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Implementing the “Protect-Respect-Remedy Framework”. How the state duty to protect and the corporate responsibility to respect (should) interrelate

The work of the Special representative of the Secretary General on the issue of Human Rights and Transnational Corporations (SRSG) has made one thing abundantly clear. When it comes to effectively addressing the challenges posed by corporations to the effective enjoyment of human rights there is no easy solution, or to put it in the words of the SRSG professor John Ruggie: “there is no silver bullet solution”. When the SRSG ventured out on his mission to clarify the relation between corporations and human rights in 2005, the discussion had become entrenched, stuck in a rather counterproductive polarization on the need for mandatory versus voluntary measures. Through the “respect-protect-remedy framework”, the SRSG has placed the primary obligation squarely on States but by means of the second pillar, the corporate responsibility to respect (R2R), attention is drawn to the possible contributions corporate governance structures can make.

To the dismay of many human rights advocates, the SRSG steered clear away from grounding the concept of the corporate responsibility on any legal foundation but rather based it on a ‘societal expectation’ to do no harm. In essence, the commitment of corporations to discharge of their responsibility to respect is of a voluntary nature. Nevertheless, simply therefore dismissing the corporate responsibility to respect as a mere aspiration and consequently of little use in the quest for corporate accountability is too simple. The SRSG has pointed out that addressing the corporate challenges to human rights requires a holistic approach, a smart regulatory mix with a central role for the state. In other words, the two pillars of the UN Framework need to be connected.

This contribution first reflects on the potential contribution of the R2R towards effectively regulating corporations for human rights violations. Subsequently, it is discussed how the two pillars, the state duty to protect and the corporate responsibility to respect can, in theory, be mutually reinforcing.

The potential for such dynamic inter-linkages between voluntarism and regulation will differ depending on the business sector under consideration. For certain areas it might prove difficult as is illustrated by discussing the drive towards regulating the human rights impact of the private security industry.

Several high profile incidents of human rights abuse involving private security companies have highlighted the need for regulation. Recent years have seen a strong development of standard setting in this field. Based on empirical research the potential for dynamic inter-linkages between voluntarism and regulation in this field are addressed.

The conclusion is drawn that the UN “protect-respect-remedy framework” has pointed the direction towards a multi-facet regulatory approach to the issue of corporations and human rights. It has drawn attention to the contribution new governance structures can make towards improved corporate human rights performance. Success depends however on complex interrelations between the state duty to protect and the corporate responsibility to respect.

The UN Framework will most likely not quell the call for the development of direct obligations for corporations especially where it concerns grave human rights violations such as those that private security companies have allegedly committed in weak governance zones.

The widely embraced notion of the corporate responsibility to respect might have prepared the ground towards the adoption of an instrument laying down the direct duties of corporations when it comes to international crimes. Such an instrument will trigger a broader array of monitoring and remedial mechanisms. Second pillar initiatives may then prove to be the stepping-stone towards the adoption of binding human rights obligations for corporations.