

Business, Human Rights and the Environment: The Evolving Agenda

Chiara Macchi

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To my family.

*To the memory of Professor John G. Ruggie
and of Professor David Weissbrodt.*

Foreword

It has been nearly thirty years since the now defunct UN Sub-Commission on the Promotion and Protection of Human Rights asked the UN Secretary-General to submit a report on the relationship between the enjoyment of human rights and the working methods and activities of transnational corporations, which eventually led to the establishment of the first working group on the matter. We have now entered the “UNGPs 10+” or “next decade BHR” era, with the aims to raise the ambition and increase the pace of implementation of the UN Guiding Principles on Business and Human Rights and create greater impact. In the past three decades, knowledge and understanding of the devastating impact of some corporate activities on human rights and the environment have become widespread; new obligations and responsibilities have been established and avenues of accountability have been opened. In this time too, business and human rights have established themselves as an independent field of inquiry. Those of us working in this field have chosen to call ourselves business and human rights scholars. We have matured, both physically (not enthusiastically) and intellectually (very enthusiastically!). An exciting development is the advent of new scholars, with fresh ideas, new outlooks, and most importantly, with a determination and passion for the field that is evident in each word they write. Dr. Chiara Macchi is one of the most salient examples.

The book the reader has in his/her hands is an intellectually sound and comprehensive piece of scholarship. *Business, Human Rights and the Environment: The Evolving Agenda* is not only well written, and therefore, a pleasure to read, but it is also ground-breaking for several reasons. Many have attempted to disentangle the hodgepodge that is the extraterritorial reach of state human rights obligations regarding corporate activities. Dr. Macchi’s functionalist approach allows us to continue pursuing this avenue of accountability unapologetically and with confidence. The book also lays bare the synergies and contradictions of addressing the impact of commercial activities on human rights and the environment simultaneously. It convincingly establishes climate change as a business and human rights issue and how as such it can be articulated as part of the corporate responsibility to respect and due diligence, and be addressed through litigation. It is not easy to navigate the tortuous journey of liability attempts through national courts we have seen since

the Nuremberg trials considered the horrendous consequences of Nazi and Japanese industrialists' involvement in the IIWW. However, Dr. Macchi leads us through the first Alien Tort Statute cases to today's climate change litigation with grace and insight. *Business, Human Rights and the Environment: The Evolving Agenda* is thus destined to become an essential tool for all of us.

As I write this Foreword, we enter our second year living in a worldwide health pandemic that has had unforeseen implications for the business and human rights field but also presents great opportunities for the pursuit of corporate accountability. As the UN Working Group on Business and Human Rights put it in its statement 'Ensuring that business respects human rights during the Covid-19 crisis and beyond', the pandemic will eventually pass and the recovery period will provide the opportunity to take a more sustainable path forward, by putting people and planet at the centre. In this effort, scholars, lawyers and activists will have to work harder to face the challenges of climate-driven migration and human suffering, the human costs of the transition towards net-zero economies, the shrinking of the democratic space in large parts of the globe and the widening of social and economic inequalities. We will have to develop innovative tools to address increased corporate capture and precarisation of labour markets; revisit our approach to a global production system that thrives on human exploitation, including state-sponsored forced labour. And not least, stand up socially and legally to the pervasive use of technology, including AI, to intrude in our private lives, spread misinformation, weaken governments and civil society and act as instruments for repression and persecution.

The next decades present us with many challenges that each of us who are committed to corporate accountability will tackle as best we can, some risking their own lives on the ground, some financing lawsuits to address harm and provide redress, some working on them, some by investing and divesting ethically, some with campaigns, placards and social media posts, and some with the word, our scholarship, like Dr. Macchi does. This book is another cobblestone, an important one, in the road towards accountability we are committed to continue building until no corporate abuse remains unredressed.

London, UK
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Dr. Olga Martin-Ortega
Professor of International Law

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Abbreviations

ACmHPR	African Commission on Human and Peoples' Rights
ATS	Alien Tort Statute (US)
CCP	EU Common Commercial Policy
CEDAW	UN Committee on the Elimination of Discrimination against Women
CERD	UN Committee on the Elimination of Racial Discrimination
CESCR	UN Committee on Economic, Social and Cultural Rights
CFR	Charter of Fundamental Rights of the EU
CRC	UN Committee on the Rights of the Child
CSR	Corporate Social Responsibility
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
ETOs	Extraterritorial Human Rights Obligations
EU	European Union
HRC	UN Human Rights Council
IACmHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ILO	International Labour Organization
ISDS	Investor-State Dispute Settlement
OECD	Organization for Economic Co-operation and Development
OEIGWG	Open-ended Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights
(OECD) NCPs	OECD National Contact Points

SRS	UN Secretary-General’s Special Representative on business and human rights
UN	United Nations
UNFSS	UN Food Systems Summit
UNGPs	UN Guiding Principles on Business and Human Rights