

## Book Reviews

Angelica Bonfanti, *Business and Human Rights in Europe: International Law Challenges* (Boca Raton, FL, USA: CRC Press, 2018), 264 pp.

In recent years there has swept over the European continent a cacophony of regional and national laws, regulations, principles and practices that seek to incorporate international human rights law into corporate operations, domestically and at times extraterritorially. Few books have been able to capture the full scope of this phenomenon, with its promises and limitations transparently conveyed for scrutiny by scholars and practitioners alike. Angelica Bonfanti's edited volume, *Business and Human Rights in Europe: International Law Challenges*, is one treatise that succeeds in this daunting task with insightful chapters that provide both overview and granular perspectives on most of the key issues arising in this field of study and practice. For American readers, this book will provide refreshing insight into the European take on business and human rights, and it is a fair amount to absorb in only 264 pages.

There is a 'top-down' character to the book as it uses international law (and that really means international human rights law in this context) that has developed since World War II to frame the legal obligations that European parties then strive to fulfil through various codified means, some enforceable as law and others scattered in the vast terrain of voluntary principles associated with business and human rights. This methodology unfolds in three ways. At the international level, the United Nations (UN) and its bodies play a central role as the framers of international human rights law. Then, the focus shifts to the European Union (EU) and its various institutions as well as the European human rights system to pronounce on the European interpretation and implementation of such UN initiatives and international law standards, albeit with the regional realities of the EU mandate front and centre. Finally, contributors to the book examine various EU countries for the national legislation they have generated recently to propel forward these human rights goals (informed by both UN and EU law) within their respective national corporate spheres.

Daniel Augenstein presents, in Chapter 3 ('Managing Global Interdependencies through Law and Governance') which is lodged prior to other thematically organized chapters, perhaps the most contentious issue confronting the business and human rights community over the last several years: implementing the 'soft law' UN Guiding Principles on Business and Human Rights (UNGPs) as the current guiding framework for voluntary action by States and corporations *versus* the 'hard law' idea of an international treaty initiative (ITI) that would codify mandatory performance and enforcement standards upon corporations (including their extraterritorial operations) by the ratifying States of the treaty. Augenstein explains: 'Among the main goals of

ITI are the adjustment of the imbalance between the rights and responsibilities of corporations in international law and the closing of legal (jurisdictional) protection gaps in relation to human rights violations committed in global supply and commodity chains' (p. 27).

The Global North, including the EU delegation to the ITI talks, has resisted such a codified treaty. Nonetheless, in a move emblematic of how the technocratic European Commission and the EU governments sometimes conflict with the political will of the European Parliament, the EU responded to a 2016 resolution adopted by the Parliament calling upon the EU to 'constructively engage' in ITI negotiations with 'its (reserved) commitment to "address outstanding issues as soon as possible"' (pp. 27–28). How the ITI will fare in further negotiations and among the governments that have resisted it so far remains problematic, but it is the ultimate international law prospect overshadowing the national approaches described in the rest of the book.

Bonfanti has chosen to unpack the rapidly evolving European experience within the framework of the UNGPs, which were prepared for years under the guidance of Professor John Ruggie of Harvard University and adopted by the UN Human Rights Council in late 2011. It is a familiar playing field understood by everyone in the field and that works to the benefit of the book. The discipline of business and human rights can be a complex web of law, principles, custom, aspirations, deep scepticism, commercial realism, and sheer rhetoric at times. To cut through all of that, the UNGPs provide a conceptual structure well suited to guide the analyses set forth in this book. They are the known touchstones upon which a survey of the European experience can be placed.

In that vein, the book is divided into three sections that align with the three pillars of the UNGPs. Part I of the book examines the State duty to protect human rights; part II focuses on the corporate responsibility to respect human rights; part III covers the challenge of more effective access to remedies. There are 22 contributors authoring among them 20 chapters, the Foreword, and the Conclusion. The three-part division works very well and enables the discussion to advance coherently throughout the book.

In part I, two chapters in particular stand out. Chapter 4, by Marco Fasciglione, examines, among other developments, the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights in the quest to enforce human rights principles with corporations among Council of Europe Member States. Chapter 5, by Claire Methven O'Brien, looks at whether European nations shoulder legal responsibility for the extraterritorial actions of their corporations. Drawing upon both chapters, Editor Angelica Bonfanti highlights in her concluding chapter that 'the state duty to protect human rights has received a significant, but in some regards still not decisive, interpretation at [the] European level, at least pursuant to the CoE approach. On the one hand, the case law developed by the ECtHR has certainly evolved as concerns the application of the ECHR procedural and substantive standards to cases of corporate abuse ... However, on the other hand, the ECtHR approach is not fully satisfactory in terms of the extraterritorial application of the ECHR, when MNCs' activities abroad are concerned' (p. 248). Contributor O'Brien concludes that 'there is no basis in the ECHR for a general state duty to control the conduct abroad of business enterprises incorporated under states parties' laws or having their headquarters in their territories, even when such conduct leads to human rights abuses' (p. 56). In O'Brien's view this

does not necessarily mean there is a ‘black hole’ lacking regulation of extraterritorial operations. Rather, one ought to defer to the host state’s legal system to identify legal liability or to its civil society for monitoring and oversight, even if the host state’s own human rights obligations ‘are or appear to be imperfect from the point of view of advocates of extraterritoriality’, and she points more broadly to what she describes as the ‘imperialist impulse’ of the extraterritoriality movement.

In part II, European approaches to the corporate responsibility to respect human rights are richly covered in seven chapters of detailed analyses. The new corporate liability examples that have been legislated in the United Kingdom (Modern Slavery Act 2015), Italy (criminal offences under Legislative Decree No. 231/2001) and France (2017 law on corporate duty of human rights due diligence) demonstrate growing interest in addressing human rights compliance directly with corporations through national law. Then, as a mandated administrative priority, the Norwegian Sovereign Wealth Fund, applying its Guidelines for Observation and Exclusion of Companies from the Fund and guided by its Council of Ethics, resorts to the tool of divestment to avoid the Fund being complicit in human rights violations.

The European Union, following extensive engagement by the Council of the EU, European Commission and European Parliament, is now governed by Regulation (EU) 2017/821, which, as contributor Valentina Grado summarizes, lays down ‘supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas’ (p. 166).

Editor Bonfanti authors a very timely chapter on the responsibility of information and communication technology (ICT) companies for compliance with human rights principles. The most notable example, which she dissects, is the EU General Data Protection Regulation (GDPR) of 2018, which seeks to protect the right to privacy and has had enormous impact on data processing by European companies as well as non-European companies within the scope of the GDPR, the latter being a point that should be emphasized for an international readership. Bonfanti counsels: ‘Since European ICT companies must prevent the risks to the right to privacy and personal data protection, and remediate the related negative effects that their activities can cause, they must take the legal framework based on the ECHR and the GDPR into account’ (p. 179). She uses the sensitive issue of ‘bulk data collection and generalized disclosure of data to governments’ to delineate the responsibility of ICT companies to respect human rights in a European regulatory context. Overall, the chapter provides a fresh perspective by fleshing out the human rights dimension of the GDPR under the European human rights system as well as EU guidance and case law. This greatly enhances the understanding and interpretation of the GDPR, on which much has been written since its entry into force a year ago, as part of the broader emerging European vision on the internet.

Remedies, as explored in part III of the book, remain far more theoretical in scope than they are in actual implementation in Europe. The five chapters in this section address this dilemma, with discussion of EU Regulation Brussels I and national laws that have yet to be effectively enforced. There is an enormous task ahead to create and enforce remedies that draw upon international human rights law but are grounded in domestic civil or criminal codes. The contributors propose plenty of new plans and laws to underwrite

remedies (civil and criminal) for corporate violations of human rights law and principles. Chapter 19, by Adriana Espinosa Gonzalez and Marta Sosa Navarro, is particularly well conceived in its presentation and analysis of the many variants in ‘Corporate Liability and Human Rights: Access to Criminal Judicial Remedies in Europe’.

The relevance of this book to business and human rights, particularly in Europe, is unquestionable. It is topical and rigorous in its analysis of the multiple levels of law (international, regional and national) and the largely progressive developments in the European theatre, and thus merits serious attention across academic and practitioner spectrums. It is refreshing to have relatively new perspectives by participating contributors beyond the generation of scholars that came of age before or with the launch of the UNGPs.

There are a couple of minor structural issues in the book, however. First, it would be helpful if there were a master bibliography that easily informs the reader of the major treatises being cited in the hundreds of footnotes in the contributors’ individual chapters. Alternatively, a short bibliography at the end of each chapter would have been useful. Second, the two-page list of ‘Abbreviations’ on pages xxii and xxiii does not contain all of the abbreviations used in the book. This can slow down the reader who flips to that list only to find that the abbreviation at issue is not there, thus requiring a trek backwards through the relevant chapter to identify the organization or document being referenced.

Overall, *Business and Human Rights in Europe* commands respect as a scholarly work that both informs and instructs the specialist and the generalist. The book should be kept close at hand by all who care deeply about this field of endeavour.

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