Paper presentation


Submitting Author: Paul L. Regan
Position: Associate Director, Institute of Delaware Corporate & Business Law and Associate Professor of Law
Affiliation: Widener University School of Law, Wilmington, Delaware USA
Institute address: 4601 Concord Pike, Wilmington, Delaware USA
E-mail address: plregan@mail.widener.edu
Country: United States

Other authors: n/a

Preferred session: Organisational sociology

Equipment required: laptop and projection screen for power point slides

Keywords:
- alien tort statute, international human rights, multinational corporations, corporate compliance systems

Abstract:
This article proposes a U.S. Congressional statutory solution to the issue of whether, and under what circumstances, a U.S. multinational corporation can be held liable in tort on a claim brought in a United States federal court under the Alien Tort Statute for human rights abuses arising from a corporation’s overseas business operations. In recent years U.S. federal courts have splintered in their interpretations of this 1789 statute in terms of its scope and applicability to tort claims arising from violations of international human rights standards, a well established branch of international law for the last sixty years but one entirely unknown to the Founders in 1789.

In response to this uncertainty, this article proposes enactment of the Human Rights Compliance and Accountability Act (“HRCAA”), which would impose direct tort liability in an appropriate case on a U.S. parent corporation for human rights violations abroad in which its foreign overseas subsidiary is complicit. Under the proposed statute, a U.S. multinational enterprise would be amenable to suit in U.S. federal court and directly liable under HRCAA for human rights violations of its overseas subsidiary where (1) it failed in good faith to ensure that its overseas
subsidiary had in place a reasonably effective and functioning human rights compliance system or (2) notwithstanding the existence of such an effective compliance system, the U.S. parent corporation acquired knowledge of ongoing human rights violations by its overseas subsidiary and failed to take meaningful corrective measures in a timely way. Conversely the U.S. parent corporation would be shielded from liability under HRCAA, and thus encouraged to invest in developing countries, if it maintained effective human rights compliance systems and was responsive to human rights violations about which it acquired knowledge.