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Transnational Corporations and Human Rights: Responsibility or Accountability?

The relationship between TNCs and human rights is being construed through the interplay between the corporate social responsibility paradigm and the international law of human rights. The premise for this interplay is the idea that it is possible and desirable to take advantage of the role played by TNCs within civil society. As it is well-known, this is a way to try to overcome or avoid the problems stemming from the lack of international legal personality and the limited liability of enterprises, and the consequences arising when their activity is performed within the territory of states that are not interested or not able to protect human rights.

This explains the need for widening and even restating the relevant notions of the “Protect, Respect and Remedy” Framework promoted by the UN - first of all the notions of *responsibility* and *accountability* - but also calls for a commitment to the clarification of the meanings and the scope that are, and should be, associated to them.

The Framework promoted by the UN, as the previous soft law tools that have been worked out by different kinds of international organizations, tends to use both the term ‘responsibility’ and the term ‘accountability’. These concepts refer, however, to different kind of obligations, may rest on different implementation measures, and can be supported by different kind of justifications. Their interplay is at the basis of the complex intertwining of voluntariness and compulsoriness in the Framework.

The clarification of the potential connected to each of these terms and concepts is important in order to make clear which concrete impact - whether moral, legal or a more complex one - can be pursued by the Framework and by the international tools in this field.

By addressing the international framework on corporations and human rights, the presentation moves from the analysis of (i) the role played by the notions of responsibility and accountability; (ii) the relationship between legal responsibility and moral responsibility with regard to the accountability mechanisms.

The presentation underlines that the genuine role and advantage of CSR tools within the field of human rights derives from their ability to provide for accountability mechanisms that are not only of legal kind and that are not necessarily based on legal responsibility. In the presentation it is maintained that to best act on the basis of this idea, the

interplay between CSR and human rights law that shapes the Framework needs to be assessed. Finally, it is wondered if there is a need for a more clear distinction, in the Framework, between TNCs' duties (with regard to human rights) having a legal basis in international law (due to the horizontal effect of rights at stake) and TNCs' duties lacking of this basis.