Book Reviews

Dalia Palombo, *Business and Human Rights: The Obligations of the European Homes States* (Oxford, UK: Hart Publishing, 2019), ISBN 9781509928033, 280 pp. + notes and index

Dalia Palombo's book, *Business and Human Rights: The Obligations of the European Home States*, is a good read for human rights advocates, scholars and international litigators that are interested in effective remedies for victims of business and human rights abuses. The book, divided into five chapters, explores litigation strategies to hold European states accountable for human rights abuses committed extraterritorially by subsidiaries of parent companies headquartered in Europe. The author focuses on countries within the European Union (EU), particularly the United Kingdom (UK). However, this does not foreclose the application of the book's proposals in other regional or international courts. The book answers the important question of how states can fulfil their duties to protect, promote and fulfil human rights within the business and human rights discourse. The author argues that European states should be liable in the European Court of Human Rights (ECtHR) for their failure to regulate parent companies within their jurisdictions. She hopes that if the ECtHR upholds states' obligation as argued in this book, 'it would open the door to extensive litigation before domestic courts against multinational European multinational enterprises abusing human rights in developing countries' (p. 2). According to the author, litigating against states is appealing because (1) it reduces or potentially solves the extraterritorial problems of cases as international law provides human rights victims with causes of action against states, and (2) by shifting the role of the state from a spectator to the potential perpetrator of human rights violence, states who had hitherto opposed making multinational enterprises (MNEs) personally liable in international law may consider changing their position.

In the introductory chapter, the author introduces readers to three hypothetical case studies modelled along some popular real-life cases of human rights abuses by MNEs: the Bangladeshi building collapse and workplace abuses, environmental abuses in Ecuador, and militarized commerce in Nigeria. The aim, which is successfully achieved in this book, is to examine what remedies would be available to victims of human rights in similar cases if the arguments of the book were to be adopted.

Chapter 1 sets up the problem of inadequate/ineffective remedy for victims of business and human rights abuse who are in developing countries, and examines the global governance debate as to whether MNEs are subjects or objects of international law. Palombo argues that there is a discrepancy between the obligations that corporations owe and the limited remedies available to victims to enforce such rights in practice. Therefore, the current domestic and international rules have a corporate accountability gap. The author correctly points out that despite the multiplicity of both soft and hard laws over the years, they do not provide an adequate solution to the corporate accountability

Business and Human Rights Journal, 6 (2021), pp. 170–173 © The Author(s), 2020. Published by Cambridge University Press
doi:10.1017/bhj.2020.31

https://doi.org/10.1017/bhj.2020.31 Published online by Cambridge University Press

gap. Also, reliance by litigators on domestic substantive laws (including tort law) against MNEs in domestic courts remains limited geographically and is often unsuccessful. The author concludes by proposing that, in light of the current inadequate/ineffective remedies for victims of human rights abuses, it is time to chart an innovative approach of suing states for their failure to regulate MNEs within their territories.

Chapter 2 considers the options available to human rights abuse victims to access remedies in home states under corporate social responsibility (CSR) standards, EU law and UK laws. Palombo first identifies challenges inherent in suing MNEs in host states and then notes that because of these challenges, human rights advocates sue MNEs in home states. However, the application of EU, international and domestic laws have not provided an effective accountability regime either. The author argues that soft laws, taking the UN Guiding Principle on human rights as an example, are insufficient to hold MNEs accountable because they are not enforced. She then examines domestic remedies in UK courts against parent companies headquartered in the UK, relying on the Brussels Convention and Rome II Regulation. The author concludes that there is still a problem with using EU choice of laws rules because the Rome II Regulation does not consider any human rights standards. Particularly, the Rome II Regulation still refers to the laws of the place of occurrence of the tort, which are usually developing countries with weak legislation. This Rule invariably favours MNEs as the *lex loci delicti* is usually in developing countries. The author also analyses English court decisions that rely on domestic tort laws and indirect liability theories to provide remedies to victims of human rights abuse. Palombo concludes that the existing legal models in the EU do not provide adequate remedies for business and human rights abuse committed transnationally by subsidiaries of MNEs headquartered in the EU.

Chapter 3 argues that due to the ineffective remedies available under the CSR standards, EU and domestic laws, the UK (and by extension, European countries) should, and indeed, have obligations under international treaties to guarantee effective remedies for the victims of human rights abuses. Also, the UK ought to consider in its investment and trade policies, the interests of foreign stakeholders affected by parent corporations headquartered in the UK. To substantiate these arguments, the author engages in a high-level analysis of the European Convention on Human Rights (ECHR) and its interpretation in decisions of the ECtHR. Particularly, the author argues that the ECtHR's interpretation of Articles 1, 13, 8 and 3 of the ECHR obligates home countries to protect, promote and fulfil human rights. While the duty to protect demands that states should guarantee effective legal remedies for human rights victims that are able or willing to bring an action in court to protect their rights, the duties to promote and fulfil require states to prevent human rights abuses by private actors. The author's further characterization of human rights as absolute and non-absolute abuses rights under sections 3 and 8 of the ECHR helps the reader to understand that some human rights claims are not absolute because they are calibrated against competing MNEs' rights. Regarding absolute rights, the author argues that 'the state has two parallel obligations as it pertains to companies abusing human rights. First, it must conduct an effective investigation against the corporate group abusing fundamental rights. Second, the state must provide the victim of human rights abuses with a cause of action to claim damages against the corporate group' (p. 135). Bearing in mind sovereignty

https://doi.org/10.1017/bhj.2020.31 Published online by Cambridge University Press

considerations, it remains to be seen how home countries will investigate host states where most human rights abuses occur. The author, understandably, did not provide a practical solution or explanation for this potential sovereignty challenge in this chapter.

Chapter 4 tackles the sovereignty query posed above. It engages with the question of how to apply ECHR jurisprudence transnationally to enable private individuals to hold states liable for transnational human rights abuse committed by subsidiaries of MNEs headquartered in the EU. Although the author acknowledges that the ECtHR has not previously answered this question and there is no easy answer, she nonetheless proffers some thoughts and analysis based on the current ECtHR jurisprudence and rulings of other human rights courts, treaty bodies, tribunals, bodies and committees. After rehashing the debate on the benefits and drawbacks of extending the jurisdiction of ECtHR to transnational human rights abuse, the author strikes a middle ground on the debate by drawing inspiration from the Maastricht Principles on extraterritoriality. Characterizing the Maastricht Principles as 'the most appropriate doctrinal framework to reconceptualize the jurisprudence of the ECtHR' (p. 161), she argues that the EU court should assert transnational jurisdiction over states on three bases: extraterritorial control, territorial control with extraterritorial effects, and the ability to influence. Also, persuasively, the author argues that as there is an ongoing cross-fertilization and judicial dialogue in international human rights law, making a case for the extraterritoriality of ECtHR in business and human rights cases aligns with an already developed jurisprudence of other human rights adjudicative bodies and soft laws applicable to business and human rights. The author coherently proposes the extraterritoriality of the EU jurisprudence based on the already identified state duties in the book – to protect, fulfil and promote human rights. This characterization makes the book easy to read. However, it is unclear how private individuals in Africa, for example, can file claims at the ECtHR. Although applicants at the ECtHR do not need to be citizens of a European state, the nuances of the application of locus standi have always been a barrier to access to justice. Addressing standing to sue at the ECtHR will give readers clearer procedural and substantive insights on how to access justice in this regional court.

The book concludes with a call for state reforms that align with the duties to protect, promote and fulfil. Regarding the responsibility to protect, the author proposes that states should establish new binding human rights obligations for businesses under either international, European or national law. Also, the author proposes that states should change civil procedure rules, including European conflict-of-laws rules and rules on limited liability of companies, regulating civil litigation against parent companies at both the EU and national level (p. 223). Palombo favours international treaties in pushing through this reform and, in this light, offers useful suggestions that could improve on the Zero Draft Bill on the business and human rights treaty. Finally, she offers insights on how states can fulfil their duties to promote and fulfil human rights through foreign policies that balance the rights of foreign investors, states and private individuals in bilateral investment treaties and free trade agreements.

This book contains high-level analyses of cases, legislation, rules and global standards that are useful to human rights advocates, scholars and students. Arguments in this book are bold and novel, offering human rights advocates ideas to test before various courts, and offering courts and other bodies ideas on how to better enable effective remedies.

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Furthermore, the book presents a clear state of the EU law on business and human rights, especially as it relates to transnational litigation that seeks to hold parent companies accountable for transnational human rights abuses. This book is valuable because of its ability to speak to different audiences: human rights advocates and litigators will find the EU jurisprudence as it relates to business and human rights useful, scholars will find the theoretical underpinnings and debates around corporate accountability invaluable, and students will find the book a useful resource to pique their innovative minds as to how parent companies headquartered in developed states can be held accountable. Although the book is limited to the EU, it serves as a blueprint that may be used by other regional bodies and, even, globally.

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