

Business and Human Rights

LW5111 – 10 ECTS – Semester 2

Professor Shane Darcy

Course Outline 2024-2025

Objective	The course engages postgraduate students with the topic of business and human rights, exploring questions regarding State obligations and the extent to which business entities such as multinational corporations have human rights responsibilities. It considers developments at the international and domestic level to promote accountability and ensure compliance with emerging standards.			
Lecturer(s)	Name Prof Shane Darcy	Office Room 208 Office Hours: By appointment	Ext 3947	E-mail shane.darcy@nuigalway.ie
Times	Semester 2	Day TBD	Time TBD	Venue Seminar Room, Irish Centre for Human Rights
Overall Learning Outcomes	<p>On successful completion of this course, you will:</p> <ul style="list-style-type: none"> • Demonstrate a thorough and nuanced understanding of the current debates concerning the responsibility and role of businesses with regard to human rights • Have developed a critical awareness of the legal, economic, political and sociological issues that arise with respect to the issue of whether businesses have obligations with respect to human rights • Have a deep knowledge of the international and domestic efforts at enforcing accountability of business for actions contrary to human rights. • Be able to conduct comprehensive research focused on this subject area and will be familiar with the major literature and policy documents and emerging legal instruments 			
Format	The course will be taught by weekly seminars, each three hours, over eight weeks. Students are expected to have read all prescribed readings in advance of each seminar, thus requiring independent study of 8-10 hours each week, and will be expected to engage actively in discussion and class activities.			
Programme(s)	LL.M in International Human Rights Law, LL.M in International Criminal Law, LL.M in Peace Support, Humanitarian Law and Conflict, full-time and part-time.			
Course Material	Syllabus is available on the website of the Irish Centre for Human Rights (http://www.nuigalway.ie/irish-centre-human-			

	<p>rights/academics/llmprogrammes/modules/) and from Blackboard at http://blackboard.nuigalway.ie.</p>								
Texts & Materials	<p>Required:</p> <p>Dorothee Baumann-Pauly and Justine Nolan (eds.), <i>Business and Human Rights; From Principles to Practice</i>, Routledge, 2016.</p> <p>Additional:</p> <p>Florian Wettstein, <i>Business and Human Rights: Ethical, Legal and Managerial Perspectives</i>, Cambridge, 2022.</p> <p>Surya Deva and David Birchall, <i>Research Handbook on Human Rights and Business</i>, Elgar, 2020.</p> <p>César Rodriguez-Garavito, <i>Business and Human Rights</i>, Cambridge University Press 2017.</p> <p>John Ruggie, <i>Just Business: Multinational Corporations and Human Rights</i>, W.W. Norton & Company, 2013.</p> <p>Surya Deva and David Bilchitz (eds), <i>Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect</i>, Cambridge, 2013.</p> <p>Jena Martin and Karen E. Bravo (eds), <i>The Business and Human Rights Landscape; Moving Forward, Looking Back</i>, Cambridge University Press, 2016.</p> <p>David Kinley, <i>Human Rights and Corporations</i>, Ashgate, 2009.</p> <p>Robert C. Bird (ed.), <i>Law, Business and Human Rights</i>, Elgar, 2014.</p> <p>Andrew Clapham, <i>Human Rights Obligations of Non-State Actors</i>, Oxford University Press, 2006.</p> <p>Website of the Business and Human Rights Resource Centre: http://business-humanrights.org</p> <p><i>Business and Human Rights Journal</i>: https://www.cambridge.org/core/journals/business-and-human-rights-journal.</p>								
Assessment	<p>Evaluation is undertaken through the submission of a written essay (5,000 words, including footnotes, excluding table of contents, bibliography etc.). Essays should demonstrate significant research, familiarity with the literature, independent thought and critical analysis. Essays are to be submitted in hardcopy and electronically via Blackboard. Submission date is set out in the general 'Guidelines for LLM students'.</p>								
Workload hours	<table> <tr> <td>Credit weighting:</td> <td>10 ECTS</td> </tr> <tr> <td>Lecture hours:</td> <td>24</td> </tr> <tr> <td>Independent study:</td> <td>226</td> </tr> <tr> <td>Total Student Effort:</td> <td>250 hours</td> </tr> </table>	Credit weighting:	10 ECTS	Lecture hours:	24	Independent study:	226	Total Student Effort:	250 hours
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Topics

Topic 1: Introduction to business and human rights

The module begins with an exploration of the emerging field of business and human rights, considering why businesses should be concerned with human rights. The seminar provides an introduction to the challenges of imposing human rights obligations on non-State actors and addresses the question of the extent of international legal personality of multinational corporations.

Required Reading:

Dorothee Baumann-Pauly and Justine Nolan (eds.), *Business and Human Rights; From Principles to Practice*, Routledge, 2016, Chapter 1, Section 2.1.

John Ruggie, *Just Business: Multinational Corporations and Human Rights*, W.W. Norton & Company, 2013, Chapter 1, pp. 1-36.

Surya Deva, 'From 'Business or Human Rights' to 'Business and Human Rights': What Next?' in Surya Deva and David Birchall, *Research Handbook on Human Rights and Business*, Elgar, 2020, pp. 1-14.

Erika R. George, 'The Enterprise of Empire: Evolving Understandings of Corporate Identity and Responsibility', in Jena Martin and Karen E. Bravo (eds), *The Business and Human Rights Landscape; Moving Forward, Looking Back*, Cambridge University Press, 2016.

Further Reading:

Andrew Clapham, *Human Rights Obligations of Non-State Actors*, Oxford University Press, 2006.

Markos Karavias, *Corporate Obligations under International Law*, Oxford University Press, 2013.

Beth Stephens, 'The Amoral of Profit: Transnational Corporations and Human Rights', *20 Berkeley Journal of International Law* (2002) 45-91.

Film Suggestion

'The Corporation', by Mark Achbar, Jennifer Abbott & Joel Bakan (2005)

Topic 2: Corporate social responsibility & multi-stakeholder initiatives

This week we consider the emerging voluntary framework which seeks to ensure businesses are in compliance with human rights. Students will examine and critique the corporate social responsibility model, as exemplified in the United Nations Global Compact and the OECD Guidelines.

Required Reading:

Dorothee Baumann-Pauly and Justine Nolan (eds.), *Business and Human Rights; From Principles to Practice*, Sections 3.4, 4.1, 4.2, 4.3, 4.4 and 4.6.

Anita Ramasastry, 'Corporate Social Responsibility v. Business and Human Rights: Bridging the Gap between Responsibility and Accountability' *14(2) Journal of Human Rights* (2015) 237.

Institute for Multi-Stakeholder Initiative Integrity, 'Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights

and Global Governance', Summary Report, July 2020, available at: https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_SUMMARY_REPORT.FORWEBSITE.FINAL_.pdf

Further Reading:

Upendra Baxi, 'Market Fundamentalisms: Business Ethics at the Altar of Human Rights', 5 *Human Rights Review* (2005), 1-26.

Christopher McCrudden, 'Human Rights Codes for Transnational Corporations: What can the Sullivan and McBride Principles Tell Us?' 19 *Oxford Journal of Legal Studies* (1999) 167.

Film Recommendation

'The Pipe' (2011), directed by Risteard O'Domhnaill.

Topic 3: The Emerging Business and Human Rights Framework I: The United Nations Guiding Principles

This seminar considers the emerging business and human rights framework and the attempts at devising a binding set of norms applicable to companies. Students will begin by examining the 'Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights', before turning to the work of the Special Representative John Ruggie and the United Nations Framework and Guiding Principles on Business and Human Rights.

Required Reading:

Dorothee Baumann-Pauly and Justine Nolan (eds.), *Business and Human Rights; From Principles to Practice*, Sections 2.2 and 2.3.

Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, UN Sub-commission on Promotion and Protection of Human Rights, August 2003, available at: <http://www.unhcr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.Sub.2.2003.12.Rev.2.En>

Guiding Principles for Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, March 2011: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

John Ruggie, *Just Business: Multinational Corporations and Human Rights*, W.W. Norton & Company, 2013, Chapter 3, pp. 81-127.

Further Reading:

David Kinley and Rachel Chambers, 'The UN human rights norms for corporations: the private implications of public international law', 2 *Human Rights Law Review* (2006) 447.

David Weissbrodt, 'Business and human rights', 74 *University of Cincinnati Law Review* (2005) 55.

Global Policy Forum, 'Corporate Influence on the Business and Human Rights Agenda of the United Nations', Working Paper, June 2014, available at: https://www.globalpolicy.org/images/pdfs/GPFEurope/Corporate_Influence_on_the_Business_and_Human_Rights_Agenda.pdf

Film Recommendation

'Virunga' (2014), directed by Orlando von Einsiedel

Topic 4: The Emerging Business and Human Rights Framework II: A Business and Human Rights Treaty?

This seminar considers further the emerging business and human rights framework, in particular developments following the endorsement of the United Nations Framework and Guiding Principles on Business and Human Rights. In particular it looks at the resurgent debate regarding a binding treaty on business and human rights and national implementation of the UN framework.

Required Reading:

Dorothee Baumann-Pauly and Justine Nolan (eds.), *Business and Human Rights; From Principles to Practice*, Sections 2.4 and 2.5.

John G. Ruggie, 'A UN Business and Human Rights Treaty?', January 2014, available at:

<http://business-humanrights.org/sites/default/files/media/documents/ruggie-on-un-business-human-rights-treaty-jan-2014.pdf>

United Nations Open-Ended Intergovernmental Working Group on a binding treaty on business and human rights, Updated Draft, 2023, available at:

<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf>

National Plan on Business and Human Rights 2017-2020, Department of Foreign Affairs and Trade, Dublin, November 2017:

<https://www.dfa.ie/media/dfa/alldfawebsitemedia/National-Plan-on-Business-and-Human-Rights-2017-2020.pdf>

Chris Jochnick, 'Challenging Corporate Power through Human Rights', in Cesar Rodriguez-Garavito (ed.), *Business and Human Rights: Beyond the End of the Beginning*, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2501084.

Film Recommendation

'Shadow Company' (2006) directed by Nick Bicanic & Jason Bourque.

Topic 5: Corporations and Armed Conflict

Corporate activities during situations of armed conflict may involve or contribute to breaches of international humanitarian law. The rise of private security firms and the increasing privatisation of warfare, amongst other considerations, have triggered attempts to ensure that businesses do not act in a manner contrary to the laws of war and this week we consider these developments.

Required Reading:

Emanuela-Chiara Gillard, 'Business goes to war: private military/security companies and international humanitarian law', vol. 88 no. 863 *International Review of the Red Cross* (2006) 525-572.

Vincent Bernard, 'Editorial: Globalisation will only mean progress if it is responsible', *International Review of the Red Cross*, Vol. 94, no. 887, (2012), p. 881.

United Nations Working Group on Business and Human Rights, *Business, Human Rights and Conflict-Affected Regions*, 21 July 2020, A/75/212.

Valentina Azarova, 'Business and Human Rights in Occupied Territory: The UN Database

of Business Active in Israel's Settlements', 3(2) *Business and Human Rights Journal* (2018) 187.

Further Reading:

International Review of the Red Cross, Special Issue on 'Business, violence and conflict', Vol. 94, no. 887, (2012), available at: <http://www.icrc.org/eng/resources/international-review/review-887-business-violence-conflict/review-887-all.pdf>.

Simon Chesterman, *From Mercenaries to Market: The Rise and Regulation of Private Military Companies*, Oxford University Press, 2009.

Benjamin Perrin, 'Promoting compliance of private security and military companies with international humanitarian law', vol. 88 no. 863 *International Review of the Red Cross* (2006) 613-636.

Olga Martin-Ortega, 'Human Rights Due Diligence for Corporations: From Voluntary Standards to Hard Law at Last?' 31(4) *Netherlands Quarterly of Human Rights* (2013) 44.

Eric W. Orts, 'War and the Business Corporation', 35 *Vanderbilt Journal of Transnational Law* (2002) 549-584.

Film Recommendation

'Atlantic' (2016), directed by Risteard O'Domhnaill.

Topic 6: Non-Financial Reporting & Human Rights Due Diligence

This seminar considers the role of human rights reporting in the business and human rights context. It examines the evolution of non-financial reporting, with a particular emphasis on the reporting requirements under the United Kingdom Modern Slavery Act 2015, the United States Dodd Frank Act and recent EU regulations.

Required Reading

Dorothee Baumann-Pauly and Justine Nolan (eds.), *Business and Human Rights; From Principles to Practice*, Sections 6.5 and 6.6.

Genevieve Lebaron and Andreas Rühmkorf, 'Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance', 8 *Global Policy* (2017) 15-28.

European Commission, Proposal for a Directive on Corporate Sustainability Due Diligence (2022), pp. 46-69 available at: https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF.

Surya Deva, 'Mandatory human rights due diligence laws in Europe: a mirage for rightsholders?' 36(2) *Leiden Journal of International Law* (2023) 389.

Further Reading

Anil Yilmaz and Rachel Chambers, 'Human Rights Disclosure and Due Diligence Laws: The Role of Regulatory Oversight in Ensuring Corporate Accountability', 21(2) *Chicago Journal of International Law* (2020) 323.

Radu Mares, 'Corporate Transparency Laws: A Hollow Victory?' (2018) 36 *Netherlands Quarterly of Human Rights* 189;

Karin Buhmann, 'Neglecting the Proactive Aspect of Human Rights Due Diligence? A Critical Appraisal of the EU's Non-Financial Reporting Directive as a Pillar One Avenue for Promoting Pillar Two Action' (2018) 3 *Business and Human Rights Journal*, 23.

Marco Fasciglione, 'The Enforcement of Corporate Human Rights Due Diligence: From the UN Guiding Principles on Business and Human Rights to the Legal Systems of EU Countries' (2016) 10 *Hum Rts & Int'l Legal Discourse* 94.
Jonathan Bonnitcha and Robert McCorquodale, 'The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights' (2017) 28 *Eur J Int Law* 899

Film Recommendation

'Push' (2019) directed by Fredrik Gertten

Topic 7: Accountability & Remedy: Civil litigation & criminal prosecution

This week's seminar considers the avenues of accountability for holding businesses or their individual officers to account for actions contrary to human rights or humanitarian law and which might provide redress to victims of such abuses. We will explore in particular domestic civil litigation, such as that under the United States Alien Tort Claims Act, as well as the role of criminal prosecutions in terms of corporate accountability.

Required Readings:

Dorothee Baumann-Pauly and Justine Nolan (eds.), *Business and Human Rights; From Principles to Practice*, Sections 6.1, 6.2, 6.3 and 6.4.

Kiobel v. Shell, United States Supreme Court, April 2013, available at:

http://www.supremecourt.gov/opinions/12pdf/10-1491_l6gn.pdf

Richard Meeran, 'Access to Remedy: the United Kingdom experience of MNC tort litigation for human rights violations' in Surya Deva and David Bilchitz (eds), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect*, Cambridge, 2013.

Marina Aksenova, 'Corporate Complicity in International Criminal Law: Potential Responsibility of European Arms Dealers for Crimes Committed in Yemen', 30(2) *Washington International Law Journal* (2021) 255.

Further Readings:

Joanna Kyriakakis, *Corporations, Accountability and International Criminal Law*, Edward Elgar, 2021.

Katherine Gallagher, 'Civil Litigation and Transnational Business: An Alien Torts Statute Primer' 8 *Journal of International Criminal Justice* 3 (2010) 745.

James Stewart, 'The Turn to Corporate Criminal Liability for International Crimes: Transcending the Alien Tort Statute', 47 *New York University Journal of International Law and Policy* (2014) 121.

William A. Schabas, 'Enforcing international humanitarian law: Catching the Accomplices', vol. 83 no. 842 *International Review of the Red Cross* (2001) 439-460.

Anita Ramasastry, 'Corporate Complicity: From Nuremberg to Rangoon: An Examination of Forced Labor Cases and Their impact on the Liability of Multinational Corporation', 20 *Berkeley J. Int'l L.* (2002) 91.

International Commission of Jurists: *Final Report of the Expert Legal Panel on Corporate Complicity & Legal Accountability* (2008).

Topic 8: Corporate Tax Avoidance and Human Rights

This class considers the growing linkages between taxation and human rights, in particular in the context of large-scale tax avoidance by multinational corporations. It also assesses the potential role of the business and human rights framework in addressing tax abuse.

Required Reading

Shane Darcy, 'The Elephant in the Room'; Corporate Tax Avoidance & Business and Human Rights', *Business and Human Rights Journal* (2016) available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2797219.

Lima Declaration on Tax Justice and Human Rights (2015):

http://www.cesr.org/downloads/Lima_Declaration_Tax_Justice_Human_Rights.pdf

International Bar Association, *Tax Abuses, Poverty and Human Rights*, 2013, Chapter 2, pp. 85-146, available at:

<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=4a0cf930-a0d1-4784-8d09-f588dcddfea4>.

Further Reading:

Philip Alston and Nikki Reisch (eds.), *Tax, Inequality and Human Rights*, Oxford University Press, 2019.

Save the Children, *Tackling tax and saving lives; Children, tax and financing for development*, 2014, available at:

http://www.savethechildren.org.uk/sites/default/files/docs/Tackling_Tax_and_Saving_Lives.pdf

Christian Aid, *Who Pays the Price? Hunger: The Hidden Cost of Tax Injustice* (2013)

<http://www.christianaid.org.uk/images/Who-pays-the-price-Hunger-the-hidden-cost-of-tax-injustice-May-2013.pdf>.