

# **‘Home State Duty to Protect in Business and Human Rights Through the Prism of Extraterritorial Jurisdiction’**

## **Abstract**

Transnational corporations have become the new global power players. Their economic influence is growing, and so is their capacity to violate human rights. However, corporations do not have direct obligations in international human rights law. It is primarily states where human rights violations have occurred (“host-states”) that must ensure corporate human rights compliance within the scope of their duty to protect. In practice, these are often developing states unable or unwilling to exert power against the more powerful corporations, negatively impacting people’s universal enjoyment of human rights.

To strengthen human rights protections in the business and human rights sphere, human rights bodies and scholars have begun placing a duty to protect human rights on the *home states* of corporations operating in the territory of host states. The study of a home state duty to protect from extraterritorial human rights violations of corporations is in its infancy. In the absence of a legally binding instrument in the sphere of business and human rights, the existence of such a duty is also highly ambiguous. While most human rights scholars argue that a home state duty to protect may already be attributed as a matter of existing international human rights law, other scholars firmly oppose such views.

To contribute towards the clarification of the human rights *status quo* and strengthening of international human rights law protections in the business and human rights sphere, this dissertation thus examines the home state duty to protect in the business and human rights sphere. It addresses its emergence, permissibility, and attribution. Based on the analysis of human rights jurisprudence, this dissertation determines that while a trend in favour of a duty to protect is indisputable, a mandatory home state duty does not yet arise. Based on the concept of jurisdiction in public international law, it ascertains that a conditional exercise of home state protections in view of a recommended duty to protect is permissible. Finally, relying on the concept of jurisdiction in international human rights law, this dissertation concludes that a future mandatory duty may be attributed according to existing human rights law based on a cause-and-effect model of jurisdiction.

**Keywords:** Business and human rights, duty to protect, extraterritorial jurisdiction, cause-and-effect jurisdiction