

On the Evolution of the United Nations' "Protect-Respect-Remedy" Project: The State, the Corporation and Human Rights in a Global Governance Context

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Abstract: The advent of contemporary economic globalization has substantially altered the regulatory environment in which economic enterprises operate. Once assumed to be creatures of the states that recognized and regulated their existence, economic enterprises today are increasingly capable of arranging their activities beyond the regulatory scope of any state or groups of states. That gap between operational and regulatory capacity has produced a sustained reaction at the national and international levels. States have sought to extend their power over corporations beyond their borders. International organizations have sought to develop supra national legal governance frameworks. This paper examines one of the more important efforts to elaborate a transnational regulatory framework for transnational corporations and other business enterprises—the United Nations “protect, respect, and remedy” framework. The three parts of the framework—the state duty to protect, the corporate responsibility to respect and the access to remedies—posits a system in which national legal orders incorporate and apply national and international human rights norms as enterprises implement global systems of institutionalized social norms, and both provide mechanisms for remedy of breaches of these overlapping but not identical legal and governance systems within their respective jurisdictions. The conceptual grounding of the framework is first explored on its own terms. The framework’s viability as a transnational autonomous regulatory soft law system is then explored. The resulting issues of implementation under the framework are then examined, as national systems transpose international legal obligations in the governance of enterprises that are themselves independently subject to global systems of social norms, both of which are bound up in a remedial matrix. The paper ends by examining the implications for the regulation of corporations raised by the proposed construction of this polycentric multilevel law-governance system.

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