

# **Contents**

	List o	f Figures	and Tables p	age xviii
	List o	f Contribi	utors	xix
	Prefa	ce		xxix
	Table	of Cases		xxxi
		f Abbrevi	ations	xxxvi
1	Busin	ess and H	Iuman Rights	1
	Foun	dations ar	nd Linkages	
	Ilias Ba	antekas		
	1.1	Introduc	ction	1
	1.2	Business	s and Human Rights from the Perspective	
		of Corpo	orate Law	3
		1.2.1	The Limited International Legal Personality	У
			of MNCs	4
		1.2.2	0 1	6
		1.2.3	1 0	9
		1.2.4	Absence of Extraterritorial Regulation by	
			Home States	11
	1.3		s and Human Rights from the Perspective	
			gn Investment Law	14
	1.4		s and Human Rights from the Perspective	10
	4 -		al Economic Integration	18
	1.5	Conclus	1011	21
2	Recor	nciling Int	ternational Human Rights with Internationa	ıl
	Trade	_	Ü	22
		sco Seatzu		
	2.1	Introduc	ction	22
	2.2		nal Approaches towards the Relationship	22
			i IHRL and WTO Law	24
		2.2.1	Human Rights against the Law of WTO	24
		2.2.2	9 9	27
		2.2.3	<u> </u>	29
	2.3	The Rise	e of SDGs and Their Potential Impact	
			VTO-Human Rights Relationship	32



## viii Contents

	2.4	The Principle of Mutual Supportiveness and Its Possible Impact on the WTO-Human Rights	0.5
	2.5	Relationship Combining the SDGs and the Principle of Mutual Supportiveness to Address the Human Rights-WTO Tension	35 37
3	Neolik	peralism, State-Capitalism and European Ordo-Liberalism	41
•		Power Politics and 'Constitutional Failures' Undermine	11
	·	omic Law and Human Rights	
		Urich Petersmann	
	3.1	Introduction	41
	3.2	Market Failures, Governance Failures and Global Emergencies	43
	3.3	Mainstreaming Human Rights into Multilevel	13
		Economic Regulation?	45
	3.4	The Psychology of International Law: Need for	
		Constitutional Constraints	50
	3.5	Neoliberal 'Capture' of Trade and Investment	
		Regulation	52
	3.6	The Rise of State-Capitalism Distorting International Markets	55
	3.7	Multilevel Judicial 'Common Law Approaches'	
		Protecting Rule-of-Law	57
	3.8	Ordoliberal European Economic Constitutionalism	60
4	Corpo	rate Governance and Corporate Social Responsibility	65
	John Pa	aterson	
	4.1	Introduction	65
	4.2	To Whom Do Corporations Owe Duties?	66
	4.3	The Economic Understanding of the Company	68
	4.4	Company Law	72
	4.5	Best Practice Approaches to Corporate Governance	74
	4.6	A Rule-Based Approach to Corporate Governance	78
	4.7	The Limits of Corporate Governance?	80
	4.8	Corporate Social Responsibility	81
	4.9	The Role of Accounting	83
	4.10	Conclusion	84
5	The R	ole of Business in International Development	
	and th	ne Attainment of the Sustainable Development Goals	86
	Katerin	a Akestoridi	
	5.1	Introduction	86



		Con	tents
	5.2	A Brief History of the International Development	
		Paradigm	89
	5.3	Business and Sustainable Development: From Passive	0.5
	- 4	Involvement to Development Actors	95
	5.4	The UNGPs and the SDGs As Mutually Reinforcing	100
		Frameworks 5.4.1 Case Study 1: Anti-child Labour Policy	102
			100
		in the Textile Industry 5.4.2 Case Study 2: Telecommunications MNE	108
		Vodafone	110
	5.5		113
	ر.ر	Conclusion	115
6	The B	usiness Case for Human Rights	115
	Irrelev	vant or Indispensable?	
		ée Baumann-Pauly and Lilach Trabelsi	
	6.1	Introduction: The Business Case for Human Rights	
		to Address the Implementation Challenge	115
	6.2	New Expectations Regarding the Purpose of the	
		Corporation	119
		6.2.1 The Role of Multi-Stakeholder Initiatives	
		in the Business Case for Human Rights	119
		6.2.2 Towards Sustainable Business Models that	
		Respect Human Rights	121
	6.3	Making Human Rights Business-Compatible: Case	
		Illustrations of New Business Models in Two Industries	125
		6.3.1 Human Rights in the Garment Supply Chain:	
		The Case of Decathlon	127
		6.3.2 Human Rights in the Mining Context:	
		The Case of Trafigura	134
	6.4	Conclusion: Alternative Business Models to Address	1.40
		Human Rights Issues through Core Business Operations	142
7	The U	N Guiding Principles on Business and Human Rights	
		s Predecessors	145
		ess at a Snail's Pace?	115
	Surya D		
	7.1	Introduction	145
	7.1	Business and Human Rights at the UN	147
	7.2	7.2.1 The 1990 Draft Code	149
		7.2.2 The UN Global Compact	151
		7.2.3 The Draft UN Norms	155
	7.3	UN Guiding Principles	157
		7.3.1 Development Process	157
		7.3.2 The Three Pillars	159

ix



# x Contents

		7.3.3 Good Beginning, But Not Free	
		from Limitations	164
		7.3.4 Uptake and Implementation	167
	7.4	Comparing the UNGPs with Its Predecessors	169
	7.5	Conclusion	171
8	The R	legulatory Framework of Multinational Enterprises	173
	Peter N	Muchlinski	
	8.1	Introduction	173
	8.2	The Organisational Complexity of MNEs and GVCs	175
		8.2.1 Organisational Building Blocks for MNEs	175
		8.2.2 Organisational Building Blocks for GVCs	176
	8.3	Issues of Jurisdiction	177
	8.4	Modalities of Regulation	179
	8.5	MNE Group Liability for Human Rights Violations	182
	8.6	GVC Liability for Human Rights Violations	187
	8.7	Towards a General Human Rights Duty of Care for	100
	0.0	Businesses?	189
	8.8	Concluding Remarks	193
9	The U	IN Global Compact and the OECD Guidelines for	
	Multi	national Enterprises and Their Enforcement	
	Mech	anisms	195
	Andrea	as Rasche	
	9.1	Introduction	195
	9.2	Theoretical Background	196
	9.3	The United Nations Global Compact	199
		9.3.1 History and Basic Idea	199
		9.3.2 The UNGC's Human Rights Principles	202
		9.3.3 Enforcement of the UNGC	203
	9.4	The OECD Guidelines for Multinational Enterprises	207
		9.4.1 History and Basic Idea	207
		9.4.2 Human Rights Obligations under the OECD Guidelines	200
		9.4.3 Enforcement of the Guidelines	209 211
	9.5	Conclusion	211
	9.5	Conclusion	213
10		tion and Business	215
		Iuman Rights Dimension of Corporate Tax Practices	
		n Avi-Yonah	
	10.1	8	215
	10.2	International Tax Competition and the Taxation	212
	10.2	of Capital	218
	10.3	Tax Competition and Developing Countries	223



			Contents	хi
	10.4	What Can Be Done about Tax Competition?	227	
	10.5	Conclusion	231	
11	Corpo	orate Accountability for the Natural Environment		
	_	Climate Change	234	
		ola S. Olawuyi	231	
	11.1	Introduction	234	
	11.1	Corporate Responsibility for Human Rights	2J <del>4</del>	
	11.2	Violations Relating to the Environment: Drivers		
		and Contours	237	
	11.3	Corporate Responsibility and Accountability for	231	
	11.5	Environmental Harm: Scope and Content	244	
		11.3.1 Participation	244	
		11.3.2 Accountability	247	
		11.3.3 Non-discrimination and Equality	248	
		11.3.4 Empowerment and Access to Information	250	
		11.3.5 Legality and Access to Remedies	250	
	11.4	Implementing a Rights-Based Corporate Risk	231	
	11	Management Framework: Minding the Gaps	254	
	11.5	Conclusion	258	
12	Corpo	orate Accountability for Corruption and the Business		
	-	for Transparency	260	
		M Nichols	200	
	-	Introduction	260	
		What Is Corruption?	260	
	12.2	Two Illustrative Cases	262	
	12.3	12.3.1 Vioxx	262	
		12.3.1 Vioxx 12.3.2 Walmart	264	
	12.4	Corruption Inflicts Significant Damage on Society	266	
	12.4	Legal and Administrative Accountability	270	
	12.5	12.5.1 International and Local Law	270	
		12.5.1 International and Local Law 12.5.2 Administrative Rules and Processes	270	
	12.6	The Business Case against Corruption	272	
	12.6	12.6.1 Direct and Indirect Costs	273 274	
			274	
	12.7	12.6.2 Corruption Inhibits Relationships Management of Corruption	278	
	12.7	12.7.1 Risk Assessment	278 278	
		12.7.1 Risk Assessment 12.7.2 Positive Ethical Culture	278	
	12.0			
	12.8	Conclusion	281	

Michael Ashley Stein Introduction

13.1

Disability, Business and Human Rights

13

283

283



# xii Contents

	13.2	Interna	tional Legal Obligations and Goals	286
		13.2.1	International Soft Laws	287
		13.2.2	International Instruments	287
		13.2.3	Domestic Laws and Policies	291
		13.2.4	MNCs	292
	13.3	Employ	ring Workers with Disabilities	293
		13.3.1	Labour Markets	293
		13.3.2	Cost and Productivity	298
		13.3.3	State Impacts on Costs and Benefits	301
	13.4	Beyond	l Employment	301
		13.4.1	Accessibility	302
		13.4.2	Customers and Communities	302
		13.4.3	Data and Accountability	303
		13.4.4	Culture and Inclusion	305
	13.5	Conclu	sion	306
14	Gend	er, Busin	ess and Human Rights	308
	Jessica	Lynn Cors	si	
	14.1	Íntrodu		308
	14.2	Definin	g Key Terms and Explaining Theoretical	
		Framev		309
		14.2.1	Business and Human Rights	309
		14.2.2	<u> </u>	311
		14.2.3	Why Focus on Gender?	312
			Gender Mainstreaming	314
			Intersectionality	317
	14.3	Gender	, Business and Human Rights in Context:	
			ive Industries	318
	14.4	Applica	able Law and Standards Regarding Gender,	
			ss and Human Rights	319
		14.4.1	The UN Guiding Principles on Business	
			and Human Rights	321
		14.4.2	The Convention on the Elimination of All	
			Forms of Discrimination Against Women	
			(CEDAW)	326
	14.5	Conclu	sion	328
15	The B	usiness S	Sector and the Rights to Work and Just	
	and F	avourabl	le Conditions of Work	330
		Jovanovic		
	15.1	Introdu		330
	15.2		this to Work and Just and Favourable	330
	13.2	_	ons of Work in International Human	
		Rights 1		332



Contents xiii

		15.2.1 15.2.2	The Scope of the Rights to Work and Just and Favourable Conditions of Work and Their Mutual Relationship Obligations, Enforcement, Remedies: State As	333
		1 3.2.2	the Ultimate Guarantor of the Rights to Work and Just and Favourable Conditions of Work	336
	15.3	The Sco	ope of Business' Obligations to Secure the Rights	330
			k and Just and Favourable Conditions of Work	339
		15.3.1	Labour Exploitation in Global Food Supply	
			Chains	341
		15.3.2	The Responsibility of the Business Sector	
			in Securing Labour Rights in Global Supply	242
	15.4	Conclus	Chains	343 355
	15.4	Conclus	Sion	399
16	Respo	nsible Le	ending	359
	Expo	t Credit	Agencies As Drivers of Human Rights	
		arbellay		
	16.1	Introdu	ction	359
	16.2	Interna	tional Standards in the Export Credit Industry	360
	16.3	Nationa	al and Supranational Laws Related to Export	
		Finance	e and Human Rights	366
	16.4	Case St		370
		16.4.1	Mozambique Liquefied Natural Gas (LNG) Project	370
		16.4.2	Porto de Sergipe I Power Project	374
	16.5	Conclus	sion	378
17	Rucin	ecc and I	Human Rights Approaches to Intellectual	
17			Tullian Rights Approaches to Intellectual	380
	Prope		d Lea Nesselhauf	300
	17.1	Introdu		380
	17.1		cal and Legal Context	380
	17.2	17.2.1	The Human Rights Impact of IP	381
		17.2.2	International Enclosure of National	301
			Flexibilities	384
	17.3	Busines	ss Responsibilities in the Context of IP	387
		17.3.1	State Obligation to Protect	387
		17.3.2	Corporate Responsibility to Respect	388
		17.3.3	Responsibility to Fulfil	391
		17.3.4	Accountability and Remedy	392
	17.4	Case St		393
		17 / 1	Patents on Pharmaceuticals	303



## xiv Contents

		17.4.2	Access to Accessible Format Copyrighted Works	396
	17.5	17.4.3 Conclus	Indigenous Knowledge sion	399 403
18			ıman Rights in Investment Law and Arbitration	406
	State	Obligatio	ons, Corporate Responsibility and Community	
	Empo	werment		
	Silvia S	teininger		
	18.1	The Thr	ree Roles of Human Rights in the Investment	
		Regime		406
	18.2	Human	Rights As Obligations of States Parties	409
		18.2.1	The Obligation of States to Regulate Foreign Investment	409
		18.2.2	Human Rights Obligations of States in	
			Arbitral Practice	412
	18.3	The Do	uble-Edged Nature of Human Rights vis-à-vis	
			Investors	415
		18.3.1	Investor Rights As Defence against State	
			Interference	415
		18.3.2	The Corporate Responsibility	
			to Respect Human Rights	418
	18.4		Rights as Tools to Address Structural	
		Imbalar	nces of Affected Communities	422
		18.4.1	The Invisibility of Affected Communities	
			in Investment Law and Arbitration	422
		18.4.2	Participation via Amicus Curiae	423
	18.5	Conclus	sion: Human Rights and the Future of ISDS	426
19	The U	se of Inte	ernational Arbitration Tribunals for Business	
	and H	uman Ri	ghts Disputes	428
	Judith	Levine and	Sarah Castles	
	19.1	Introdu	ction	428
	19.2	The The	oretical Framework of Access to Remedy under	
		the UNO	GPs	429
		19.2.1	State-Based Judicial Mechanisms	430
		19.2.2	State-Based Non-Judicial and Non-State-	
			Based Grievance Mechanisms	432
	19.3		tion of BHR Disputes	433
	19.4		ing Arbitration to Render It More Appropriate	
			R Disputes	435
	19.5		ctical Dimensions of Using Arbitration to	
		Resolve	BHR Disputes	438



More Information

			Contents	χ۱
		<ul><li>19.5.1 The Bangladesh Accord Arbitrations</li><li>19.5.2 The Hague Rules</li></ul>	438 444	
	19.6	Industries in Which BHR Tribunals Could Resolve	777	
	13.0	Future Disputes	448	
		19.6.1 Fast Fashion	448	
		19.6.2 Mega-Sporting Events	449	
		19.6.3 Rights and Wrongs at Sea	451	
	19.7	Conclusions for the Future of BHR Arbitration	452	
20		rative Contractual Remedies with Indigenous Peoples	455	
		Introduction	455	
	20.2	Mapping the Legal Terrain and Authority for	155	
		Indigenous-Investor Contracts	457	
		20.2.1 Historical Treatment of Indigenous People	s'	
		Land Rights under International Law	460	
		20.2.2 The Business and Human Rights Connection	on 465	
	20.3	Legal Elements of Indigenous Investor Agreement-		
		Making	468	
		20.3.1 Australia	468	
		20.3.2 Russia	474	
		20.3.3 Mongolia	477	
	20.4	Conclusion	479	
21	The R	ole of Ethics in Corporate Human Rights Impact		
	Asses	sments	481	
	Ilias Ba	antekas		
	21.1	Introduction	481	
		Auditor Ethics in Human Rights Impact Assessmen Ethical Considerations in World Bank Policies	ts 487	
		on Indigenous Persons	492	
		21.3.1 Ethical Issues Not Considered by the World	d	
		Bank	498	
	21.4	Conclusion	500	
22	Addre	essing Human Rights Impacts in Sustainability		
	Repor	ting	502	
	Chiara	Ferracioli and Julien Parkhomenko		
	22.1	Introduction	502	
	22.2	The Theoretical Framework	503	
		22.2.1 The Policy Imperative	503	
	22.3	Drafting a Sustainability Report	509	
		22.3.1 Drivers of Sustainability Reporting	509	
		22.3.2 Reporting Frameworks	511	



## xvi Contents

	22.4	22.3.4 Human	Key Concepts Phases of Sustainability Reporting Rights Reporting in Practice	513 515 519
		22.4.1	Challenges and Gaps	520
		22.4.2	Best Practices	523
	22.5	Conclu	Sion	529
23	Lever	aging the	e Consumer-Led Movement to Strengthen	
	Susta	inable Bı	asiness	531
	Oppo	rtunities,	Limitations and the Role of Companies	
	to Em	power C	onsumers	
	Anna 1	Triponel		
	23.1	Introdu	ction	531
	23.2	Limitat	ions in Prioritising Sustainably Sourced	
		Produc	ts through Purchasing Decisions	534
		23.2.1	Consumer Studies Highlight That Consumers –	
			and Younger Consumers in Particular - Would	
			Prefer to Buy Sustainably Sourced Products	534
		23.2.2	Consumers' Desire for Sustainable Products	
			Does Not Translate at the Point of Purchase	536
	23.3		ect of Consumer Mobilisation on Tarnishing	
		-	ny Reputations	539
		23.3.1	Positive Impacts of Consumer-Coordinated	F 40
		22.2.2	Activism	540
		23.3.2	Limitations on the Ability of Consumer Campaigns to Lead to Meaningful Changes	
			for Companies' Approach to Sustainability	
			at Scale	544
	23.4	Compa	nies' Instrumental Role in Leveraging the	JTT
	23.4		ner-Led Movement towards Sustainable	
		Busines		546
		23.4.1	The Importance of Transparency about	3 10
			Product Ingredients, Raw Materials, Origin	
			and Manufacturing Practices, as Well as	
			Challenges and Lessons Learned	547
		23.4.2	Harnessing the Potential for Advertising,	
			Marketing and Branding to Push Consumers	
			towards Sustainable Choices and a More Just	
			Society	550
		23.4.3	Progressive Companies Are Enabling Their	
			Consumers to Proactively Reduce Negative	
			Impacts through Their Purchases	554
	23.5	Conclu	sion	558



Contents

xvii

The Structural Complexity of Multinational Corporations and						
the Ef	ffect on Managing Human Rights Risks in the Supply					
Chain	l	560				
Tam N	guyen					
24.1	Introduction	560				
24.2	Rethinking Responsible Supply Chain Management	562				
24.3	Responsible Supply Chain Management and the					
	Decision-Making Process	567				
24.4	The Conundrum of Responsible Supply Chain					
	Management in the Developing World	572				
24.5	Considerations	57!				
24.6	Conclusion	580				
Towa	rds a UN Business and Human Rights Treaty	583				
Ilias Ba	antekas					
25.1	Introduction	583				
25.2	Preventive Due Diligence Obligations	587				
25.3	Liability of MNCs	590				
25.4	Jurisdiction for Victims' Rights	594				
25.5	Victimhood under the BHR Treaty	598				
25.6	Institutional Arrangements	60				
	25.6.1 The Committee	60				
	25.6.2 Assembly of States Parties	604				
	25.6.3 Fund for Victims	60				
	25.6.4 National Implementation Mechanisms	606				
25.7	The 2020 Version of the BHR Treaty	607				
25.8	Conclusion	610				