

International Human Rights Breaches and Activities of Multinational Enterprises

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During the '70s and '80s, many developing countries and public opinion often criticized multinational enterprises on the ground that their conduct interfered with the internal affairs of host States - most frequently, developing countries.

These countries claimed the need of internationally agreed standards of conduct for multinational enterprises. In particular, developing countries claimed for very restrictive standards to subordinate the conduct of these enterprises to the achievement of their economic and political goals. As a matter of fact, the activities of multinational enterprises should not have resulted in depriving local populations of the benefit deriving from the exploitation of the natural resources of their lands. This way developing countries also aimed at strengthening their role in international relations.

At the same time, the national States of multinational enterprises (that is, industrialized countries) stressed the need of enhancing the protection of private foreign investments at an international law level, due to so-called political risks arising from the possibly unfriendly line of conduct of host States.

These clashing claims gave rise to a lively debate on the status of multinational enterprises in international relations, specifically with regard to their possibly international personality, the role of States in controlling their conduct abroad and in protecting their interests and those of their shareholders.

Today, the public opinion's attention to multinational enterprises has mainly shifted its focus. One of public opinion's main concern now attaches to the need that these enterprises do not act in contrast with international human rights standards.

As for the relationship with host States (still today mainly developing countries), there is growing concern that multinational enterprises end up being involved and supporting the possibly breaches of international human rights rules that these States can commit against their own people.

The worries and sometimes lively criticism of public opinion are due to some controversial facts.

Host States may well have an interest in exempting, either entirely or partially, foreign investors from complying with international human rights standards as this could imply a greater freedom of action and, consequently, an incentive to invest in their territories.

However, contemporary practice shows that the allegedly involvement in, or complicity with, breaches of international human rights rules by multinational enterprises begin to be asserted. Indeed, more and more often there are attempts to have recourse to legal remedies to ascertain this involvement in or complicity not only with State actors but also, in situations of civil war, with insurgents or local *de facto* governing parties that can be liable for breaches of international human rights rules against their own people.

There are several examples in this regard.

The main issue is to identify the legal instruments allowing to assert the legal consequences of both the possibly conduct of multinational enterprises in contrast with international human rights rules and allegedly multinational enterprises' complicity with serious breaches of international human rights rules committed by host States or other local actors in control of the territory.

The possibly relevant legal instruments can be grouped in two main categories according to their different sources, that is: 1) international law; and 2) domestic law.

As regards international law, some points are to be made.

We believe multinational enterprises lack international personality, notwithstanding the fact that they are often perceived as some of the main actors of global relations and are able to strongly influence these relations.

Assuming multinational enterprises lack international personality implies that they are not the direct holders of international human rights obligations. Thus, at an international law level, these enterprises cannot, in principle, be held responsible for violations of such obligations.

Therefore, their possibly breaches of international human rights obligations, or their allegedly complicity with these breaches, could be without consequences.

The issue is to understand what remedies are available in order to avoid this possible impunity.

My task is to deal with this issue.

In particular, my task is to clarify if and how the several international obligations on human rights can apply to the conduct of multinational enterprises.

In this connection, I will also take into account the fact that today, at an international law level, most States - among them many developing countries - are especially interested in finding a balance between the activities of multinational enterprises and the goals of their own policies, rather than trying to prepare restrictive standards of conduct for these enterprises.