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Review paper

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THE INCLUSION OF HUMAN RIGHTS IN INTERNATIONAL INVESTMENT LAW

ABSTRACT

This paper addresses the possibility of harmonizing human rights with international investment law. To achieve this purpose, the paper first focuses on the importance of human rights within the context of international investment law, as well as the challenges in integrating regulations to resolve potential conflicts between these fields. Subsequently, it explores two alternatives that have been utilized to incorporate human rights into the international investment regime: firstly, the inclusion of human rights provisions in international investment agreements, and secondly, the inclusion through interpretation by certain arbitral tribunals. Finally, the paper presents some concluding remarks.

Keywords: Human Rights; International Investment Law; International Investment Arbitration

1. INTRODUCTION

Human rights and international investment law regulate distinct situations. Human rights establish guarantees for individuals in their relations with states, whereas international investment law seeks, primarily, to protect the economic interests of foreign investors from arbitrary behaviors by states or their agents.

However, despite the differences, measures adopted by states can sometimes also violate the human rights of foreign investors. On other occasions, regulatory measures aimed at protecting human rights could affect the economic interests of foreign investors. In these situations, human rights rules and international investment rules could be in contradiction. This is especially problematic because international investment treaties enshrine certain standards of treatment for foreign investors, and when their investments are affected by measures to protect human rights, these might be challenged.

In such a situation, the sovereignty of states and the regulatory capacity to protect human rights could be compromised, leading to an imbalance in the international investment regime that favors the protection of the interests of foreign investors. This problem is even more significant when considering that international investment agreements rarely contain provisions on human rights.

Therefore, a question arises: How has harmonization been achieved between human rights and international investment law? This paper seeks to address this question in three different parts: in the first, the problem of harmonization between human rights and international investment law is presented; in the second, the solutions adopted to achieve a better balance between human rights and the rules of international investment law are introduced; and in the third, some conclusions are highlighted.

2. HARMONIZING HUMAN RIGHTS AND INTERNATIONAL INVESTMENT LAW

There is a public demand for businesses to comply with human rights, recognizing the existence of a social contract that establishes rights and obligations.¹ In this sense, compliance with human rights is a prerequisite for conducting business. There are three generations of human rights depending on the kind of the claims made by society.² The first generation is related to the non-intervention of the state, establishing freedoms and guarantees against arbitrariness. Essentially, political and civil rights belong to this generation. The second generation burdens the state by providing certain living conditions to the people, such as education, healthcare, nutrition, etc. Fundamentally, these conditions fall under the category of socio-economic rights. Recently, a third category of rights has emerged, where claims are not individual anymore but are made collectively by society as a whole. It does not mean that these rights cannot be claimed individually but normally are exercised collectively. These claims are classified as collective developmental rights, such as the right to peace, a healthy environment, sustainable development, etc.³

¹ Choudhury, B., *Human Rights in International Investment Law* in: Bungenberg, M., Krajewski, M., Tams, C.J., Terhechte, J.P., Ziegler, A.R. (eds.), *European Yearbook of International Economic Law* 2020, 2021, Vol. 11., p. 178.

² Joshi, R.& Gurpur, S., *The Silent Spring of Human Rights in Investment Arbitration: Jurisprudence Constante Through Case-Law Trajectory*, *Arbitration International*, 2020, Vol. 36, No. 4, p. 2.

³ *Ibid.*, p. 2.

Traditionally, human rights have been seen as a relationship between the state and citizens, where the state has to guarantee the protection of these rights. However, states are also responsible for protecting human rights from private actors' behaviors, including foreign investors.⁴ This obligation has been explicitly stated in the International Covenant on Civil and Political Rights (ICCPR) of 1966 and acknowledged by the United Nations Human Rights Committee. For example, in its General Comment No. 31, it emphasized that the state has the role of guaranteeing human rights from violations by private actors:

(...) the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.”⁵

In this regard, the Committee on Economic, Social and Cultural Rights, in General Comment No. 24, regarding the obligations enshrined in the International Covenant on Economic, Social, and Cultural Rights, stated: “(...) under international standards, business entities are expected to respect Covenant rights regardless of whether domestic laws exist or are fully enforced in practice.”⁶

Despite these obligations for states, it is not possible to affirm that foreign investors are subject to binding obligations related to guaranteeing human rights at international law, but they are responsible according to domestic laws.⁷ This does not mean foreign investors are immune to human rights violations. In the context of international investment law, they also have to comply with *erga omnes* regulations, regardless of the absence of international liability for business entities.⁸

⁴ De Brabandere, E., *Human Rights and International Investment Law* in: Binder, C., Nowak, M., Hofbauer, J., Janig, P. (eds.), *Elgar Encyclopedia of Human Rights*, Edward Elgar Publishing Limited, Massachusetts 2022, p. 621.

⁵ UN Human Rights Committee. *General Comment No. 31 (80). The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26 May 2004, paragraph 8. <https://digitallibrary.un.org/record/533996?ln=en&v=pdf#files>, 31 March, 2024.

⁶ UN Committee on Economic, Social and Cultural Rights. *General Comment No. 24 (2017) on State Obligations Under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, 10 August 2017, paragraph 5. <https://digitallibrary.un.org/record/1304491?ln=en&v=pdf>, 31 March, 2024.

⁷ De Brabandere, *op.cit.* note 4, p. 623.

⁸ Choudhury, *op. cit.* note 1, p. 187.

Despite the fact that states guarantee human rights and foreign investors also have to comply with regulations *erga omnes*, the international investment regime does not provide a remedy to ensure that host states will have enough regulatory power to comply with their international obligations in this realm, without breaching their commitments related to foreign investment.⁹ Even if the state wins the case, the arbitral procedure can cause a regulatory chill to protect human rights.¹⁰

The problem is exacerbated by the fact that international investment treaties are designed to protect investments, which sometimes implies a reduction in the regulatory power of the state, limiting the possibility of enacting regulations to protect human rights. On the other hand, sometimes corporations are in a better position than states to minimize the impact of their activities on human rights. This implies that corporations should also bear the burden of respecting human rights.¹¹

The mentioned problem is systemic, the efforts to make compatible human rights and business have been individual and not collectively. This has been acknowledged by the "UN Special Report on Business and Human Rights Protect, Respect, and Remedy Framework":

"Insofar as governance gaps are at the root of the business and human rights predicament, effective responses must aim to reduce those gaps. But individual actions, whether by States or firms, may be too constrained by the competitive dynamics just described. Therefore, more coherent and concerted approaches are required."¹²

The protection of human rights is an issue that has failed to be included in the international investment regime, mainly because there is a view that states are entities with the obligation to fulfill human rights, not foreign investors.¹³ The problem is that the foreign investment regime affects human rights by constraining the sovereignty of the state to enact regulations to protect human rights. For example, environmental regulations or measures to protect life,

⁹ Simma, B., *Foreign Investment Arbitration: A Place for Human Rights?* International and Comparative Law Quarterly, 2011, Vol. 60, No. 3, p. 580.

¹⁰ *Ibid.*, p. 580.

¹¹ Choudhury, *op. cit.* note 1, p. 188.

¹² UN Human Rights Council. *Protect, Respect and Remedy: a Framework for Business and Human Rights. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, John Ruggie, 7 April 2008, paragraph 17. <https://digitallibrary.un.org/record/625292?ln=en&v=pdf>, 31 March, 2024.

¹³ De Schutter, O., *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, Cambridge 2014, p. 280.

human health, etc.¹⁴ The view that human rights are separate from commitments regarding foreign investments is also shared by some tribunals, which have decided to condemn states because of regulations made to protect human rights.¹⁵

One way to resolve this problem is to include provisions related to human rights in international investment treaties and contracts with foreign investors.¹⁶ However, in fact, some of these inclusions contain rules that are not binding for host states or for foreign investors.

Another approach to addressing the conflict between human rights and the protection of investments in the context of international investment law has been through the interpretation of arbitral tribunals. By interpretation, some arbitral tribunals have acknowledged that human rights should also be included as a relevant part of the relationship between investors and host states, as it is explained in the next section. Nonetheless, this option also has its own limitations regarding the scope of international investment agreements.

According to this, it is possible to affirm that human rights and international investment law belong to the same family: international law. Nonetheless, the challenge lies in how to harmonize the rules of each category, taking into account the principle of *lex specialis*, as each set of rules governs different situations. According to this principle, human rights should be regulated in a different set of rules to those that govern international investments. The next sections address how this problem has been approached.

3. BALANCING HUMAN RIGHTS AND INTERNATIONAL INVESTMENT LAW

In order to harmonize human rights and international investment law, Simma¹⁷ proposes a Human Rights audit prior to the establishment of the investment, enshrined in the investment treaties. In this way, investors could understand the state's commitments to human rights, limitations, and specific regulations in certain sectors. This also provides the opportunity to include methods for complying with these commitments and potential changes in the future or judicial interpretations. The aim of this is to better define the legitimate expectations of foreign investors.

¹⁴ Choudhury, *op. cit.* note 1, p. 180.

¹⁵ *Ibid.*, p. 181.

¹⁶ Simma, *op. cit.* note 9, p. 580.

¹⁷ *Ibid.*, p. 595.

Despite the good idea proposed by Simma, the inclusion of human rights in the world of international investments has been approached in two different ways, as he proposed: firstly, through the inclusion of references or even obligations regarding human rights in international investment agreements; secondly, through the interpretation made by some arbitral tribunals. However, this inclusion has been limited, and human rights are still far from being integrated into international investment law in a comprehensive manner. The following lines address these scenarios and their limitations.

3.1. Wording of international investment agreements

The inclusion of human rights in international investment treaties should pursue two objectives: first, to ensure regulatory sovereignty for human rights issues; second, to justify regulatory actions. However, these treaties should also include obligations and responsibilities for foreign investors related to human rights.¹⁸

Regarding the inclusion of obligations related to human rights for foreign investors, the UN Guiding Principles on Business and Human Rights proposes that corporate responsibility to respect human rights should be included¹⁹. This is a good mechanism for accountability, considering that the international investment regime establishes rights for corporations but not obligations. In this way, the regime could be more balanced.²⁰

Another interesting proposal to harmonize human rights and investment arbitration is the Hague Rules on Business and Human Rights of 2019²¹, developed within the framework of the Center for International Legal Cooperation in The Hague. This work was based on the Arbitration Rules of the United Nations Commission on International Trade (UNCITRAL Rules), but adjusted to the context of business and human rights issues. Unfortunately, similar to the UN guide mentioned above, the Hague Rules are not binding. However, they at least sparked a discussion on how to harmonize business and human rights in the context of investment arbitration.

¹⁸ Choudhury, *op. cit.* note 1, p. 188.

¹⁹ UN Human Rights Office of the High Commissioner. *Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework*, 16 June 2011, p. 13.
<https://digitallibrary.un.org/record/533996?ln=en&v=pdf#files>, 31 March, 2024.

²⁰ Choudhury, *op. cit.* note 1, p. 191.

²¹ Center for International Legal Cooperation. *The Hague Rules on Business and Human Rights Arbitration*, 12 December 2019, p. 1. https://www.cilc.nl/cms/wp-content/uploads/2019/12/The-Hague-Rules-on-Business-and-Human-Rights-Arbitration_CILC-digital-version.pdf, 31 March, 2024.

The efforts mentioned indicate a growing awareness of the importance of bridging the gap between business and human rights in the context of international investment law. In addition to the obvious benefits, integrating human rights obligations for foreign investors in the long term could maximize general welfare. This inclusion could influence companies' behavior, resulting in better investments and promoting sustainable development in the long term.²²

Besides the documents mentioned, recently some international investment agreements and contracts between states and investors have included references to human rights or carve-outs to accommodate regulatory measures. Nonetheless, this is not a general trend; only a few legal instruments have enshrined these provisions as it is illustrated in the next lines.²³

The problem is that this kind of language still does not create binding rights or obligations for the parties related to human rights. They have more of an "auxiliary function," stating that specific measures related to public interests should be presumed as legitimate regulatory interests of the state. Another possible auxiliary function is that it clarifies that investors' interests are not absolute and should be weighed against the legitimate regulatory interests of host states. Overall, despite this language, this inclusion does not create enforceable rights or obligations. It might be a useful tool for tribunals to better assess the interests of the parties in dispute, considering human rights as well.²⁴

It is rare to see obligations related to human rights imposed on foreign investors. However, there are some examples where there is an obligation to comply with local laws, including human rights rules, such as the Southern African Development Community (SADC) Protocol on Finance and Investment. In Article 10 of the Annex on Cooperation on Investment, there is a provision that for foreign investors, the local laws, regulations, policies, and administrative guidelines are binding and subject to their compliance²⁵. A similar provision is made in the Investment Agreement for the Common Market for Eastern and Southern Africa (COMESA) Common Investment Area, in Article 25, which

²² International Institut for Sustainable Development, *Harnessing Investment for Sustainable Development: Inclusion of investor obligations and corporate accountability provisions in trade and investment agreements*, 9 January 2018, p. 6. <https://www.iisd.org/system/files/meterial/harnessing-investment-sustainable-development.pdf>, 31 March, 2024.

²³ Choudhury, *op. cit.* note 1, p. 181.

²⁴ *Ibid.*, p. 188.

²⁵ Southern African Development Community (SADC). *Protocol on Finance and Investment*, 18 August 2006. <https://www.sadc.int/document/protocol-finance-and-investment-2006>, 31 March, 2024.

establishes the obligation for foreign investors to comply with local regulations.²⁶

Article 29 of the COMESA agreement also explicitly establishes an obligation for the foreign investor to comply with human rights and to follow the recommendations outlined in the UN Guiding Principles on Business and Human Rights:

1. "COMESA investors and their investments shall observe the United Nations Guiding Principles on Business and Human Rights with modifications necessary for local circumstances.
2. COMESA investors and investments shall among others:
 - (a) support and respect the protection of internationally proclaimed human rights;
 - (b) ensure that they are not complicit in human rights abuses;"²⁷

Additionally, this article of the COMESA agreement provides that investors shall prioritize actions to avoid actual or potential negative consequences on human rights as a result of business activities.

A further development was made by SADC through its model BIT, which explicitly contains obligations for foreign investors related to human rights. Article 15.1 establishes the obligation to respect human rights, refrain from actions that could lead to a violation of them, and not assist or be complicit in their violation:

"15.1. Investors and their investments have a duty to respect human rights in the workplace and in the community and State in which they are located. Investors and their investments shall not undertake or cause to be undertaken acts that breach such human rights. Investors and their investments shall not assist in, or be complicit in, the violation of the human rights by others in the Host State, including by public authorities or during civil strife."²⁸

Furthermore, the SADC BIT model and the COMESA agreement establish the possibility of counterclaims against foreign investors who breach their obligations under local laws, including human rights.²⁹

²⁶ Common Market for Eastern and Southern Africa (COMESA). *Investment Agreement for the COMESA Common Area*, 23 May 2007. <https://www.comesa.int/wp-content/uploads/2020/10/English-Revised-Investment-agreement-for-the-CCIA-28.09.17-FINAL-after-Adoption-for-signing.pdf>, 31 March, 2024.

²⁷ Art. 29 COMESA

²⁸ Southern African Development Community (SADC). *SADC Model Bilateral Investment Treaty Temple with Commentary*. July 2012, <https://www.iisd.org/itn/wp-content/uploads/2012/10/sadc-model-bit-template-final.pdf>, 31 March, 2024.

²⁹ De Brabandere, *op.cit.* note 4, p. 633.

Despite the COMESA agreement and the SADC BIT model, the most common inclusion of references to human rights in international investment agreements is in the preamble or in the objectives of the treaty, but not in a separate provision that establishes obligations related to human rights. For example, the bilateral investment treaty between Hungary and Cabo Verde stipulates in the preamble: "Seeking to ensure that investment is consistent with the protection of health, safety and the environment, the promotion and protection of internationally and domestically recognised human rights, labour rights, and internationally recognised standards of corporate social responsibility"³⁰ Other treaties have provisions that aim to not lower standards of protection of human rights. For example, in the case of the Azerbaijan-Hungary BIT, Article 2.3 establishes:

"The Contracting Party shall not encourage investment by lowering domestic environmental, labour or occupational health and safety legislation or by relaxing core labour standards. Where a Contracting Party considers that the other Contracting Party has offered such an encouragement, it may request consultations with the other Contracting Party and the two Contracting Parties shall consult with a view to avoiding any such encouragement."³¹

The BIT between Cambodia and Japan has a similar wording, but in the preamble, referring to not lowering standards related to health, environment, or safety. Additionally, there are some treaties with a general reference to the state's right to regulate to pursue public welfare objectives, such as the Nigeria-Morocco BIT or the Argentina-Qatar BIT.³²

Regardless of the absence of obligations related to human rights, these kinds of inclusions in the preamble and objectives are useful tools to guide the arbitrators due to Article 31(2) of the Vienna Convention:

2. "The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes"³³

³⁰ Agreement between the Government of Hungary and the Government of the Republic of Cabo Verde for the Promotion and Reciprocal Protection of Investments, 2019. <https://edit.wti.org/document/show/46bdb04e-721b-4cac-830a-1c346c25c96c>, 31 March, 2024.

³¹ Agreement between the Republic of Azerbaijan and the Republic of Hungary for the Promotion and Reciprocal Protection of Investments, 2007.; <https://edit.wti.org/document/show/a32bbcb2-5bde-407d-bf4c-f4317dae54b5>, 31 March, 2024.

³² Choudhury, *op. cit.* note 1, p. 182.

³³ Vienna Convention on the Law of Treaties. 23 May 1969. https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf, 31 March, 2024.

In that way, it is expected that arbitrators, at the moment of making a decision, take into account human rights.

Another trend in international investment law is to include exemptions in treaties, allowing the host state to avoid obligations with foreign investors to protect human life, animal life, or health, to protect public security, or to maintain public order. For example, Canada is including these exemptions in their treaties such as the Canada-China BIT and Canada-European Union: Comprehensive Economic and Trade Agreement. This last Agreement, in Article 28.3, establishes that:

“For the purposes of Chapters... Chapter Eight (Investment), subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary:

- (a) to protect public security or public morals or to maintain public order;
- (b) to protect human, animal or plant life or health, or
- (c) to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement (...)³⁴

The inspiration for these exemptions is Article XX of GATT, within the framework of the World Trade Organization. In fact, the Canada-European Union: Comprehensive Economic and Trade Agreement explicitly states in Article 28.3 that Article XX of GATT is incorporated into the agreement.

Other treaties have established exceptions related to human rights for certain standards of treatment. For example, the treaty between ASEAN and India enshrines that “financial assistance or measures taken by a Party ... in pursuit of legitimate public purpose including the protection of health, safety, [and] the environment” will not be considered a violation of national treatment obligations.³⁵ Other treaties have gone even further; for instance, Article 9.11(4) of the treaty between China and Australia has established that any regulation to

³⁴ EU - Canada Comprehensive Economic and Trade Agreement (CETA), 2016. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/canada/eu-canada-agreement/ceta-chapter-chapter_en, 31 March, 2024.

³⁵ Agreement on Investment Under the Framework Agreement on Comprehensive Economic Cooperation Between the Association of Southeast Asian Nations and the Republic of India, 2014. <https://edit.wti.org/document/show/5d30ad06-c913-438d-a6ac-313d6d596aab>, 31 March, 2024.

ensure legitimate public welfare objectives, such as public health, public morals, and the environment, are outside the scope of the treaty for arbitral effects:

“Measures of a Party that are non-discriminatory and for the legitimate public welfare objectives of public health, safety, the environment, public morals or public order shall not be the subject of a claim under this Section” (Investment).³⁶

When states use GATT language as exceptions in the wording of investment treaties, there is a requirement that they have to meet when their regulatory measures are challenged: necessity. This means they have to demonstrate that the measure is not arbitrary, discriminatory, or a disguised restriction on trade.³⁷ The problem is that there is not certainty about the necessity test in investment arbitration. A good example related to this is the saga of arbitration against Argentina in the framework of the economic crisis at the beginning of XXI century, where the tribunals interpreted necessity in many different ways.³⁸

The most effective way to preserve the regulatory power of host states is to exclude measures related to human rights from the scope of the international investment treaty. In this way, there is no obligation from host states to foreign investors related to regulatory measures in this field. A good example in this regard is the ASEAN-India BIT, which exempts human rights measures from the standards of expropriation and national treatment. Article 8(9) of the ASEAN-India BIT illustrates this point clearly for the standard of non-expropriation:

“Non-discriminatory regulatory measures by a Party or measures and awards by judicial bodies of a Party that are designed and applied in pursuit of public policy to achieve legitimate public interest or public welfare objectives, such as the protection of public health, safety, and the environment, do not constitute expropriation of the type referred to in subparagraph 2(b) of this Article.”³⁹

Ideally, more than the exclusion from the scope of investment treaties of measures related to human rights, there should be obligations for foreign investors in this realm. Unfortunately, in the international investment regime, the inclusion of obligations for companies has been reluctant; there are only some soft invitations to establish standards of social responsibility. For example, the Belarus-India BIT, Nigeria-Singapore BIT, and the Brazil BITs (with

³⁶ Free Trade Agreement between the Government of Australia and the Government of the People’s Republic of China, 2015. <https://www.dfat.gov.au/trade/agreements/in-force/chafta/official-documents/Pages/official-documents>, 31 March, 2024.

³⁷ Choudhury, *op. cit.* note 1, p. 189.

³⁸ *Ibid.*, p. 189.

³⁹ ASEAN-India BIT, *op. cit.* note 35.

Mozambique and Malawi) include provisions that foreign investors should seek the highest standards of social responsibility. Article 10 of the agreement between Brazil and Mozambique provides:

“Investors and their investments should strive to achieve the highest possible level of contributions to the sustainable development of the receiving State and the local community, through the adoption of a high degree of socially responsible practices, by reference to the voluntary principles and standards set in Annex II - "Corporate Social Responsibility"”.⁴⁰

Nevertheless, African countries have gone further, including obligations for foreign investors to comply with human rights. For instance, Article 15 of the Morocco-Nigeria BIT establishes:

“4. Each Party shall ensure that its laws and regulations provide for high levels of labour and human rights protection appropriate to its economic and social situation, and shall strive to continue to improve these law and regulations.

5. All parties shall ensure that their laws, policies and actions are consistent with the international human rights agreements to which they are a Party.”⁴¹

Similarly, in the Economic Community of West African States, the Supplementary Act Common Investment Rules for the Community establish that investors shall operate according to human rights obligations and shall not assist or act with complicity with others who violate human rights. In fact, Article 14 stipulates:

“(2) Investors shall uphold human rights in the workplace and the community in which they are located. Investors shall not undertake or cause to be undertaken, acts that breach such human rights. Investors shall not manage or operate the investments in a manner that circumvents human rights obligations, labour standards as well as regional environmental and social obligations, to which the host State and/or home State are Parties.

⁴⁰ Agreement for Cooperation and Investment Facilitation between the Government of the Federal Republic of Brazil and the Government of the Republic of Mozambique, 2015. <https://edit.wti.org/document/show/c9fd85ab-2190-467a-a063-4ad7c3c98bfd?page=1>, 31 March, 2024.

⁴¹ Reciprocal Investment Promotion and Protection Agreement between the Government of the Kingdom of Morocco and the Government of the Republic of Nigeria, 2016. <https://edit.wti.org/document/show/bde2bcf4-e20b-4d05-a3f1-5b9eb86d3b3b>, 31 March, 2024.

(3) Investors shall not by complicity with, or in assistance with others, including public authorities, violate human rights in times of peace or during socio-political upheavals.”⁴²

In the case of the BIT between Bangladesh and Denmark, the parties went further by enshrining a legal consequence for losses to the host state originating from investor behavior affecting public health, life, and the environment. In this case, the investor has to compensate the host state which suffered the losses. Article 2(2) of the agreement provides:

“Investment objectives should be achieved without relaxing health, safety and environmental measures of general application. If the Contracting Party in whose territory the investment is made, suffers from a loss, destruction of damages with regard to its public health or life or the environment, including natural resources by the investor of the other Contracting Party, then the First Contracting Party shall be accorded adequate and effective compensation as per its laws and regulations, and if necessary as per International law, by the investor of the other Contracting Party”⁴³

3.2. Arbitral Decisions

Another way to include human rights in international investment law has been through arbitral decisions. However, there is a problem with the jurisdiction of arbitral tribunals due to the scope of international investment treaties, which is to regulate circumstances related to investments. In this regard, states give their consent for arbitration only regarding this concept and not for non-investment issues such as human rights. Therefore, arbitral tribunals have no jurisdiction to resolve disputes outside the scope of investment treaties.⁴⁴

In this regard, the Tribunal in the case *Rompetrol v. Romania* established that its jurisdiction only covers aspects directly related to investment, despite both parties seeking the possible application of the European Convention on Human Rights. On that occasion, the Tribunal considered that according to Article 25 of the ICSID Convention, the applicable law to the dispute is the rules in the investment agreement, and if the parties want to claim a possible breach of the

⁴² Economic Community of West African States, Supplementary Act on Investments, 2008. <https://edit.wti.org/document/show/9030e714-3be3-48f2-93a1-69b5ec76d8bb>, 31 March, 2024.

⁴³ Agreement on the Promotion and Reciprocal Protection of Investments between the Government of People’s Republic of Bangladesh and the Kingdom of Denmark, 2009. <https://edit.wti.org/document/show/16e70a15-af06-4773-8a42-699e2662277c>, 31 March 2024.

⁴⁴ De Brabandere, *op.cit.* note 4, p. 627.

European Convention on Human Rights, they have to submit their complaints before the dispute settlement system created for that purpose. On that occasion, the Tribunal stated:

“The Tribunal starts from the elementary proposition that it is not called upon to decide any issue under the ECHR, whether the issue in question lies in the past or is still open. Its function is solely to decide, as between TRG and Romania, “legal dispute[s] arising directly out of an investment” and to do so in accordance with “such rules of law as may be agreed by the parties,” which in the present case means essentially the BIT, in application of the appropriate rules for its interpretation. The ECHR has its own system and functioning institutional structure for complaints of breach against States Parties.”⁴⁵

On the other hand, despite the jurisdiction of arbitral tribunals regarding issues related to investments, the applicable law is a broader concept that has been used to assess other norms of international law that could be relevant to resolve disputes between parties. For example, Article 42(1) of the ICSID Convention establishes that rules of international law should be applicable. The article provides:

“The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.”⁴⁶

In the same sense, Article 1131 of NAFTA provides that disputes shall be decided according to the agreement and the rules of international law. Similar provisions can be found in Article 26(6) of the Energy Charter Treaty or even in the United States BIT Model of 2012. These kinds of provisions open the window to the inclusion of human rights considerations in investment disputes.⁴⁷ Therefore, by interpretation, human rights can be included in investor-state disputes.⁴⁸

In order to include human rights in investment arbitration, there are two ways to achieve this purpose: first, by the principle of evolutionary or dynamic

⁴⁵ Rompetrol Group NV v. Romania, ICSID Case No ARB/06/3, Award, 6 May 2013, paragraph 170.

⁴⁶ ICSID Convention, Regulations and Rules, 2006. <https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20English.pdf>, 31 March 2024.

⁴⁷ De Brabandere, *op.cit.* note 4, p. 639.

⁴⁸ Simma, *op. cit.* note 9, p. 582.

interpretation, which means that the terms in international law have to adjust to the dynamics of present times, regardless of the meaning initially given by the states; second, the presupposition that treaties seek to have effects according to the existing rules of international law, which is accorded to Article 31(3)(c) of the Vienna Convention.⁴⁹

The provision contained in Article 31(3)(c) establishes that treaties should be interpreted in the context of any relevant rule of international law applicable to the relations between the parties. This could be considered as a gateway to apply treaties and conventions on human rights to investment disputes when it is pertinent. However, to apply this provision, three conditions must be met:⁵⁰ first, the rule sought to be applied must be a rule of international law; second, that rule must be relevant according to the circumstances; third, the scope of the treaty must allow for the establishment of rights and obligations for the parties.

It is important to consider the perspective of claimants as holders of human rights in international investment arbitration. Not always are claimants challenging measures to protect human rights, but they suffer violations of their rights. However, the arbitral decisions in this regard are not extensive.⁵¹ When a claimant seeks that the tribunal evaluates a possible violation of human rights, there are two conditions that should be complied with: first, the language of the international investment agreement has to be wide enough to allow this kind of argumentation; second, the violation of human rights should be strongly connected to the detriment of the investment.⁵²

Regarding the first condition, in the case of *Toto v. Lebanon*, the claimant argued that the host state violated its human rights. The Tribunal found that the text of the Italy-Lebanon BIT allows the application of the principles of international law to this case.⁵³ This means that considerations regarding human rights are applicable to the dispute. However, in another case, *Biloune v. Ghana*, despite the claim of violations of human rights, the Tribunal considered that it is not possible to expand the scope of the investment agreement to issues different from investments.⁵⁴ These examples show how important the language of the

⁴⁹ *Ibid.*, p. 583.

⁵⁰ Joshi & Gurbur, *op. cit.* note 2, p. 10.

⁵¹ *Ibid.*, p. 3.

⁵² *Ibid.*, p. 3.

⁵³ *Toto Costruzioni Generali S.p.A. v. Republic of Lebanon*, ICSID Case No ARB/07/12, Decision on Jurisdiction, 11 September 2009, paragraph 57

⁵⁴ *Biloune & Marine Drive Complex Ltd v Ghana Investments Centre and the Government of Ghana*, UNCITRAL, Award on Jurisdiction and Liability, 27 October 1989, paragraph 75.

investment agreement is to determine if the scope of it allows arguments beyond the clauses contained in it.⁵⁵

In regard to the second condition, in the case of *Spyridon v. Romania*, the claimant alleged the violation of its human rights under the protection of the European Convention on Human Rights and its First Additional Protocol, besides the clauses in the BIT between Greece and Romania. The argumentation was connected to the claim that the host state also violated the standard of fair and equitable treatment under the BIT. In that occasion, the Tribunal found that sometimes BITs could be complemented by other multilateral instruments and agreements, but in that case, the BIT offered enough protection for the investor:

“The Tribunal does not exclude the possibility that the international obligations of the Contracting States mentioned at Article 10 of the BIT could include obligations deriving from multilateral instruments to which those states are parties, including, possibly, the European Convention of Human Rights and its Additional Protocol No.1. But the issue is moot in the present case and does not require decision by the Tribunal, given the higher and more specific level of protection offered by the BIT to the investors compared to the more general protections offered to them by the human rights instruments referred above. Consequently Article 10 of the BIT cannot, in its own terms and in the instant case, serve as a useful instrument for enlarging the protections available to the Claimant from the Romanian State under the BIT.”⁵⁶

Another interesting case connected to this condition is *Grandriver Enterprises v. USA*. In this case, the claimants belong to indigenous people, and they claimed that their rights are recognized by customary international law. Thus, they argued that these rights had to be taken into account in the dispute. The Tribunal agreed, using the preamble of NAFTA, where there are considerations of public welfare, and according to the Tribunal, these rights are included in this category.⁵⁷

Despite the examples mentioned where human rights argumentation was used as a tool for the protection of foreign investors, the most common argumentation about the protection of human rights is used by host states. This is considering they have to guarantee human rights. For that reason, sometimes, when host

⁵⁵ Joshi & Gurpur, *op. cit.* note 2, p. 3.

⁵⁶ *Spyridon Roussalis v Romania*, ICSID Case No ARB/06/1, Award, 7 December 2011, paragraph 312.

⁵⁷ *Grand River Enterprises Six Nations, Ltd et al. v United States of America*, UNCITRAL, Award, 12 January 2011, paragraphs 218-219.

states make regulatory measures to protect human rights, they could undermine foreign investor interests.⁵⁸

In addition, some arbitral decisions have highlighted that foreign investors have obligations to comply with human rights, considering that the legal relationship between them and host states is also regulated by international law. Moreover, human rights have been recognized as *erga omnes* obligations, for some tribunals, so they are also binding for foreign investors and not only for states. Some examples are the awards in *Burlington Resources v. Ecuador*, *Perenco v. Ecuador*, and *Aven v. Costa Rica*.⁵⁹

In the cases of *Burlington Resources v. Ecuador*⁶⁰ and *Perenco v. Ecuador*⁶¹ (paragraph 447), the host state initiated a counterclaim against the claimant for breaching environmental laws. The Tribunals ordered compensations in favor of Ecuador in both cases.

An important consideration was made in *Aven v. Costa Rica*, highlighting that at the international level, foreign investors also have responsibilities and obligations to comply with. This is particularly evident regarding environmental regulations, considering they are binding *erga omnes*. The Tribunal stated:

“Under international law of investments, particularly under DR-CAFTA, the investors enjoy by themselves a number of rights both substantive and procedural, including the right to sue directly the host State when it breaches its international obligations on foreign investment (Section A of Article 10 in DR-CAFTA). What about the investor’s obligations arising of the investment according to international law? This Tribunal shares the views of Urbaser Tribunal that it can no longer be admitted that investors operating internationally are immune from becoming subjects of international law. It is particularly convincing when it comes to rights and obligations that are the concern of all States, as it happens in the protection of the environment. It is pertinent to recall the observation of the International Court of Justice regarding this kind of obligations: “In view of the importance of the rights involved, all States can be held to

⁵⁸ Joshi & Gurpur, *op. cit.* note 2, p. 5.

⁵⁹ Choudhury, *op. cit.* note 1, p. 186-187.

⁶⁰ *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision On Counterclaims, 7 February 2017, paragraph 889.

⁶¹ *Perenco Ecuador Ltd. v. The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/08/6, Interim Decision on The Environmental Counterclaim, 11 August 2015, paragraph 447.

have a legal interest in their protection; they are obligations *erga omnes*.”⁶²

One example of this type of argumentation, which concerns the obligations of foreign investors or the necessity to implement regulatory measures to protect human rights, is the saga of cases against Argentina⁶³. These cases emerged in the context of the economic crisis experienced at the end of the XX century, where the state took measures to provide water and gas supply to its people, albeit at the expense of certain foreign investors' interests.

In this saga of arbitration, there are three different categories of response from the arbitral tribunals⁶⁴: firstly, the tribunals denied to assess the arguments in respect to human rights in the measures challenged; secondly, the tribunals acknowledged that human rights are involved in the dispute, but the outcome was not positive to Argentina; third, the tribunal accepted the fact that human rights are involved in the dispute and the argument of the host state was accepted.

In the first category, in the case of CMS v Argentina, the claimant challenged certain measures made by the host state regarding the tariff adjustment formula for gas transportation. Argentina alleged that the measures were taken to protect economic and social rights. However, the Tribunal dismissed this argument because no human rights collisions were involved in the dispute:

“So too, Article 31 of the Constitution mandates that the Constitution the laws enacted under it and treaties are “the supreme law of the Nation.” Indeed, the Argentine courts have a long-standing record of respect for treaties and have duly recognized their hierarchical standing above the law. While treaties in theory could collide with the Constitution, in practice this is not very likely as treaties will be scrutinized in detail by both the Government and Congress.

In this case, the Tribunal does not find any such collision. First because the Constitution carefully protects the right to property, just as the treaties on human rights do, and secondly because there is no question of affecting fundamental human rights when considering the issues disputed by the parties.”⁶⁵

⁶² David R. Aven and Others v. Republic of Costa Rica, ICSID Case No. UNCT/15/3, Award, 18 September 2018, paragraph 738.

⁶³ Joshi & Gurpur, *op. cit.* note 2, p. 5.

⁶⁴ *Ibid.*, p. 5.

⁶⁵ CMS Gas v Argentine Republic, ICSID Case No ARB/01/8, Award, 12 May 2005, paragraphs 120-121.

The same outcome arose in *Azurix v. Argentina* and *Siemens A.G. v. Argentina*, where similar arguments were used. However, the Tribunals dismissed the arguments, stating that there is no compatibility between human rights and the investment treaty.⁶⁶

In the second category, in the case of *SAUR International v. Argentina*, the Tribunal acknowledged that human rights, including the right to water, should be taken into account in the dispute, but also stated that property is a human right. In that case, the Tribunal ordered Argentina to compensate the claimant. However, the Tribunal mentioned:

“In reality, human rights in general, and the right to water in particular, constitute one of the several sources that the Tribunal must take into consideration to settle the dispute, as these rights are integrated into the Argentine legal system with constitutional rank, and also form part of the general principles of international law. Access to potable water constitutes, from the State's point of view, a basic public service, and from the citizen's perspective, a fundamental right. Therefore, in this matter, the legal framework can and should reserve to the legitimate public authority functions of planning, supervision, policing, sanctioning, intervention, and even rescission, in protection of the general interest.”⁶⁷

In the third category, the case of *Urbaser v. Argentina* is a good example of successful argumentation on human rights to limit the liability of the respondent state under the obligations of the international investment agreement. In this case, Argentina made a counterclaim, arguing that the claimant failed to provide water and sewage services to the population. The Tribunal found that the provisions of the BIT should be harmonized with the principles of international law, which not only enshrined rights but also obligations. On that occasion, the Tribunal stated:

“The Tribunal may mention in this respect that international law accepts corporate social responsibility as a standard of crucial importance for companies operating in the field of international commerce. This standard includes commitments to comply with human rights in the framework of those entities’ operations conducted in countries other than the country of their seat or incorporation. In light of this more recent development, it can no longer be admitted that companies operating internationally are immune from becoming subjects of international law. On the other hand, even though several initiatives undertaken at the international scene are seriously targeting corporations human rights conduct, they are not, on

⁶⁶ Joshi & Gurpur, *op. cit.* note 2, p. 5.

⁶⁷ *SAUR International S.A. v Republic of Argentina*, ICSID Case No ARB/04/4, Decision on Jurisdiction and Liability, 6 June 2012, paragraph 330.

their own, sufficient to oblige corporations to put their policies in line with human rights law. The focus must be, therefore, on contextualizing a corporation's specific activities as they relate to the human right at issue in order to determine whether any international law obligations attach to the non-State individual.”⁶⁸

Finally, the counterclaim was dismissed in the argumentation of human rights because the claimant is not responsible for the protection of human rights, particularly the right to water supply, but is bound to comply with the obligations and duties of the concession contract. The Tribunal observed:

AGBA's performance and its shareholders' investment were certainly designed as a substantial contribution to the enforcement of the population's right to water. Nevertheless, the mere relevance of this human right under international law does not imply that AGBA and its shareholders were holding corresponding obligations equally based on international law. No human rights obligation to provide access to water existed on part of Claimants before they entered into the Concession. The acceptance of the Bid and the Concession Contract could not have as an effect that the obligations arising out under this Contract became, in addition or in parallel, obligations based on international law. The BIT does not contain any indication in such a direction, and its reference to general principles of international law in Article X(5) cannot let emerge an obligation that did not exist on charge of the investing companies before they entered into their investment in the Argentine Republic.⁶⁹

4. CONCLUSION

Harmonization between human rights and business is necessary and desirable, and essentially, attempts to achieve this purpose have been made by including provisions in international investment agreements or through the interpretation of arbitral tribunals. For this reason, the efforts made by the United Nations with the Guiding Principles on Business and Human Rights regarding corporate responsibility to respect human rights were important. Similarly, the Hague Rules on Business and Human Rights address the same issue. These documents serve as guides to achieve a better balance between human rights and investor protection within the framework of international investment law, and they could inform the drafting of future international investment agreements.

⁶⁸ Urbaser S.A. & Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v Argentine Republic, ICSID Case No ARB/07/26, Award, 8 December 2016, paragraph 1195.

⁶⁹ *Ibid*, paragraph 1212.

Despite these efforts, the world is far from achieving this harmonization, considering that the inclusion of obligations for states and investors in international investment agreements is rare. For this reason, it is important to take a closer look at Africa. African countries, especially those belonging to SADC and COMESA, have shown the world that the inclusion of obligations for all parties, including investors, in international investment agreements is possible. This initiative should be considered by the rest of the international community to provide more tools to realize human rights, especially in the context of business.

On the other hand, arbitral tribunals should also take into account that in a dispute of international investment, not only the treaty is a source of law, but also other legal instruments in international law, such as human rights, considering Article 31(3)(c) of the Vienna Convention. This interpretative framework could be useful for achieving a better balance in arbitral decisions regarding human rights and the interests of foreign investors.

However, the efforts mentioned above are not sufficient; there are further opportunities to harmonize human rights. Indeed, the discussion could be more productive with broader engagement from those directly affected by foreign investors or inadequate regulations. Additionally, ensuring accountability for investors should be paramount. Establishing mechanisms whereby they demonstrate their commitment to promoting and protecting human rights to the international community is crucial. In cases of violations, they must be held accountable at the international level, not solely at the domestic level as is currently the case. Additionally, safeguarding investments should also prioritize a stakeholder approach, which entails soliciting input and proposals from social organizations and communities.

REFERENCES

BOOKS AND ARTICLES

1. Choudhury, B. Human Rights in International Investment Law in: Bungenberg, M., Krajewski, M., Tams, C.J., Terhechte, J.P., Ziegler, A.R. (eds.), *European Yearbook of International Economic Law* 2020, 2021, Vol. 11.
2. De Brabandere, E. Human Rights and International Investment Law. In: Binder, C., Nowak, M., Hofbauer, J., Janig, P. (eds.), *Elgar Encyclopedia of Human Rights*, Edward Elgar Publishing Limited, Massachusetts 2022.

3. De Schutter, O. *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, Cambridge 2014.
4. Joshi, R.& Gupur, S. *The Silent Spring of Human Rights in Investment Arbitration: Jurisprudence Constante Through Case-Law Trajectory*, *Arbitration International*, 2020, Vol. 36, No. 4., p. 557 – 571.
5. Simma, B. *Foreign Investment Arbitration: A Place for Human Rights?* *International and Comparative Law Quarterly*, 2011, Vol. 60, No. 3., p. 573 – 596.

LEGAL ACTS

1. Common Market for Eastern and Southern Africa (COMESA). *Investment Agreement for the COMESA Common Area*, 23 May 2007.; <https://www.comesa.int/wp-content/uploads/2020/10/English-Revised-Investment-agreement-for-the-CCIA-28.09.17-FINAL-after-Adoption-for-signing.pdf>
2. Southern African Development Community (SADC). *Protocol on Finance and Investment*, 18 August 2006.; <https://www.sadc.int/document/protocol-finance-and-investment-2006>
3. *Agreement between the Government of Hungary and the Government of the Republic of Cabo Verde for the Promotion and Reciprocal Protection of Investments*, 2019.; <https://edit.wti.org/document/show/46bdb04e-721b-4cac-830a-1c346c25c96c>
4. *Agreement between the Republic of Azerbaijan and the Republic of Hungary for the Promotion and Reciprocal Protection of Investments*, 2007.; <https://edit.wti.org/document/show/a32bbcb2-5bde-407d-bf4c-f4317dae54b5>
5. *Agreement for Cooperation and Investment Facilitation between the Government of the Federal Republic of Brazil and the Government of the Republic of Mozambique*, 2015.; <https://edit.wti.org/document/show/c9fd85ab-2190-467a-a063-4ad7c3c98fbd?page=1>
6. *Agreement on Investment Under the Framework Agreement on Comprehensive Economic Cooperation Between the Association of Southeast Asian Nations and the Republic of India*, 2014.; <https://edit.wti.org/document/show/5d30ad06-c913-438d-a6ac-313d6d596aab>
7. *Agreement on the Promotion and Reciprocal Protection of Investments between the Government of People's Republic of Bangladesh and the Kingdom of Denmark*, 2009; <https://edit.wti.org/document/show/16e70a15-af06-4773-8a42-699e2662277c>

8. Economic Community of West African States, Supplementary Act on Investments, 2008.; <https://edit.wti.org/document/show/9030e714-3be3-48f2-93a1-69b5ec76d8bb>
9. EU- Canada Comprehensive Economic and Trade Agreement (CETA), 2016. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/canada/eu-canada-agreement/ceta-chapter-chapter_en
10. Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China, 2015. <https://www.dfat.gov.au/trade/agreements/in-force/chafta/official-documents/Pages/official-documents>
11. ICSID Convention, Regulations and Rules, 2006. <https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20English.pdf>
12. Reciprocal Investment Promotion and Protection Agreement between the Government of the Kingdom of Morocco and the Government of the Republic of Nigeria, 2016.; <https://edit.wti.org/document/show/bde2bcf4-e20b-4d05-a3f1-5b9eb86d3b3b>
13. Vienna Convention on the Law of Treaties, 23 May 1969.; https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

ARBITAL CASES

1. Biloune & Marine Drive Complex Ltd v Ghana Investments Centre and the Government of Ghana, UNCITRAL, Award on Jurisdiction and Liability, 27 October 1989.
2. Burlington Resources Inc. v. Republic of Ecuador, ICSID Case No. ARB/08/5, Decision On Counterclaims, 7 February 2017.
3. CMS Gas v Argentine Republic, ICSID Case No ARB/01/8, Award, 12 May 2005.
4. David R. Aven and Others v. Republic of Costa Rica, ICSID Case No. UNCT/15/3, Award, 18 September 2018.
5. Grand River Enterprises Six Nations, Ltd et al. v United States of America, UNCITRAL, Award, 12 January 2011.
6. Perenco Ecuador Ltd. v. The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador), ICSID Case No. ARB/08/6, Interim Decision on The Environmental Counterclaim, 11 August 2015.
7. Rompetrol Group NV v. Romania, ICSID Case No ARB/06/3, Award, 6 May 2013.
8. Spyridon Roussalis v Romania, ICSID Case No ARB/06/1, Award, 7 December 2011.

9. SAUR International S.A. v Republic of Argentina, ICSID Case No ARB/04/4, Decision on Jurisdiction and Liability, 6 June 2012.
10. Toto Costruzioni Generali S.p.A. v. Republic of Lebanon, ICSID Case No ARB/07/12, Decision on Jurisdiction, 11 September 2009.
11. Urbaser S.A. & Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v Argentine Republic, ICSID Case No ARB/07/26, Award, 8 December 2016.

NETWORK RESOURCES

1. Center for International Legal Cooperation. The Hague Rules on Business and Human Rights Arbitration, 12 December 2019., https://www.cilc.nl/cms/wp-content/uploads/2019/12/The-Hague-Rules-on-Business-and-Human-Rights-Arbitration_CILC-digital-version.pdf
2. International Institut for Sustainable Development. Harnessing Investment for Sustainable Development: Inclusion of investor obligations and corporate accountability provisions in trade and investment agreements, 9 January 2018, <https://www.iisd.org/system/files/meterial/harnessing-investment-sustainable-development.pdf>
3. Southern African Development Community (SADC). SADC Model Bilateral Investment Treaty Temple with Commentary. July 2012. <https://www.iisd.org/itn/wp-content/uploads/2012/10/sadc-model-bit-template-final.pdf>
4. UN Committee on Economic, Social and Cultural Rights. General Comment No. 24 (2017) on State Obligations Under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, 10 August 2017, <https://digitallibrary.un.org/record/1304491?ln=en&v=pdf>
5. UN Human Rights Committee. General Comment No. 31 (80). The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, <https://digitallibrary.un.org/record/533996?ln=en&v=pdf#files>
6. UN Human Rights Council. Protect, Respect and Remedy: a Framework for Business and Human Rights. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 7 April 2008, <https://digitallibrary.un.org/record/625292?ln=en&v=pdf>
7. UN Human Rights Office of the High Commissioner. Guiding Principles on Business and Human Rights. Implementing the United Nations “Protect, Respect and Remedy” Framework, 16 June 2011, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf