chetail, "The Legal Personality of Multinational Corporations, State Responsibility and Due Diligence: The Way Forward", in *Unity and diversity of international law : essays in honour of Professor Pierre-Marie Dupuy* (Leiden, Martinus Nijhoff, 2014), pg. 108.

² OEIGWG, "Report on the third session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights", UN Doc. A/HRC/37/67 (2018), pg. 13.

³ OEIGWG, "Report on the first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights", UN Doc. A/HRC/31/50 (2016), at para. 46.

⁴ See here: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf>.

⁵ Note Verbale by the Chairmanship of the Working Group regarding the release of the zero draft legally binding instrument at <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/NoteVerbaleLBI.PDF> (accessed on 8 October 2018).

⁶ OEIGWG, "Report on the second session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect

to human rights", UN Doc. A/HRC/34/47 (2017), at para. 101.

⁷ UN Doc. A/HRC/37/67 (2018), para. 60.

⁸ United Nations Conference on Trade and Development (UNCTAD), *Information Economic Report: Digitalization, Trade and Development* (2017), pg. 16 at https://unctad.org/en/PublicationsLibrary/ier2017_en.pdf (accessed 9 October 2018).

⁹ Carlos Lopez, "Towards an International Convention on Business and Human Rights (Part I)", in *OpinioJuris* at <http://opiniojuris.org/2018/07/23/towards-an-international-convention-on-business-and-human-rights-part-i/> (accessed 09 October 2018).

¹⁰ Ibid.

¹¹ Alison Berthet, Peter Hood and Julianne Hughes-Jennett, "UN treaty on business and human rights: Working Group publishes draft instrument", in Hogan Lovells Blog Focus on Regulation at <https://www.hlregulation.com/2018/07/26/un-treaty-on-business-and-human-rights-working-group-publishes-draft-instrument/> (accessed on 9 October 2018).

¹² Surya Deva, "The Zero Draft of the Proposed Business and Human Rights Treaty, Part II: On the Right Track, but Not Ready Yet" in Business and Human Rights Resource Centre Blog, Reflections on the Zero Draft blog series at <https://www.business-humanrights.org/en/the-zero-draft-of-the-proposed-business-and-human-rights-treaty-part-ii-on-the-right-track-but-not-ready-yet> (accessed 9 October 2018).

¹³ Report of the United Nations High Commissioner for Human Rights, *Improving accountability and access to remedy for victims of business-related human rights abuse*, UN Doc. A/HRC/32/19 (2016), at para.24.

¹⁴ Carlos Correa, "Scope of the Proposed International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with respect to Human Rights", South Centre Policy Brief No. 28 (2016) at https://www.southcentre.int/wp-content/uploads/2016/09/PB28_Scope-of-the-Proposed-Internationally-Binding-Instrument-on-Transnational-Corporations-and-Human-Rights_EN.pdf (accessed 9 October 2018).

¹⁵ Ibid.

¹⁶ Duncan Green, "The world's top 100 economies: 31 countries; 69 corporations," in Peoples, Places, Deliveration at <https://blogs.worldbank.org/publicsphere/world-s-top-100-economies-31-countries-69-corporations> (accessed 15 October 2018).

¹⁷ Presentation by Stephanie Blankenburg, head of the Debt, Development and Finance work at the United Nations Conference on Trade and Development (UNCTAD) Division on Globalization and Development Strategies, during the First Session of the Open-ended intergovernmental working group on Business and Human Rights (July 2015) in Kinda Mohamedieh and Daniel Uribe, "Building a binding instrument on business and human rights," Business and Human Rights Resource Centre Blog at <https://www.business->

[humanrights.org/en/building-a-binding-instrument-on-business-and-human-rights](https://www.humanrights.org/en/building-a-binding-instrument-on-business-and-human-rights) (accessed: 03.10.2018).

¹⁸ Filip Gregor and Hanna Ellis, *Fair Law: Legal Proposals to Improve Corporate Accountability for Environmental and Human Rights Abuses*, European Coalition for Corporate Justice.

¹⁹ Luis Gallegos and Daniel Uribe, "The Next Step against Corporate Impunity: A World Court on Business and Human Rights?," *Harvard International Law Journal*, 57 (Online Symposium) at http://www.harvardilj.org/wp-content/uploads/Gallegos-Urbe_0615.pdf.

²⁰ Speech delivered by Dr. Salvador Allende, President of the Republic of Chile, before the General Assembly of the United Nations, December 4, 1972.

²¹ See for example: Chetail, op. cit.; Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, 2016); Jernej Letnar Čerňič, *Human Rights Law and Business: Corporate Responsibility for Fundamental Human Rights* (Groningen, Europa Law Publishing, 2010).

²² UN Doc. A/HRC/31/50 (2016), at para. 75.

²³ Dinah Shelton, "Protection Human Rights in a Globalized World", *Boston College International and Comparative Law Review*, Vol. 25 (2002), p. 284. Available from: <http://lawdigitalcommons.bc.edu/iclr/vol25/iss2/7>.

²⁴ *Urbaser S.A. and Consorcio Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. Argentina*, ICSID Case No. AR-B/07/26 (Award of 8 December 2016), at para. 1194.

²⁵ *Ibid*, at para. 1196.

²⁶ International Organisation of Employers, Response of the international business community to the Zero Draft Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises ("Zero Draft Treaty") and the Draft Optional Protocol to the Legally Binding Instrument ("Draft Optional Protocol") Annex, September 2018, at <https://www.ioe-emp.org/policy-areas/business-and-human-rights/> (accessed 08 October 2018).

²⁷ Article 3.4 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography provides: Subject to the provisions of its national law, **each State Party shall take measures, where appropriate, to establish the liability of legal persons** for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

²⁸ The International Convention on Civil Liability for Oil Pollution (1992) provides that "[T]he owner of a ship registered in a Contracting State [...] shall be required to maintain insurance or other financial security [...]" (Article VII (1) in order to be able to respond for any claim of pollution damage. It also establishes that the 'owner' is any person registered as such, and continues defining 'person' in Article I (2) as: "Person" means any individual or partnership or any public or private body, whether cor-

porate or not, including a State or any of its constituent subdivision.)

²⁹ United Nations Guiding Principles on Business and Human Rights, endorsed by Human Rights Council Resolution 17/4 of 16 June 2011.

³⁰ Surya Deva, "The Zero Draft of the Proposed Business and Human Rights Treaty, Part I: The Beginning of an End?," in Business and Human Rights Resource Centre Blog, Reflections on the Zero Draft blog series at <https://www.business-humanrights.org/en/the-zero-draft-of-the-proposed-business-and-human-rights-treaty-part-i-the-beginning-of-an-end> (accessed on 9 October 2018).

³¹ Charlie Holt, Shira Stanton and Daniel Simons, Greenpeace, "The Zero Draft Legally Binding Instrument on Business and Human Rights: Small Steps along the Irresistible Path to Corporate Accountability" in Business and Human Rights Resource Centre Blog, Reflections on the Zero Draft blog series at <https://www.business-humanrights.org/en/the-zero-draft-legally-binding-instrument-on-business-and-human-rights-small-steps-along-the-irresistible-path-to-corporate-accountability> (accessed on 9 October 2018).

³² Berthet, Hood and Hughes-Jennett, op. cit.

³³ These provisions recognize that the instrument aims to "strengthen the respect, promotion, protection and fulfilment of human rights in the context of business activities of transnational character" and "to ensure an effective access to justice and remedy to victims of human rights violations in the context of business activities of transnational character, and to prevent the occurrence of such violations".

³⁴ Jurisdictions as Colombia, Chile, Ecuador, Spain and France have recognized the concept of 'block of constitutionality' by which international treaties (particularly human rights treaties) will become part of the Constitutional Law as soon as ratified and could be directly enforced by the State judiciary. Although in a limited fashion, the United States follows a similar approach with the application of the 'Supremacy Clause' which intends to give international treaties automatic domestic legal force and could be applied directly by the courts. See: Rodrigo Uprimny, "BLOQUE DE CONSTITUCIONALIDAD, DERECHOS HUMANOS Y NUEVO PROCEDIMIENTO PENAL" at https://cdn.dejusticia.org/wp-content/uploads/2017/04/fi_name_recurso_47.pdf (accessed 9 October 2018) and Carlos Manuel Vásquez, "The Four Doctrines of Self-Executing Treaties," Georgetown Public Law and Legal Theory Research Paper No. 12-101 (1995).

³⁵ UN Doc. E/C.12/GC/24 (2017), para. 51.

³⁶ See for example *Case of the Kaliña and Lokono Peoples v. Suriname* (Judgment, 25 November 2015) para. 224. (Consider that the judgment in Spanish refers to *violaciones* (violations) by third parties, while its translation in English refers to *abuses*. It is not clear if the Court considers these concepts as interchangeable, but academics have recognized that the reference to *violaciones* (violations) by third parties in the judgement goes beyond the idea that only States can violate human rights. See: Nicolas Carrillo Santarelli, *La Corte Interamericana de Derechos Humanos hace referencia a principios de responsabilidad corporativa, continuando con desarrollos en la región americana al respecto*, at <https://aquiencia.net/2018/10/04/cidh->

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³⁷ Denise Auclair, "What can the zero draft Treaty text offer to people negatively affected by business operations?", CIDSE at <https://www.cidse.org/articles/business-and-human-rights/business-and-human-rights-frameworks/what-can-the-zero-draft-treaty-text-offer-to-people-negatively-affected-by-business-operations.html> (accessed 15 October 2018).

³⁸ John G. Ruggie, "Comments on the "Zero Draft" Treaty on Business & Human Rights," in Business and Human Rights Resource Centre Blog, Reflections on the Zero Draft blog series at <https://www.business-humanrights.org/en/comments-on-the-%E2%80%9Czero-draft%E2%80%9D-treaty-on-business-human-rights> (accessed on 9 October 2018).

³⁹ Ibid.

⁴⁰ Loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=ORFTEXT000034290626&categorieLien=id> (accessed 10 October 2018).



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⁴¹ Richard Meeran, "The "Zero Draft": Access to judicial remedy for victims of multinationals' ("MNCs") abuse," in Business and Human Rights Resource Centre Blog, Reflections on the Zero Draft blog series at <https://www.business-humanrights.org/en/the-%E2%80%9Czero-draft%E2%80%9D-access-to-judicial-remedy-for-victims-of-multinationals%E2%80%99-%E2%80%9Cmncs%E2%80%9D-abuse> (accessed on 9 October 2018).

⁴² E/C.12/GC/24, 10 August 2017. See paras. 42 and 43 of the document.

⁴³ Meeran, op. cit.

⁴⁴ Ibid.

⁴⁵ Correa, op. cit.

⁴⁶ See: Business and Human Rights Resource Centre Blog, Reflections on the Zero Draft blog, <https://www.business-humanrights.org/en/about-us/blog/debate-the-treaty/reflections-on-the-zero-draft>.

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