LEGAL STRATEGIES AND EXTRATERRITORIAL IMPLEMENTATION OF ILO CONVENTION 169

A PROPOSAL FOR ACTION AGAINST THE SPANISH TRANSNATIONAL CORPORATIONS AFFECTING INDIGENOUS RIGHTS
I. Introduction

- Extraterritorial implementation of ILO Convention 169 for non-state actors: Spanish transnational corporations operating in indigenous territories
- Spanish ratification of the Convention on 15th February, 2007: legal obligations for extraterritorial actions or an expression of mere solidarity?
- Problem: corporate accountability in international human rights law
- Obligation of the State to respect, protect, comply and remedy for violations committed by Spanish TC: subsidiary responsibility
II. International law and TC accountability

- TC: subject to rights and responsibilities?
- Legal norms on TC
  - Regulations on foreign investment
  - Regulation on TC conduct (codes)
    - Draft Code of conduct for TCs
    - OECD Guidelines for Multinational Enterprises
    - ILO Tripartite Declaration of Principles on TC and social policies
    - Norms on corporations responsibilities
    - Global Pact of the UN Secretary General
    - Corporate responsibility (voluntary)
- Development of transnational commercial law ignoring Public International Law (PIL)
II. International law and TC accountability

- Legal bases for extraterritorial enforcement:
  - UDHR: Arts. 28, 29, 30
  - Declaration on the rights and duties of individuals, groups and institutions to promote and protect the fundamental rights and freedoms universally recognized: towards a subsidiary responsibility of the State
  - Special Representative of the United Nations Secretary General, John Ruggie: TC corporate responsibility; differentiated responsibilities
III. Extraterritoriality in Spanish law

- Is an extraterritorial enforcement possible?
- Extraterritoriality in criminal law
- Criteria: Organic Act of the Judicial Power (LOPJ)
  - Nationality of the culprit
  - Protection of national interest
  - Universal Justice
- Reinterpreting the concept of universal justice: what is jurisdiction?
IV. Bases for an extraterritorial implementation of the Convention

- “Pro homine” principle
- Contextualization: new problems with new subjects
- Evolutory interpretation of Spanish law with regard to human rights
- LOPJ: Arts. 23. 4 a) and j)
- Articles 2, 3, 4 and 34 of ILO 169
- ILO Constitution: Art. 19. 5 (d)
- UN Declaration on the Rights of Indigenous Peoples
- Sectorial Strategy of the Spanish Cooperation with Indigenous Peoples (ECEPI)