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gLAWcal
COMMENT #374

**IT IS NECESSARY THAT THE
UNGP'S EXPAND TO INCLUDE EX-
TRATERRITORIAL JURISDICTION**

Based on

**Marco Fasciglione "Enforcing the State
Duty to Protect Under the UN Guid-
ing Principles on Business and Human
Rights: Strasbourg Views"**



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Global Law Initiatives for Sustainable Development



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A gLAWcal comment on Marco Fasciglione “Enforcing the State Duty to Protect Under the UN Guiding Principles on Business and Human Rights: Strasbourg Views” in Angelica Bonfanti (Ed.) “Business and Human Rights in Europe: International Law Challenges”, gLAWcal Book Series, Routledge Publishing (New-York/London).

Extraterritorial human rights jurisdiction is only applied in a few situations, such as occupation, operational activities of military, police or security personnel or agents, abduction or rendition by state agents, and offshore detention. However, it is imperative that extraterritorial jurisdiction is applied to business and human rights treaties, specifically the United Nations Guiding Principles (UNGPs), in order to protect employees who may be being abused abroad.

The UNGPs are the first globally accepted framework on Business and Human Rights. The UNGPs require states ‘to protect against human rights abuse within their territory and/or jurisdiction.’ In the official commentary on this principle, John Ruggie pointed out that ‘states are not generally required under international human rights law to regulate the extraterritorial activities of businesses

domiciled in their territory and/or jurisdiction.’ However, ‘nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis.’ He concluded that it is in the states’ best interests to reach out to corporate activities overseas even though they are not formally required to take action in this area.

If States desired to take formal action (and they should), Guiding Principle Two proposes two types of extraterritoriality: domestic measures with extraterritorial implications and direct extraterritorial legislation. To date, states have adopted a range of approaches in order to try and offer a remedy to this problem. In regards to domestic measures, some states require companies to include human rights requirements in procurement contracts. Adopting this policy means public money would only be spent on companies that are respectful of human rights, including the rights of people located outside the state’s jurisdiction.

Other extraterritorial methods include requirements on “parent” companies to report on the global operations of the entire enterprise; multilateral soft-law instruments such as the Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development; and performance standards required by institutions that support overseas investments.

Other approaches are aimed directly at extraterritorial enforcement, including criminal regimes that allow for prosecution based on the nationality of the perpetrator no matter where the offense oc-

curs.

Additionally, in order to strengthen accountability, States should strengthen reporting requirements. For example, California enacted a bill in 2012, which requires every retail seller and manufacturer doing business in California to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale. University of Delaware conducted a study that has concluded that a large number of companies do not strictly adhere to the law because these companies have not clearly put information on their websites. However, the Act has at least had the effect of raising awareness of the issues and prevents companies from denying the possibility of human rights violations associated with their business altogether.

There are strong policy reasons for home States to set out clearly the expectations that businesses protect human right abroad, including ensuring predictability for business enterprises by providing coherent and consistent messages and preserving the State's own reputation. It is essential for every business' success to put protecting human rights as a priority and showing transparency in that movement. Thus, extraterritorial jurisdiction should be an essential component of the UNGPs in holding states accountable for business and human rights violations. However, if it is not incorporated, there are other measures states can take, such as direct measures in their own country or extraterritorial legislation.



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