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| RESEARCH ARTICLE

Analyzing Investors' Corporate Social Responsibility to Ensure Human Rights' Protection in Investment Agreements

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| ABSTRACT
Determining the roles of foreign investors in relation to human rights is still mostly stagnant, despite advancements being made in the business and human rights fields about corporate responsibility for human rights. The notion that companies should uphold human rights is deeply ingrained in international law and is predicated on what society expects from companies operating in the twenty-first century. International investment law remains mute on the subject despite the fact that it is widely acknowledged. This creates a gap between public international law rules governing corporations' human rights responsibilities and international investment law norms. Introducing investor commitments to human rights is one method to better integrate the advancement of the business and human rights movement with international investment law. These responsibilities can be found in both non-treaty sources and investment treaties. Furthermore, investment arbitration gives tribunals a variety of ways to assess these duties, including through jurisdictional, admissibility, and counterclaims. The introduction of investor obligations for human rights has two main advantages. First, it can serve as a means of enforcing general business and human rights rules. Second, and perhaps more significantly, establishing investor responsibilities for human rights can aid in providing a more accurate framework for interpreting international investment agreements. The introduction of such responsibilities serves as a useful tool in reminding arbitrators that human rights and other non-investment concerns are part of the framework within which international investment law operates. However, taking such commitments into account by themselves is unlikely to lead to more significant changes in international investment law. However, encompasses investor responsibilities.

| KEYWORDS
The human rights obligations of investors, social responsibility of corporations, Corporate accountability for human rights, and Corporate social responsibility rules become more rigid, Global accountability of multinational corporations

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1. Introduction
Internationally recognized Corporate Social Responsibility (CSR) standards have been adopted and updated over the past ten years due in large part to the social dimension of investment activity regulation, which acknowledges the critical role transnational companies (TNCs) play in ensuring the social welfare of the host country's population. The primary CSR guidelines are found in the 1977 Tripartite Declaration of the International Labor Organization (ILO), the 1976 Guidelines of the Organization for Economic Cooperative and Development (OECD), and, more

specifically, the 2011 United Nations Guiding Principles (UNGPs), which establish the corporate human rights responsibility [1]. As a result of disagreements over whether the 1970 Code of Conduct and the 1998 Draft Norms on the Responsibility of TNCs and Other Business Enterprises with Respect to Human Rights should be binding or nonbinding, these documents have not been adopted, making it more crucial than ever for academics, international policymakers, regulatory bodies, and businesses to address CSR [2]. However, serious human rights abuses involving transnational corporations (TNCs) go unpunished, leaving victims with few options and growing irritated over the absence of a corporate liability mechanism [3]. This adds to the dissatisfaction with the CSR standards' inability to effectively address human rights violations, as well as the practice of including CSR in business operations[1].

In addition to the evolution of investment treaty practice, firms are increasingly acknowledged in the literature to have a social duty to protect the environment, uphold labor laws, and protect human rights [4],. It is commonly recognized in the legal literature that the rise of transnational corporations as global players calls for a reconsideration of the international framework for corporate human rights responsibilities [5]. There is a raging controversy within the doctrine over the best venue and method for implementing these kinds of regulatory reforms [6]. Some authors have proposed that an internationally binding instrument, which might be negotiated through already-existing international negotiation forums (UN, WTO, etc.) [7] or by creating new forums [8], There have also been suggestions that human rights requirements can be included in investment agreements by adding mandatory wording or by making reference to international human rights instruments. Another option is to incorporate CSR obligations into investment agreements. Researchers are interested in the use of CSR clauses in investment agreements as a way to legitimize investors' human responsibility.[2].

In order to balance state and investor obligations under international law, A. Michoud has looked into the inclusion of direct CSR clauses in investment agreements as investors' sustainable development commitments. Based on the results of her research, she came to the conclusion that addressing corporate responsibility issues, facilitating the application of international law standards, and recognizing corporate legal personality under international law would all be made easier with the inclusion of direct CSR in investment agreements [9]. In his research, Krajewski looks at how indirect corporate social responsibility (CSR) clauses changed into direct CSR clauses in investment agreements. He discovers that although direct CSR clauses are a step toward legally enforceable responsibilities, their wording is still more permissive [10]. Regarding the positive effect of including CSR in investment agreements, some writers have suggested that it could be a useful strategy to protect society's rights and that adopting CSR practices may have a good impact on investors' financial performance [11].

We understand that extensive research has been done on the subject of establishing CSR in investment agreements.

The investors' human rights obligation. The goal of this research is to add to the ongoing discussion by examining whether the recent hardening of direct CSR clauses can significantly improve human rights protection under IIAs. Specifically, the possibility of incorporating direct CSR clauses in investment agreements and the study of the transition from indirect to direct CSR clauses have been extensively explored. This paper demonstrates how this hardening process has led to the inclusion of explicit CSR clauses under "investors obligations" sections or chapters and the linking of CSR obligations to legally binding environmental and human rights prohibitions as well as human rights obligations set by the host country.[12].

This study adds in a number of ways to the body of knowledge about transnational investors' general corporate human rights obligations. First off, this study is among the most recent and unique ones that addresses the inclusion of direct corporate social responsibility (CSR) in investment agreements. It focuses on the unstudied part of the CSR responsibilities' hardening process. Actually, since talks to develop a globally binding instrument on business and human rights started in 2014, the idea of legalizing human rights responsibility through the incorporation of corporate social responsibility (CSR) into investment agreements has garnered less attention in the

[1] in the last decade, over sixty-five international investment agreements (IIAs) have referenced human rights with regard to CSR, of which thirty had been concluded within the past three years.

[2] Anita Ramasastry, Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability, 14 J. HUM. RTS. 237 (2015), https://digitalcommons.law.uw.edu/faculty-articles/734

literature. Second, the uniqueness of this study serves as a springboard for additional scholarly investigation into the applicability of CSR[3].

1.1 Methodology
The technique comprises normative analysis, doctrinal input, and research mostly obtained from investment agreements executed between 2012 and 2019.

The United Nations Conference on Trade and Development (UNCTAD) database has a thorough study of theories and CSR sections in investment agreements, which forms the basis of the methodology's robustness[4].

In this essay, "CSR provisions or clauses" are described as clauses in IIAs that allude to specific duties that contracting States either directly or indirectly place on foreign investors with regard to labor, environmental, and human rights norms [13]. Direct CSR clauses are clauses that, as their name implies, enforce investors' CSR obligations directly. Clauses that urge States to require investors to adhere to CSR standards are known as indirect CSR clauses or state-specific CSR provisions; these clauses usually do not place a mandatory duty on investors to follow CSR standards.

In order to promote a fair, just, and safe society, the paper concludes with some helpful recommendations for enhancing the efficacy of the enforcement of investors' human rights commitments.

It is evident that the ***limited scope*** of the research certainly does not leave room for any generalization regarding this study.

1.2 Research Question
What would be the appropriate forum for negotiation and approach for undertaking such regulatory reforms.?

2. Literature review and hypothesis development
A brief introduction to the concept of CSR is presented first, followed by the multilateral and bilateral approaches to the legalization of transnational investors' human rights responsibility.

2.1 The concept of corporate social responsibility
Since corporate social responsibility (CSR) sits at the nexus of philosophy, business management, and law, defining the term is a challenging undertaking. Originally, the term "*corporate social responsibility*" *(CSR*) referred to the personal accountability of a business management, who was typified by protestant religious observance and primarily focused on charity in line with a North American ethic [14]. After being evaluated through the lens of stakeholder theory, which takes into account how a company's actions affect a wide range of stakeholders whose expectations may be realistic, corporate social responsibility (CSR) has steadily developed from the individual responsibility of the company's leaders to collective or corporate responsibility.

Business management literature places more emphasis on the voluntary aspect of corporate social responsibility (CSR) than on its legal status. It also bases CSR on philosophical, historical, contextual, and practical principles that align with corporate goals and prevent it from becoming a liability [15- 16]. Therefore, as corporate social responsibility (CSR) is more of a social than a legal notion, it cannot be seen as a required activity. Instead, it refers to a company's efforts to comply with social expectations on ethical, legal, and business problems. Therefore, companies can choose to adopt CSR policies or not. It is commonly known in the literature that business generally opposes mandatory regulation and instead favors a voluntary or soft-law approach to global governance.[5]

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[3] Article 16 Benin - Canada BIT (2013); article 15 Cameroon-Canada BIT (2014); article 16 Canada-Serbia BIT (2014); article 16 Canada-Senegal BIT (2014); article 15 Canada- Mali (2014); article 15 Canada-Ivory Coast BIT (2014); article 16 Burkina Faso-Canada BIT (2015); article 16 Canada-Guinea BIT (2015); article 14 Canada-Mongolia BIT (2016).

[4] Available at https://investmentpolicy.unctad.org/.

[5] Integration of social, environmental, and economic issues into a company's values, cultures, decisions, strategies, and operations in a transparent and responsible manner, leading to improved practices within the organization and a better society in general.

It seems that mandatory international regulations and corporate social responsibility (CSR) can coexist and even overlap. Despite being optional, corporate social responsibility (CSR) is commonly understood in the legal literature to be the incorporation of social and environmental concerns into a business's operations and stakeholder relations [17]. Since corporate social responsibility (CSR) and sustainable development go hand in hand [18], there has been legal discussion regarding whether governments and states should be allowed to protect people's rights through all policies and actions that support the nation's economy and sustainable development.

The trend of governments imposing corporate social responsibility (CSR) on businesses through regulatory measures is known as "legalization" [19]. Whatever the nation, corporate social responsibility is characterized by a strong understanding of the significance of integrating corporate social responsibility policies with national strategies to develop a healthy institutional environment, according to a study that looked at corporate social responsibility in various countries during times of crisis [20]. As a result, CSR is firmly based in national, private, and public normative references and encompasses a wide range of topics (social, environmental, and human rights) in addition to going well beyond the ethical realm[21].

Opponents of human rights and social and environmental clauses in investment agreements contend that corporate social responsibility (CSR) is not covered by these clauses and can interfere with corporate will and negatively impact private, competitive businesses. Milton Friedman believed that an organization's sole duty is to maximize profits for its owners [22]. However, during the past few years, a great number of empirical research studies have identified and evaluated the economic benefits of CSR; current data suggest that CSR improves corporate performance, especially in the long run [12, 23, 24]. Accordingly, companies have benefited from implementing CSR policies depending on a number of variables, such as stock prices, profitability, firm value [26], earnings persistence [25].

2.2 Rethinking the current positive international human rights regime and the international investment regime

It is well accepted that the imbalanced regime of investment protection and the international framework for human rights responsibilities need to be reviewed in light of the rise of transnational corporations (TNCs) in the global arena. According to *M. Pentik¨ainen*, the concept of subjectivity in international law needs to be reconsidered in light of the paradigm shift at the global level brought about by the emergence of transnational corporations (TNCs) and the recent adoption of several internationally recognized corporate social responsibility (CSR) instruments regulating TNCs' activities with regard to human rights. The author notes that the idea of international "subjectivity" finds it difficult to accommodate non-state entities and that transnational corporations (TNCs) have significant rights and obligations under international law. [26].

2.3 The multilateral forum's approach

There is a viewpoint in the literature that says an internationally enforceable agreement that is reached by already-existing international forums or by creating new forums should define international investor liability. Ratner emphasized the significance of establishing such an international tool since, in the absence of global legal norms for transnational corporations (TNCs), disproportionate responsibility claims against corporate actors and corporate actors' counterclaims against those claims will persist [27]. It is significant to note that, despite the relevance of the author's viewpoint, his perspective appears less practical because he did not indicate the platform wherein the negotiations for such an international instrument might take place. Considering that there are numerous venues for international negotiations, such as the OECD, the United Nations.

Using three key pillars as an alternative to the current indirect approach to international human rights duty, ***Lopez Latorre*** argues that enterprises should be subject to direct obligations originating from existing international law. The first pillar is that, according to international law, businesses have a partial legal identity. The distinction between legal obligations and enforcement models constitutes the second pillar. Finally, since human rights are essential to justice, all social actors—including corporations and non-governmental organizations—owe them.

S. Avi-Yonah suggests creating a new multilateral negotiation forum since such an international instrument cannot be debated inside the current multilateral forums like the OECD and the WTO.

Like the **Dispute Settlement Body**, the WOI would function as a venue for enforcing these kinds of multilateral agreements. The author claims that by addressing the concerns of both rich and developing nations, his suggested system will harmonize investment restrictions. Nobody can dispute the author's original concept to establish a worldwide organization that focuses only on foreign investments[6].

2.4 Hypothesis development

In Summary, the literature study above shows that while CSR does not imply TNCs' legal responsibility, it is often seen as improving business performance and meeting local communities' expectations. The literature also highlights skepticism about the reliance on CSR and voluntary approaches, along with a preference for mandatory international regulation in social and environmental issues. It is well known that business generally resists compulsory regulation and prefers to adopt voluntary or soft-law approaches. It seems that CSR can function in unison with mandatory international regulations rather than necessarily being in conflict with them [16]. The literature has also underlined how crucial it is to include mandatory CSR terms in investment agreements in order to incorporate commitments related to human rights.

The study emphasizes that the hardening of CSR clauses has resulted in direct CSR obligations, though its mandatory nature and implementation remain a challenge.

In light of the literature review provided in the above section, the following hypothesis can be predicted.

H1. Investors are directly responsible as a result of the CSR best effort clause.

CSR clauses are often state-specific provisions with non-binding duties on the part of the States to encourage investors to follow CSR standards and to advance CSR practices. The best effort clause highlights the need for investors to make an effort to integrate globally acknowledged corporate social responsibility (CSR) obligations into their company operations and policies. The research suggests that "best efforts clauses" are a cowardly reflection of the CSR responsibilities' hardening process, which tries to force meaningful CSR obligations on investors directly.

H2. The hardening process of CSR clauses has resulted in a heterogeneous level of mandatory obligations

Direct CSR clauses were added to required sections or chapters as a result of the hardening process; however, for these clauses to be deemed mandatory, they must be combined with mandatory wording. Mandatory CSR provisions are those that are written in a language that is required, and that is connected to legally enforceable environmental and human rights restrictions as well as human rights obligations outlined in the laws of the host nation. A CSR clause that may be formally required in one meaning and essentially required in another is the outcome of the hardening process.

H2.a: CSR clauses incorporated into mandatory sections but expressed in non-binding terms do not create mandatory obligations. H2.b: CSR obligations formulated in mandatory language and linked to international law and national legislation are mandatory.

H3. The enforcement of CSR clauses is subject to jurisdictional challenges.

In order to establish their rights, victims and right holders must be able to file lawsuits against duty bearers in a jurisdictional body, according to the principle of accountability. We believe that in order to ascertain the potential enforcement efficiency of the hardening process, it is imperative to assess the efficacy of victim access to jurisdictions.

H3.*a: The violation of CSR does not constitute a dispute subject to dispute settlement mechanisms. H3.b: Victims of CSR breaches have limited access to dispute resolution mechanisms.*

[6] There is, however, no possibility of filing direct claims against the investor for human rights violations before the arbitral tribunal, since violations of human rights by investors result only in the investors being denied arbitration rights. Therefore, a dispute involving human rights vi- olations should be brought before a jurisdiction other than the arbitral tribunal.

3. Listing of the investor's obligations directly within the investment agreements

Cross-referencing globally accepted CSR standards is a good way to support the voluntary approach to CSR, but it does not impose legally obligatory CSR duties. Most investment agreements that use the best-effort technique don't mention any optional or soft instruments that aren't included in the agreement. After looking over the CSR provisions in the 2015 Brazil Model BIT and every Brazilian BIT signed in 2015, it seems that these agreements define "investor CSR with respect to human rights" clearly in their text. As a result, the BIT, not any of the soft international instruments, contains the investor's CSR duties directly. Articles 9.1 and 9.2 of the Brazil-Malawi BIT (2015)[7].

Notably, several investment agreements—like the 2015 Brazil-Mozambique and Angola-Brazil BITs—include a special appendix that enumerates investors' CSR responsibilities. In contrast, some investment agreements list investors' corporate social responsibility (CSR) requirements in a single clause. Examples of these agreements are the Brazil-Mexico BIT (Article 13), the Brazil-Colombia BIT (Article 13), the Brazil-Chile BIT (Article 15), the Brazil-Malawi BIT (Article 9), and the Brazil-Ecuador BIT (Article 14).

The best-effort strategy explicitly states in the investment agreement that investors must use reasonable efforts to comply with CSR responsibilities. Since the best effort clause imposes direct responsibilities on the investors, our hypothesis (H1) is supported.

3.1 Linking CSR obligations to the human rights legislation of the host state.

Normally, provisions pertaining to an investment's compliance with the laws of the host state exist independently from CSR clauses[8]. However, a recent practice in treaties suggests that the compliance clause is integrated into the CSR clause (see, for example, article 24.1 of the Morocco-Nigeria BIT (2016) and article 7.1 of the Netherlands Model BIT 2019). Generally speaking, these CSR clauses oblige investors to abide by national laws pertaining to labor, gender equality, environmental protection, human rights, and the rights of Indigenous peoples. The Netherlands Model BIT (2019), for instance, has the following clause: Investors and their investments shall comply with the host state's domestic laws and regulations, including labor laws, environmental protection legislation, and human rights laws (article 7.1)[9].

4. Analysis of some methods of responsibility in investment treaty practice

In accordance with treaty practices, investors can be held accountable both indirectly and directly. However, neither method guarantees adequate protection of human rights.

4.1 Methods of indirect responsibility in treaty practice

Indirect accountability can take two forms, and victims are not able to take direct action against investors in either case[10].

4.2 Conditioning access to arbitration on investor conduct

The arbitration provisions of some investment agreements, such as the Colombian model BIT of 2017, explicitly condition investors' access to arbitration upon compliance with CSR and human rights and environmental obligations under international law.

5. Investors' social responsibility.

Normally, provisions pertaining to an investment's compliance with the laws of the host state exist independently from CSR clauses. However, a recent practice in treaties suggests that the compliance clause is integrated into the CSR clause (see, for example, article 24.1 of the Morocco-Nigeria BIT (2016) and article 7.1 of the Netherlands

[7] The scope of CSR is conceptually quite broad and encompasses human rights, environment labor rights, and specific areas such as corruption.

[8] In addition to international instruments, regional human rights instruments exist, such as the Asian Declaration of Human Rights, the 1953 European Convention on Human Rights, the 1969 American Convention on Human Rights, and the African Charter on Human and Peoples' Rights adopted in 1986.

[9] It is rather the investor who initiates the arbitration process, and the arbitration tribunal draws conclusions based on the investor's failure to comply with CSR obligations.

[10] It is rather the investor who initiates the arbitration process, and the arbitration tribunal draws conclusions based on the investor's failure to comply with CSR obligations.

Model BIT 2019). Generally speaking, these CSR clauses oblige investors to abide by national laws pertaining to labor, gender equality, environmental protection, human rights, and the rights of Indigenous peoples. The Netherlands Model BIT (2019), for instance, has the following clause: Investors and their investments shall comply with the host state's domestic laws and regulations, including labor laws, environmental protection legislation, and human rights laws (article 7.1).[32].

6. Reduction of the investors' compensation

The idea of an investor's contributory fault is another means via which treaty practice holds an investor accountable for the breach of CSR's obligations[33]. Indirect accountability is typically predicated on the idea that the investors' own actions were a contributing factor in the loss they experienced, which would subsequently support a reduction in the amount of damages granted. For instance, article 23 of the Netherlands Model (2019) states that while determining damages, the arbitral tribunal hearing the dispute would take the investor's violation of its CSR responsibilities into account. The text of Article 23 is as follows: A Tribunal is required to consider non-compliance by the investor with its obligations under the UN when determining the amount of compensation without affecting national administrative or criminal law procedures.

7. Human rights corporate responsibility under domestic law

A number of investment agreements, such as the Netherlands Model BIT (2019), stipulate in article 7.1 that investors must abide by all local laws and regulations of the host state, including those pertaining to labor law compliance, environmental protection, and human rights. Regardless of whether the case is brought in the nation where the accident occurred or where the parent firm is incorporated, domestic corporate responsibility systems might create a number of judicial and practical challenges.

Furthermore, investors are accountable for actions or decisions made in connection with an investment if those actions or decisions result in major harm, personal injury, or death in the host state, according to article 7.4 of the Netherlands Model BIT. Accordingly, the Netherlands Model inherently needs[11].

7.1.1 Human rights corporate responsibility under international law

The Colombian model's CSR clause introduces a new legally binding approach that links the investor's CSR obligations to the prohibitions imposed on states by international instruments and the CSR clause is worded as follows:

7.1.2 Results and discussion

It is widely accepted, as the literature review discusses, that the idea of corporate social responsibility (CSR) stems from the community's expectation that businesses operating within its borders uphold certain norms of justice. The legalization of human rights responsibility may be accomplished through the reference of international human rights instruments or by the inclusion of mandatory corporate social responsibility (CSR) obligations within investment agreements, according to authors based on discord within the international community and recent treaty practices[12].

8. Proposals for improving the effectiveness of the protection of human rights in investment agreements.

Using a comprehensive and practical approach, we intend to integrate existing solutions in treaty practice in a manner that maximizes utility and inspiration for future CSR provisions.

8.1.1 Proposal to enhance the effectiveness of jurisdictional enforcement of a breach of CSR violation.

To maximize the effectiveness of the enforcement of CSR violations, an international corporate liability mechanism needs to be established that will permit victims to directly seek compensation. Moreover, future investment agreements should include a compensation mechanism.

[11] In a separate provision from the CSR clause, the Morocco-Nigeria BIT also provides that investors shall be subject to civil actions for liability in the judicial process of their home state for the acts or decisions made in

[12] *(a) the claimant, on its behalf, may submit to arbitration under this Section a claim:* (i) that the respondent has breached: (A) an obligation under Section A; (B) an investment authorization; or (C) an investment agreement … (article 9.19 1.a) CPTPP).

9. The necessity of an international corporate liability mechanism

It is also implied that ISDS or arbitration mechanisms, as they currently stand, are insufficient venues for the resolution of human rights problems by the implicit or explicit omission of CSR or human rights issues from the terms of investment agreements. In reality, the United Nations Commission on International Trade Law (UNICITRAL) is considering the potential of establishing a "standing mechanism" for investment disputes as a result of the problem surrounding the validity of ISDS. A centralized, permanent, international Investment Jurisdictional System (IJS) with two levels of jurisdiction—a court of first instance that considers the facts and then applies the law, and an appellate court that hears appeals against the decisions—has also been proposed by the European Union and its member states in response to this reform[34].

Based on the current international jurisdictional processes, some authors, including *M. Fasciglione*, have investigated the viability of establishing an international court of business and human rights to hold corporations accountable for abuses of human rights. The author has discussed three potential models for creating an international mechanism that will have jurisdiction over corporate human rights abuses in a study that was just published [35].

First, he looked into the potential of setting up a special ***chamber of the International Court of Justice (ICJ)*** to hear cases pertaining to human rights against businesses, based on article 26 of the ICJ Statute. However, this idea is difficult to put into practice because it requires amending the UN Charter to work[13].

However, because they rely so heavily on broad political agreement at the international level, none of these models are likely to be legally feasible or politically viable. This is because they will imply that: (a) the claimant, acting on its behalf, may submit to arbitration under this Section a claim alleging that the respondent has violated: (i) an obligation under Section A; (B) an investment authorization; or (C) an investment agreement. (CPTPP) worldwide corporate subjectivity, which isn't widely agreed upon (article 9.19 1.a).

9.1.1 Victims' rights to remedies and access to dispute resolution mechanisms

The idea of giving the State the procedural right to represent victims of human rights before a tribunal has drawn criticism because it is paradoxical that the government whose policies are regularly contested in court and on the streets must also defend those victims. How host states, which frequently condone or participate in human rights abuses, such as allowing lax employment regulations or endorsing harmful goods like tobacco, might be able to defend victims of abuses of human rights in arbitration proceedings remains to be seen [36].

9.1.2 Establishing a compensation mechanism for victims of human rights

Most investment agreements don't offer victims of investors' violations of their human rights or *corporate social responsibility (CSR)* duties any kind of recourse or compensation. Investment agreements should include such redress or compensation procedures to guarantee the effective implementation of CSR requirements in subsequent agreements. We have taken inspiration for our proposal from *Article 23 of the Netherlands Model 2019*, which states that the ISDS must consider the investor's failure to fulfill its corporate social responsibility (CSR) duties when determining damages. Furthermore, state parties are required by the Netherlands Model to "take appropriate measures" to guarantee that victims of violations of human rights have access to efficient remedies. In order to support arbitral tribunals, we propose that future investment agreements should include international civil liability rules[14].

To ensure that these instruments are relevant, investment agreements should, therefore, equate the term "investor" with the phrase "operator" in international conventions on civil responsibility. Furthermore, as stipulated by the international instrument on civil liability for nuclear damage **(Convention on Supplementary Compensation for Nuclear Damage),** investment agreements should expressly include reparation measures and a supplementary

[13] The international human rights responsibility of the State can also be challenged before an international court when it has not taken the necessary measures to prevent human rights violations (due diligence or prevention), or when these violations have occurred and the state failed to prosecute the investors that committed the violations (obligation to protect human rights).

[14] These principles are derived from international civil liability conventions that address the consequences of certain highly hazardous activities, such as nuclear energy, oil activities with a significant risk of damage and pollution, transport of hazardous goods and wastes, industrial activities with living modified organisms, and transboundary waters, and damage to the Antarctic region.

compensation mechanism to facilitate compensation for victims of human rights violations as well as reparations for damage resulting from human rights violations. The contracting states might be able to use their public funds to finance such a mechanism.

10. Findings

That is, at least, what our investigation discovered. These guidelines come from international civil liability conventions that deal with the fallout from a number of extremely risky activities, including nuclear energy, oil extraction with high potential for pollution and damage, the transportation of hazardous materials and waste, the use of living modified organisms in industry, transboundary waterways, and damage to the Antarctic region[15].

11. Recommendation

As the funds of the member state will be used to meet the compensation requirements, the solution would be relatively simple to include as part of the investment agreement. It would simply require the consent of the Contracting States to allocate public resources to compensate for any potential damage caused by its nationals investing in the territory of another state.

In this part, it is crucial to recognize that the recommendations we have made are practical since they are based on tried-and-true solutions from treaty practice. Our suggested remedies may improve the protection of human rights in investment agreements and strengthen the substance of investors' CSR duties.

In order to ensure that CSR responsibilities are enforceable, the paper specifically recommends that they be written as substantive duties. This implies that the obligations should be framed in terms that are mandatory and that their violations cannot be disregarded in investment disputes. A new bilateral or international dispute-resolution framework that would enable victims to file direct human rights cases against investors also appears to need to be reconsidered. To better defend human rights, rulings made by such a system ought to be upheld by both signatory states. [37].

Lastly, this analysis may have major limitations because it only includes investment agreements that are included in UNCTAD's database, not all of which were signed after 2011, the year the UNGPs were enacted.

The study's shortcoming is that it doesn't investigate the interpretation of these CSR duties on a case-by-case basis by taking into account current advances in international investment arbitration law.

Thirdly, a quantitative analysis technique that could have provided important insights into the statical hardening process of CSR clauses was not employed in the study. In order to advance this research, a thorough examination of a sizable number of investment agreements and the body of precedent surrounding investment arbitration is required. The process of making investors' CSR requirements more stringent is far from finished, but it is a critical step in making sure that violations of these obligations will have legal consequences [38].

12. Conclusion

In this paper, the purpose is to examine whether the recent, progressive hardening of CSR provisions has resulted in substantive and enforceable human rights obligations to ensure adequate protection of victims. We employed a methodology based on research primarily sourced from CSR clauses of investment agreements concluded between 2011 and 2019, as well as a comprehensive analysis of theories. This study has shown that the state-specific indirect clause evolved into a direct clause through the hardening process of CSR clauses. It has been demonstrated that a timid hardening of CSR clauses can be observed in the Best-effort clauses, which typically use weak terms and do not make the obligations outlined in the CSR clauses mandatory. Moreover, it has been demonstrated that CSR obligations can be mandatory in limited cases. In this case, CSR clauses use strong language and refer to CSR obligations in terms of international obligations or human rights obligations under the host state’s legislation.

[15] Indeed, the concept of investments that may cause damage should be understood in the sense of *“protected investments”* to cover all situations. Therefore, the quantum of damages will be paid directly by the investor or operator in this case.

It is only when CSR obligations are linked to human rights obligations under the legislation of the host state that CSR disputes may be brought before a domestic State court. It is questionable, in our view, what benefit there is to include CSR in investment agreements and to refer to it as an obligation of investors when violations of those obligations do not constitute an investment dispute. Some authors have questioned, to some extent, the inherent value and utility of CSR obligations as a result of their ambiguous nature [30-34]. CSR obligations do not seem to be based on a "rights-based approach", nor were they designed to constitute an authoritative and legally enforceable system of obligations since their enforcement would be, at best, a stab in the dark before an arbitral tribunal. Based on the findings of this study, the hardening process of investors' CSR obligations has not been completed, or investors' CSR obligations have not yet been fully hardened.

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