



MAX PLANCK INSTITUTE
FOR COMPARATIVE PUBLIC LAW
AND INTERNATIONAL LAW

HUMAN RIGHTS DISCUSSION GROUP

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“Attribution of State Responsibility pursuant to actions or omissions of State-Owned Enterprises in human rights matters”

Thursday, 1 December 2016, 11:00 – 12:30, Room 014

It is not the same whether state obligations in human rights law are direct or indirect. Significant differences arise, as this paper shows and summarizes, in relation to the duty to prevent violations, and the duty to guarantee human rights. It is consequently not trivial whether state responsibility accrues from the acts or omissions of state-owned enterprises directly, or due to the lack of oversight by administrative or judicial oversight organs, or through lack of regulation.

Once having determined the different scope of obligations in the two settings, this paper aims at drawing up the elements of a theory of attribution of acts or omissions by State-Owned Enterprises in human rights matters, to the State. In that sense, it argues that Articles 4, 5 and 8 of the Draft Articles on State Responsibility (2001) provide a consistent framework of attribution, but cannot solve all specific problems that arise, especially, in relation to direct attributability in situations of limited liability benefits that are granted to the enterprise despite the persistence of State control. This paper will try to argue that State responsibility may exist in certain cases despite the acceptance of a theory of separate corporate entities, drawing from doctrine and jurisprudence in international economic and human rights law.

The project counts with funds from the project Fondecyt de iniciación N° 11150853.



Judith Schönsteiner PhD (Essex) is an associate professor at the Diego Portales University, Chile. She holds an LL.M. in International Human Rights Law (Essex) and an M.A. in Political Science (Mainz). Currently, her research focuses on business and human rights issues, mainly, on state-owned enterprises. She has elaborated the first National Baseline Study on Business and Human Rights in Chile, the first of its kind in Latin America. Director of the UDP Human Rights Centre.

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