

# ENTRENCHING BUSINESS AND HUMAN RIGHTS IN A MULTI-ALIGNED GLOBAL ECONOMY:

## THE UNITED STATES, CHINA, MIDDLE POWERS, AND THE GLOBAL SOUTH

DIANE A. DESIERTO\*

The effort to create an international, legally binding instrument consolidating business and human rights law<sup>1</sup> to regulate the activities of transnational businesses is still pending in draft stages.<sup>2</sup> Nonetheless, business and human rights claims have found other pathways through litigation in national jurisdictions<sup>3</sup> that permit lawsuits to be brought directly against transnational corporations and other business enterprises for activities that create adverse impacts and human rights

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\**Professor of Law and Global Affairs, Faculty Director of the LLM Program in International Human Rights Law, Founding Director of the NDLS Global Human Rights Clinic*, at Notre Dame Law School, with a joint appointment as full tenured Professor at the Keough School of Global Affairs; *Faculty Fellow* (Klau Institute on Civil and Human Rights, Kellogg Institute of International Studies, Liu Institute of Asia and Asian Studies, Pulte Institute on Global Development, Nanovic Institute of European Studies), and *Co-Principal Investigator*, Notre Dame Reparations Design and Compliance Lab, University of Notre Dame (USA); *Professor*, Philippines Judicial Academy of the Supreme Court of the Philippines. I can be reached at [ddesiert@nd.edu](mailto:ddesiert@nd.edu).

1. United Nations, Guiding Principles on Business and Human Rights, U.N. Doc. HR/PUB/11/04 (2011), [https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

2. See Updated Draft Legally Binding Instrument (Clean Version) to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (July 2023), <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf> (last visited Sept. 10, 2023) (a U.N. draft instrument addressing the regulation of transnational business activities).

3. See, e.g., *Corporate Liability for Human Rights Violations*, QUINN EMANUEL (July 21, 2022), <https://www.quinnemanuel.com/the-firm/publications/corporate-liability-for-human-rights-violations/#:~:text=The%20United%20States%2C%20the%20United,to%20due%20diligence%20and%20reporting> (discussing national jurisdictions including the United Kingdom, Canada, France, the Netherlands, Germany, Mexico, Argentina, Colombia, Peru, and Australia).

harms.<sup>4</sup> In particular, strategic litigation on climate change and human rights before national courts, regional human rights courts, as well as international courts, is now a common phenomenon in the expanding universe of business and human rights claims.<sup>5</sup> These lawsuits are anchored in either domestic law that internalizes international human rights standards, the direct application of international human rights treaty obligations and customary international law, or purely domestic law untethered from any international human rights law. As human rights claims against business enterprises operating within and across sovereign borders continue to proliferate, so will the institutional demands and legal responsibilities of States to regulate private sector conduct to ensure greater consistency with their respective international human rights commitments.<sup>6</sup> There is, as of yet, no legally binding instrument that provides common obligations, shared institutions, resources, or standardized due diligence practices and verification methods to ensure respect for human rights throughout global supply chains.<sup>7</sup> There thus remains a gaping legal and institutional coordination problem that has resulted in increased reliance on the scope, applicability, and remedies available under a select grouping of tort liability laws within a few States that provide jurisdictional access to human rights claimants seeking redress.

This paper examines legal, geopolitical, and political economy challenges to undertaking needed adaptive regulations in the realm of

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4. See Robert McCorquodale, *The Litigation Landscape of Business and Human Rights, in HUMAN RIGHTS LITIGATION AGAINST MULTINATIONALS IN PRACTICE* 1–23 (Richard Meeran ed., 2021) (discussing options for bringing human rights cases against businesses within domestic spheres).

5. See Kumaravadivel Guruparan & Harriet Moynihan, *Climate Change and Human Rights-Based Strategic Litigation*, CHATHAM HOUSE 2, 3–8, 17 (Nov. 2021), <https://www.chathamhouse.org/sites/default/files/2021-11/2021-11-11-climate-change-and-human-rights-litigation-guruparan-et-al.pdf> (discussing various instances of rights-based climate litigation); see also U.N. Env't Programme, *Global Climate Litigation Report: 2023 Status Review*, at 28–41 (2023), [https://wedocs.unep.org/bitstream/handle/20.500.11822/43008/global\\_climate\\_litigation\\_report\\_2023.pdf](https://wedocs.unep.org/bitstream/handle/20.500.11822/43008/global_climate_litigation_report_2023.pdf) (introducing a number of cases of rights-based climate litigation).

6. See generally Comm. on Econ., Soc. & Cultural Rts., *General Comment No. 24 on State Obligations Under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, U.N. Doc. E/C.12/GC/24 (Aug. 10, 2017) (discussing, *inter alia*, the growing responsibilities of states in protecting human rights interests within the realm of international business).

7. See David Cabrelli, *Liability for the Violation of Human Rights and Labour Standards in Global Supply Chains: A Common Law Perspective*, 10 J. EUR. TORT L. 108, 108–109 (2019) (discussing challenges in holding international corporations accountable for human rights violations). See generally Galit A. Sarfaty, *Shining Light on Global Supply Chains*, 56 HARV. INT'L L.J. 419, 426–427, 449 (2015) (discussing the non-binding U.N. Guiding Principles on Business and Human Rights).

business and human rights law. States operate in a “multi-aligned” global economy,<sup>8</sup> where States (specifically the United States, China, the middle powers,<sup>9</sup> and the highly diverse Global South<sup>10</sup>) vary in the scope of their legal commitments under international human rights treaties, as well as in the degree to which they consent to international mechanisms for victim redress in cases of human rights law breaches. In this context, the development of more effective legal recourses for human rights violations in international business will depend on: 1) intensifying the alignment of domestic law (including statutory, administrative, and regulatory law) with international human rights law standards, including monitoring States’ implementation of their national action plans on business and human rights;<sup>11</sup> 2) strengthening the independence and jurisdiction of domestic (if not regional) courts and administrative tribunals as they increasingly adjudicate cross-border business and human rights claims, such as environment and climate change disputes, labor and employment standards, and social

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8. Jared Cohen, *The Rise of Geopolitical Swing States*, GOLDMAN SACHS (May 15, 2023), <https://www.goldmansachs.com/intelligence/pages/the-rise-of-geopolitical-swing-states.html> (discussing the multiplicity of alignments and various approaches taken by different states).

9. See generally JOSHUA B. SPERO, MIDDLE POWERS AND REGIONAL INFLUENCE: CRITICAL FOREIGN POLICY JUNCTURES FOR POLAND, SOUTH KOREA, AND BOLIVIA (2021) (providing an account of the contemporary understanding of “middle powers”).

10. See generally THE RISE OF THE GLOBAL SOUTH: PHILOSOPHICAL, GEOPOLITICAL, AND ECONOMIC TRENDS OF THE 21<sup>ST</sup> CENTURY (Justin Dargin ed., 2013) (offering an overview and contemporary definition of the “global south”); Kevin Gray & Barry K. Gills, *South-South cooperation and the rise of the Global South*, 37 THIRD WORLD Q. 557, 557–574 (2016) (likewise giving an overview of the “global south” and its position in global geopolitics).

11. See United Nations Global Compact, *A Guide for Integrating Human Rights into Business Management* (2009), <https://www.ohchr.org/sites/default/files/Documents/Publications/GuideHRBusinessen.pdf> (last visited Sept. 10, 2023) (offering international standards on the integration of human rights principles into business practices); Jennifer Tooze, *Aligning States’ Economic Policies with Human Rights Obligations: The CESCR’s Quest for Consistency*, 2 HUM. RTS. L. REV. 229 (2002) (discussing the alignment of the international financial system and development programs with obligations under the ICESCR); DIANE A. DESIERTO, PUBLIC POLICY IN INTERNATIONAL ECONOMIC LAW: THE ICESCR IN TRADE, FINANCE, INVESTMENT (2015) (generally discussing the ways in which the ICESCR has been implemented across the areas of trade, finance and investment). See also *National Action Plans on Business and Human Rights*, UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <https://www.ohchr.org/en/special-procedures/wg-business/national-action-plans-business-and-human-rights> (last visited Sept. 10, 2023) (listing all states that have produced National Action Plans).

protection guarantees under international human rights law;<sup>12</sup> and 3) widening or creating legal access for human rights victims to directly sue multinational corporations and other business enterprises for alleged harms experienced from business activities.<sup>13</sup> I argue that leading hegemonic economies, such as the United States and China, have fewer incentives to subscribe to international human rights procedures and will predominantly internalize the implementation of adjudicatory systems for disputes involving business and human rights via domestic institutions.<sup>14</sup> Hegemonic economic projects, such as the China-led Belt and Road Initiative (BRI) and the China-driven Regional Comprehensive Economic Partnership (RCEP) do not contain specific treaty or contract provisions applying business and human rights law,<sup>15</sup> and

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12. See generally NADIA BERNAZ, *BUSINESS AND HUMAN RIGHTS: HISTORY, LAW AND POLICY – BRIDGING THE ACCOUNTABILITY GAP* (2016) (discussing, *inter alia*, domestic courts' roles in adjudicating human rights claims related to international business).

13. See, e.g., *Nestle USA, Inc. v. Doe*, 593 U.S. 628, 631 (2021) (recognizing that U.S. corporations can be sued under the Alien Tort Statute for their violations of international law under certain circumstances); *Vedanta Res. PLC v. Lungowe* [2019] UKSC 20, [2020] AC 1045 (UK) (discussing parent companies' liability to third parties for the actions of subsidiaries even when the former have not been found directly responsible); *Nevsun Res. Ltd. v. Araya et al.* [2020] 1 S.C.R. 166 (Can.) (denying a company's motion to dismiss on the grounds that the forced labor practices it had engaged in were imposed by the state); Cour de cassation [Cass.] [supreme court for judicial matters] crim., Sept. 7, 2021, Bull. civ. II, No. 19-87.367 (Fr.), ¶¶ 2, 7, 8 (in which eleven Syrian former employees of Lafarge Cement Syria, together with the European Center for Constitutional and Human Rights ECCHR and Sherpa, filed a complaint against Lafarge SA concerning financing of a terrorist enterprise, complicity in war crimes and crimes against humanity, deliberate endangerment of people, exploitative labor work, undignified working conditions, and forced labor); Rb. Den Haag 26 Mei 2021, AB 2022, 258 m.nt. GA van der Veen (Milieudefensie, Greenpeace Nederland, Fossilvrij NL, de Waddenvereniging, Both Ends, Jongeren Milieu Actief, ActionAid/Royal Dutch Shell plc.) (Neth.), ¶¶ 2.18, 2.2.1 (in which 17,379 individual claimants appointed Milieudefensie as their representative *ad litem* in a claim that Royal Dutch Shell plc reduces its emissions in line with the objective of the Paris Agreement).

14. See Jun Zhao, *China and the Uneasy Case for Universal Human Rights*, 37 HUM. RTS. Q. 29, 45 (2015) (noting that China's official posture is that human rights issues must be handled with sensitivity to each country's own development level, culture, and value system); James L. Cavallaro, *US Exceptionalism, Human Rights and Civil Society*, 16 AUSTRIAN REV. INT'L & EUR. L. 41–42, 44–47, 51 (2011) (noting that the dominant framework for the defense of human rights in the United States is domestic and the reluctance to recognize and accept foreign, international and comparative norms and laws within U.S. litigation).

15. See Diane A. Desierto, *The Complexities of Democracy, Development, and Human Rights in China's Belt and Road Initiative*, 35 CONN. J. INT'L L. 299, 343–52 (2020) (discussing BRI-related treaties' lack of explicit reference to provisions of international human rights law).

instead localize dispute resolution before Chinese courts.<sup>16</sup> The United States-driven draft Indo-Pacific Economic Framework for Prosperity (IPEF),<sup>17</sup> as well as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP),<sup>18</sup> are likewise silent on business and human rights provisions. Nor does either agreement provide direct access to human rights claimants against business enterprises in these regional partnerships. While both hegemons commit to aligning domestic law with their international human rights treaty commitments and tout the reliability of their respective judicial systems, access to direct mechanisms for cross-border business and human rights claims will be circumscribed by each hegemon's narrow scope of international human rights commitments, and their corresponding translation (or lack thereof) into domestic law.

Middle powers,<sup>19</sup> on the other hand, will continue to “display foreign policy behavior that stabilizes and legitimizes the global order, typically through multilateral and cooperative initiatives . . . they opt for reformist and not radical global change, exhibit[ing] a strong regional orientation favouring regional integration.”<sup>20</sup> Middle power democracies will tend to support democracy beyond their borders, including some degree of international human rights law commitments.<sup>21</sup> Middle powers thus do not reject outright international human rights treaty procedures for victim redress. Indeed, they tend to welcome such

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16. See Sara Zokaei, *Dispute Resolution Commercial Transactions Along the Belt and Road: Creating Fair and Consistent Judgments*, 73 HASTINGS L.J. 559 (2022) (highlighting the need for judicial reform of Chinese courts under the BRI regime to cater to the needs of foreign parties who prefer litigation).

17. See White House Fact Sheet, *Indo-Pacific Economic Framework for Prosperity* (May 23, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/fact-sheet-in-asia-president-biden-and-a-dozen-indo-pacific-partners-launch-the-indo-pacific-economic-framework-for-prosperity/> (last visited Sept. 10, 2023).

18. See generally Diane A. Desierto, *ASEAN Investment Treaties, RCEP, and CPTPP: Regional Strategies, Norms, Institutions and Politics*, 27 WASH. INT'L L.J. 349 (April 2018) (comparing CPTPP with other investment treaties involving ASEAN member states).

19. See generally MIDDLE POWERS IN ASIA AND EUROPE IN THE 21ST CENTURY 1–12 (Giampiero Giacomello & Bertjan Verbeek eds., 2020) (identifying middle power countries to include Germany, Japan, South Korea, the Netherlands, among others).

20. Eduard Jordaan, *The Concept of a Middle Power in International Relations: Distinguishing Between Emerging and Traditional Middle Powers*, 30 POLITIKON 165, 165 (2003).

21. Rachel Kleinfeld, Thomas Carothers, Steven Feldstein & Richard Youngs, *How Middle-Power Democracies Can Help Renovate Global Democracy Support*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Feb. 4, 2021), <https://carnegieendowment.org/2021/02/04/how-middle-power-democracies-can-help-renovate-global-democracy-support-pub-83809> (discussing the tendency of middle power economies to support democracy).

avenues for business and human rights claims as complementary to redress mechanisms within their respective domestic jurisdictions.<sup>22</sup> In contrast, many self-ascribing States in the Global South will tend to push for the widest possible avenues of victim redress for human rights claimants against Global North businesses (especially in light of post-colonial discourses), arguing that practical barriers linked to development challenges prevent the imposition of human rights due diligence procedures within their domestic jurisdictions.<sup>23</sup>

The practical result of these differences across diverging types of global powers is not only to increase reliance on legal remedies available at the level of national jurisdictions, but also to narrow windows for ensuring the effective prevention of business and human rights abuses in global supply chains. The absence of global coordination on the pivotal issues of access to justice for claimants in business and human rights disputes is a situation ripe for regulatory arbitrage<sup>24</sup> that will not only delay dispute resolution, but also hinder the prospects for developing imaginative means of reparation within this sphere. The contestation of the meaning, scope, and effect of international human rights law will not only be reflected in asymmetric internalization at the domestic level, but also bolster limitations to the scope and nature of reparations available against businesses' cross-border human rights abuses.

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22. See Umut Aydin, *Emerging Middle Powers and the Liberal International Order*, 97 INT'L AFFS. 1377, 1377–94 (2021) (discussing Mexico and Turkey as case studies for how, under certain political circumstances, human rights can be more readily welcomed within middle powers); see generally Center for Int'l Legal Coop., *The Hague Rules on Business and Human Rights Arbitration* (Dec. 12, 2019) (noting that arbitration under the Rules can provide for a remedy for those affected by the human rights impacts of business activities).

23. See, e.g., Gavin W. Anderson, *Human Rights and the Global South*, in *THE LEGAL PROTECTION OF HUMAN RIGHTS: SCEPTICAL ESSAYS* 347 (Tom Campbell ed., 2011) (noting that Southern-based rights discourse seeks to expand our knowledge of human rights to include a broader range of actors and practices); Carmen G. Gonzalez, *Environmental Justice, Human Rights, and the Global South*, 13 SANTA CLARA J. INT'L L. 151 (2015) (discussing the need to negotiate multilateral treaties imposing human rights obligations on transnational corporations); Janne Mende, *The Contestation and Construction of Global Governance Authorities: A Study from the Global Business and Human Rights Regime*, 10 GLOB. CONSTITUTIONALISM 377, 386 (2021) (noting the position of states from the Global South on the need to provide remedy to human rights victims in the Treaty process of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights).

24. See generally Diane A. Desierto, *Shifting Sands in the International Economic System: Arbitrage in International Economic Law and International Human Rights*, 49 GEO. J. INT'L L. 1019, 1111 (2018) (discussing the role of regulatory arbitrage in a context of limited cohesive international responses to shortcomings in access to justice for human rights claimants).

Furthermore, it is worth noting the language of the dispute settlement provisions of the Third Revised Draft of the proposed Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (“the Draft Instrument”).<sup>25</sup> Under the Draft Instrument, any dispute arising between States Parties to this treaty would have to be resolved “by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.”<sup>26</sup> Moreover, the Draft Instrument creates an opportunity for any State Party to also deposit their advance consent to compulsory dispute settlement for any future disputes to either the International Court of Justice or international arbitration.<sup>27</sup> Even if this treaty were to be concluded in the future, therefore, business and human rights law would remain largely a project for domestic internalization and local adjudication (even if regional and international courts are belatedly following suit by being more receptive to business and human rights claims, especially regarding climate change litigation<sup>28</sup>). The entrenchment of business and human rights law, even as originally contemplated,<sup>29</sup> will thus remain heavily dependent on State-level initiatives, rather than international harmonization and global coordination.

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25. OEIGWG Chairmanship, Third Revised Draft, *Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises* (Aug. 17, 2021), <https://www.ohchr.org/sites/default/files/LBI3rdDRAFT.pdf>.

26. *Id.* Art. 18.1.

27. *Id.* Art. 18.2.

28. *See, e.g.*, Commission of Small Island States on Climate Change and International Law, Request for an Advisory Opinion to the International Tribunal for the Law of the Sea (Dec. 12, 2022), [https://www.itlos.org/fileadmin/itlos/documents/cases/31/Request\\_for\\_Advisory\\_Opinion\\_COSIS\\_12.12.22.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/31/Request_for_Advisory_Opinion_COSIS_12.12.22.pdf) (requesting an advisory opinion regarding the obligations of states parties to the U.N. Convention on the Law of the Sea relating to marine pollution and climate change impacts); Republic of Colombia & Republic of Chile, Request for an Advisory Opinion to the Inter-American Court of Human Rights (Jan. 9, 2023), [https://www.cor-teidh.or.cr/docs/opiniones/soc\\_1\\_2023\\_en.pdf](https://www.cor-teidh.or.cr/docs/opiniones/soc_1_2023_en.pdf) (requesting an advisory opinion regarding state obligations relating to climate change under international human rights law); G.A. Res. 77/276 (Apr. 4, 2023), <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230630-req-03-00-en.pdf> (requesting an advisory opinion from the International Court of Justice on states’ obligations relating to climate change).

29. *See generally* John Gerard Ruggie, *Business and Human Rights: The Evolving International Agenda*, 101 AM. J. INT’L L. 819 (2007) (discussing the prospects for entrenchment of human rights laws via international cooperation).

The continued fracturing of business and human rights law might be viewed as an expected pathology of an increasingly sovereigntist and politically riven global system mired in multiple international armed conflicts, negotiation impasses, and non-compliance with international decisions. But this phenomenon further dwindles the prospects for obtaining justice for human rights claimants against more heavily-resourced transnational business actors—who can leverage and engage in regulatory arbitrage more easily when jurisdictions do not coordinate to define the scope and applicability of human rights law to businesses. Corporate social responsibility (“CSR”) initiatives are voluntary, and to the extent that businesses themselves laudably integrate CSR standards into company practices and operations, these still do not create viable avenues for redress for harms experienced, and alleged, by human rights claimants as a result of private sector activities.<sup>30</sup> One does not need to look beyond the latest reports<sup>31</sup> regarding slavery and human trafficking in global supply chains; child labor violations and forced labor conditions in transnational business manufacturing activities; gender-based violence and hazardous environmental damage in extractive industries; or sustainability challenges in achieving the “just transition” of today’s economies towards net zero neutrality. Indeed, each of these highlights an obvious fact: despite many claimed victories in business and human rights litigation, there remain myriad deep gaps in the extent of legal protections against abuses in transnational business.

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30. See generally Anita Ramasastry, *Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability*, 14 J. HUM. RTS. 237 (2015) (discussing the various limitations of CSR in providing adequate accountability mechanisms in the context of human rights violations).

31. See, e.g., ILO, OECD, IOM & UNICEF, *Ending Child Labour, Forced Labour, and Human Trafficking in Global Supply Chains* (2019), [https://www.ilo.org/wcmsp5/groups/public/—ed\\_norm/—ipecc/documents/publication/wcms\\_716930.pdf](https://www.ilo.org/wcmsp5/groups/public/—ed_norm/—ipecc/documents/publication/wcms_716930.pdf) (discussing child labor, forced labor and human trafficking in global supply chains); Dalena Tran & Ksenija Hanaček, *A Global Analysis of Violence Against Women Defenders in Environmental Conflicts*, 6 NATURE SUSTAINABILITY 1045 (2023) (discussing gender-based violence against women environmental defenders in extractive conflicts); INTER-AM. COMM’N H.R., INDIGENOUS PEOPLES, AFRO-DESCENDENT COMMUNITIES, AND NATURAL RESOURCES: HUMAN RIGHTS PROTECTION IN THE CONTEXT OF EXTRACTION, EXPLOITATION, AND DEVELOPMENT ACTIVITIES (2015), <https://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf> (discussing the impact of extractive and development activities on the rights of indigenous peoples and Afro-descendent communities); COLUMBIA CTR. ON SUSTAINABLE INV., ENABLING A JUST TRANSITION: PROTECTING HUMAN RIGHTS IN RENEWABLE ENERGY PROJECTS (2023), [https://ccsi.columbia.edu/sites/default/files/content/docs/publications/final\\_RenewablesAndHumanRights%20%28Brief%29.pdf](https://ccsi.columbia.edu/sites/default/files/content/docs/publications/final_RenewablesAndHumanRights%20%28Brief%29.pdf) (discussing the social impacts of renewable energy projects).



Entrenching business and human rights law—which includes international human rights law commitments to respect, protect, and fulfill rights to effective remedy—requires more than weary resignation over the vagaries of international politics. It is wholly inadequate to capitulate to dynamics such as selective international human rights commitments, or the challenged institutional monitoring of the implementation of human rights, whether by economic hegemons, middle powers, or ‘Global South’ states. The frontier of business and human rights law calls for intentional re-engagement with domestic constituencies to ensure the alignment of domestic and international human rights law; the strengthening of the competencies, resources, and training of domestic adjudicative institutions to resolve business and human rights claims with fairness, transparency, and equitability for parties; and continued mobilization to create parliamentary or legislative pathways enabling direct victim redress against human rights abuses in transnational business activities. Much of these, in fact, are precisely the same recommendations advanced in the third revised draft of the business and human rights treaty,<sup>32</sup> but couched in exceptionally broad language that leaves virtually complete discretion to States to determine how these objectives would be executed and verified. An intentional re-engagement with the domestic constituencies of States on these points must factor in asymmetric international human rights law commitments, institutional implementation and monitoring, and sustained political viability of national implementation and adjudication of human rights within varied geopolitical contexts. Such a dialogue at the domestic level is essential to the development of new and effective avenues to redress human rights violations in international business. Indeed, grounding these global goals in domestic interests and legal capabilities is a crucial way of enhancing the accessibility of legal recourse for the vulnerable claimants who depend on the justice promised by State duties to respect, protect, and fulfill international human rights law, as well as private sector obligations to (at the very least) respect human rights in all business activities.

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32. See Draft Instrument, *supra* note 25, Art. 6–9.