



# Human Rights Advocates

P.O. Box 5675, Berkeley, CA 94705 USA

**Environmental Contamination Knows no Boundaries:**

**Water Pollution, Both Here and There**

**Contact Information:**

**Bridget Engle, Frank C. Newman Intern  
Representing Human Rights Advocates through  
University of San Francisco School of Law  
International Human Rights Law Clinic**

**Tel: 415-422-6961**

**bridgetengle11@gmail.com**

**Professor Connie de la Vega**

**[delavega@usfca.edu](mailto:delavega@usfca.edu)**

## I. Introduction

“Thousands have lived without love, but not one without water.”<sup>1</sup> The simple concept that water is indispensable for human existence has inevitably become an undeniable aspect of international human rights discussions. Given the international community’s recognition that environmental degradation as a whole adversely impacts the right to water, food, life, and health,<sup>2</sup> it is necessary to include water pollution of the world’s lakes, rivers, and oceans within the broader discourse pertaining to human rights and the environment.

A human right that is obviously undermined by water pollution, particularly of freshwater resources, is the right to water. In 2010 the General Assembly adopted a resolution recognizing that the right to safe drinking water and sanitation is a “human right that is essential for the full enjoyment of...all human rights.”<sup>3</sup> Further, in 2011 the Human Rights Council affirmed that “the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of...health, as well as the right to life and human dignity.”<sup>4</sup> This deduction results from the fact that consumption of contaminated water can lead to severe health effects, including gastrointestinal illness, reproductive problems, and neurological disorders.<sup>5</sup> Additionally, it is widely accepted that damaged coastal and marine ecosystems as a result of human activity

---

<sup>1</sup> W.H. Auden, *First Things First* (1956).

<sup>2</sup> John Knox, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/22/43 at para. 34 (2012).

<sup>3</sup> General Assembly, Resolution on “*The human right to water and sanitation*,” A/RES/64/292 at para. 1 (2010).

<sup>4</sup> Human Rights Council, Resolution on “*The human right to safe drinking water and sanitation*,” A/HRC/RES/18/1 at para. 1 (2011).

<sup>5</sup> Centers for Disease Control and Prevention, *Water-related diseases and contaminants in public water systems*, available at [http://www.cdc.gov/healthywater/drinking/public/water\\_diseases.html](http://www.cdc.gov/healthywater/drinking/public/water_diseases.html) (7 April 2014).

negatively impact human health.<sup>6</sup> Moreover, water quality is indispensable for supporting the human right to food.<sup>7</sup> In addition, water irrigation necessary for food production claims up to 70 percent of freshwater apportioned for human use, making the agricultural industry the biggest consumer of water on the planet.<sup>8</sup>

The foregoing facts highlight the immense impact that water pollution has on human rights. Moreover, the recognition by international bodies and other experts, such as those noted above, on the integral role that water occupies in the realization of human rights is outspoken and clear. However, the scope of State duties regarding prevention of water pollution and regulation of transnational corporations necessitates additional clarification. The goal of this report is to highlight the extraterritorial obligations implicated in the context of transboundary waters, as well as duties that arise in extraterritorial water pollution.<sup>9</sup>

## II. Extraterritorial Obligations under International Law

The International Covenant on Economic, Social and Cultural Rights (ICESCR) sets forth in Article 11: “The States Parties...recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>10</sup>

Additionally, the parties in Article 12 “recognize the right of everyone to the

---

<sup>6</sup> Fleming, L.E. & McDonough, et. al., *Oceans and Human Health: A rising tide of challenges and opportunities for Europe*, 99, *Marine Environmental Research*, 1, 16-19 (August 2014).

<sup>7</sup> UN Department of Economic and Social Affairs, *Water and Food Security*, available at [http://www.un.org/waterforlifedecade/food\\_security.shtml](http://www.un.org/waterforlifedecade/food_security.shtml) (23 October 2014).

<sup>8</sup> *Id.*

<sup>9</sup> For purposes of this report, the use of the word “transboundary” is in reference to bodies of water shared by more than one country. “Extraterritorial” refers to any area outside of the country at issue.

<sup>10</sup> International Covenant on Economic, Social and Cultural Rights, article 11(1), 993 U.N.T.C. 3 (16 December 1966).

enjoyment of the highest attainable standard of physical and mental health.”<sup>11</sup> While the State obligation to undertake steps toward achieving progressive realization of economic, social and cultural rights is clear,<sup>12</sup> questions have been raised as to whether that obligation entails a State duty to protect human rights extraterritorially.

The lack of proper clarification of whether States have responsibilities to protect human rights beyond their borders has, in the past, caused concern about a dangerous gap in human rights protection. In response to this unease, the world’s human rights experts created a set of principles designed to guide States in their compliance with human rights obligations outside of their jurisdiction.<sup>13</sup> The result was the 2011 issuance of the Maastricht Principles on Extraterritorial Obligations, not as an establishment of new law, but as a clarification of standing principles of international human rights law.<sup>14</sup> Principle 23 is an illustrative example of the document as a whole, which states, “All States must take action, separately, and...through international cooperation, to protect economic, social and cultural rights of persons within their territories and extraterritorially...”<sup>15</sup> Moreover, Principle 24 requires States to “take necessary measures to ensure that non-State actors which they are in a position to regulate,...such as...transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights. These include administrative, legislative, investigative, adjudicatory and other

---

<sup>11</sup> Id. at article 12(1).

<sup>12</sup> Id. at article 2(1).

<sup>13</sup> ETO Consortium, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, p. 3 (2013).

<sup>14</sup> Id.

<sup>15</sup> Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights, Section IV, Principle 23 (28 September 2011).

measures.”<sup>16</sup> In Section IV of this report, these principles serve as the basis to argue the extraterritorial obligations implicated with respect to international water pollution.

### III. The World’s Transboundary and Extraterritorial Waters

The world contains 263 transboundary lake and river basins, which in the aggregate cover nearly half of the Earth’s land surface.<sup>17</sup> Such basins include territory of 145 nations, and an additional 21 nations lie entirely within areas with a shared water source.<sup>18</sup> Moreover, the ubiquitous presence of transnational corporations gives way to extraterritorial activities which affect waters a long way from the country of origin. In order to avoid globally undermining human rights, it is important to discuss the international obligations that flow from such a complex network of the world’s waterways. This report begins that discussion below by presenting two examples of water pollution that implicate more than one country.

#### a. Pollution of a Transboundary Waterway: The Danube River

Of the world’s vast number of water bodies classified as transboundary, none is more expansive than the Danube River. Running through Eastern and Central Europe, an astonishing 19 countries share the Danube River Basin, which translates to over 80 million people.<sup>19</sup> Although pollution to this notorious waterway is far from new, a notable example is the 2010 collapse of a Hungarian dam containing toxic waste, including arsenic and mercury.<sup>20</sup> The collapse released 184 million gallons of

---

<sup>16</sup> Id. at Section IV, Principle 24.

<sup>17</sup> UN Water, *Transboundary Waters: Sharing Benefits, Sharing Responsibilities* (2008).

<sup>18</sup> UN Department of Economic and Social Affairs, *Transboundary waters*, available at [http://www.un.org/waterforlifedecade/transboundary\\_waters.shtml](http://www.un.org/waterforlifedecade/transboundary_waters.shtml) (24 October 2014).

<sup>19</sup> International Commission for the Protection of the Danube River, *Countries of the Danube River Basin*, available at <http://www.icpdr.org/main/danube-basin/countries-danube-river-basin> (accessed 24 February 2015).

<sup>20</sup> National Geographic, *Toxic mud spill latest insult to Polluted Danube River*, available at <http://news.nationalgeographic.com/news/2010/10/101012-toxic-spill-hungary-danube-river-water/> (12 October 2014).

contaminated mud into the Marcal River, killing at least 8 people.<sup>21</sup> The ecological disaster reached new proportions as the spill fed into the Danube River, which serves as a water source for millions of people.<sup>22</sup> The event highlighted the lack of oversight by the Hungarian government in dam-building standards as a whole, as well as the severe impact that such standards have on the right to water.<sup>23</sup> Section IV of this report suggests the obligations Hungary would have to remedy the extraterritorial human rights violations caused by this toxic spill.

b. Pollution of Extraterritorial Waters: The Gulf of Mexico

In April 2010, the explosion of the Deepwater Horizon oil rig, located in the Gulf of Mexico, and leased to British company British Petroleum (BP), led to 87 days of oil gushing from the sea floor.<sup>24</sup> In addition to killing 11 workers, the calamity caused 170 million gallons of oil to spill, which gravely impacted the wildlife of the region, as well as the livelihood of thousands of people.<sup>25</sup>

Luckily for those harmed by the spill (primarily U.S. citizens), BP has offices in the United States, which gave victims a jurisdictional basis to file thousands of lawsuits in U.S. courts against BP and affiliated organizations.<sup>26</sup> The company has inevitably been charged with billions of dollars in damages relating to activities leading up to the spill, as well as their failure to mitigate harm thereafter.<sup>27</sup>

---

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> New York Times, *Gulf Spill is the Largest of Its Kind*, available at [http://www.nytimes.com/2010/08/03/us/03spill.html?\\_r=2&fta=y&](http://www.nytimes.com/2010/08/03/us/03spill.html?_r=2&fta=y&) (2 Aug. 2010).

<sup>25</sup> NRDC, *Disaster in the Gulf*, <http://www.nrdc.org/energy/gulfspill/> (accessed 24 February 2015).

<sup>26</sup> Bloomberg, *Worst Case BP Ruling on Gulf Spill Means Billions More in Penalties*, available at <http://www.bloomberg.com/news/2014-09-04/bp-found-grossly-negligent-in-2010-gulf-of-mexico-spill.html> (4 Sept. 2014).

<sup>27</sup> Id.

Despite BP's liability, an issue remains as to whether Britain, the State whose laws govern the company, has obligations to both regulate BP's activity and hold them accountable for extraterritorial human rights violations. The inquiry into Britain's duties begs the question: What would have happened if the company *had not* had a presence in the U.S., thereby shielding the opportunity of victims to seek recourse in U.S. courts? The answer is proposed in the following section.

#### IV. Extraterritorial Obligations Implicated in International Water Pollution

Given the transboundary nature of water, and the globalized presence of corporations, it follows that States should protect against *all human rights violations* implicated by global water pollution caused by actors under their jurisdiction or control. Indeed, as the Independent Expert on human rights and the environment recognized, "There is no obvious reason why a State should not bear responsibility for actions that...violate its human rights obligations, merely because the harm was felt beyond its borders."<sup>28</sup> However, he states that "the application of...obligations to transboundary environmental harm is not always clear."<sup>29</sup> He cites jurisdiction as one barrier for consensus, as well as the failure of human rights bodies to address obligations for transboundary environmental harm.<sup>30</sup> He also notes that the Special Representative of the Secretary-General on Business and Human Rights has taken a restrictive view on State obligations in the context of transnational corporations.<sup>31</sup>

---

<sup>28</sup> John Knox, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/25/53 at para. 63 (2013).

<sup>29</sup> Id. It is important to note that the Independent Expert is using the word "transboundary" in the same way it is used in this report. Namely, to refer to harm that crosses the border of one State into a neighboring State. Despite his word choice, he goes on to discuss in the same section of his report the application of extraterritorial obligations *in both the transboundary context* as well as a *global context* (i.e. State regulation of transnational corporations in their activities abroad).

<sup>30</sup> Id.

<sup>31</sup> Id. at para. 66.

Despite these barriers, the Independent Expert argues that the legitimacy of extraterritorial obligations is grounded in several human rights sources, including treaty body interpretations, as well as reporting of various human rights experts.<sup>32</sup> The obligations endorsed by these authorities are discussed in the following two sections.

a. State obligation to protect against transboundary harm

To what extent do State obligations to protect against human rights violations transcend State borders? The Special Rapporteur on the right to food affirms that “[t]he duty of States to protect human rights extends to situations that occur outside its national territory.”<sup>33</sup> For example, the Committee on Economic, Social and Cultural Rights in General Comment 15 interpreted the ICESCR as requiring parties to “refrain from actions that interfere, *directly or indirectly*, with the enjoyment of the right to water in *other countries*.”<sup>34</sup> Additionally, the Special Rapporteur on the human right to safe drinking water and sanitation recognized in 2013 that the Maastricht Principles on Extraterritorial Obligations require States to “desist from acts...that create a real risk of nullifying or impairing the enjoyment of economic, social, and cultural rights extraterritorially.”<sup>35</sup> Moreover, she argues that this duty translates directly into State obligation to avoid transboundary water contamination.<sup>36</sup>

Finally, international case law supports the notion that States have obligations to regulate entities that are within their jurisdiction or control. In an early case involving

---

<sup>32</sup> Id. at para. 64.

<sup>33</sup> Olivier De Schutter, *Regulating Transnational Corporations: A Duty under International Human Rights Law*, Contribution of the Special Rapporteur on the Right to Food during the 25<sup>th</sup> Session of Human Rights Council, p. 3, available at <http://www.ohchr.org/Documents/Issues/Food/EcuadorMtgBusinessAndHR.pdf> (March 2014).

<sup>34</sup> The Committee on Economic, Social and Cultural Rights, General Comment 15, *The right to water*, E/C.12/2002/11 at para. 31 (2003).

<sup>35</sup> Catarina de Albuquerque, *Human right to safe drinking water and sanitation*, A/68/264 at para. 46 (2013).

<sup>36</sup> Id.

the Boundary Waters Treaty of 1909,<sup>37</sup> the *Trail Smelter Arbitration* stands for the principle that conduct occurring in one State that causes harm in another imputes liability to the home State for damages flowing from the conduct.<sup>38</sup> In that case, the tribunal held that Canada was liable for agricultural harms in the U.S. caused by sulfur dioxide fumes emanating from a smelter plant within Canadian territory.<sup>39</sup>

Applying this principle to the BP spill results in the conclusion that Britain would have been required to hold BP accountable for its extraterritorial human rights violations, for instance, by providing a forum for victims to state claims.<sup>40</sup> This deduction is supported by the fact that international environmental law instruments dictate that States must provide effective remedies for human rights violations caused by environmentally harmful activities.<sup>41</sup> Moreover, the *Trail Smelter* holding is similarly applicable to the Danube River spill, yielding the conclusion that Hungary must regulate dams within their jurisdiction or control to avoid causing transboundary harm, as well as provide an effective remedy to victims.

b. State obligation to regulate extraterritorial activity of non-State actors

The Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011,<sup>42</sup> is widely considered the most authoritative UN source on the human rights obligations of States and corporations relating to business

---

<sup>37</sup> International Joint Commission, *Boundary Waters Treaty*, available at [http://www.ijc.org/en/\\_BWT](http://www.ijc.org/en/_BWT) (11 Jan. 1909).

<sup>38</sup> C. Chatterjee and A. Lefcovitch, Issue 84, *The Gulf of Mexico oil disaster*, Amicus Curiae, 17-24 at 23 (2010).

<sup>39</sup> Id. at 23.

<sup>40</sup> Id. It is important to note the distinction that in *Trail Smelter*, the harm flowed directly from activities within Canada's jurisdiction, whereas BP's conduct did not "originate" in Britain. However, *Trail Smelter* calls for accountability of States pertaining to activities within their domain or control, which is applicable to BP.

<sup>41</sup> See Report of Independent Expert, *supra* note 28 at para. 43; see also Rio Declaration on Environment and Development, Principle 10 (June 1992): "Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

<sup>42</sup> Human Rights Council, Resolution on "*Human rights and transnational corporations and other business enterprises*," A/HRC/17/31 (2011).

activities.<sup>43</sup> The Principles embody a “Protect, Respect, and Remedy” model, dictating that: 1) States have a responsibility to *protect* human rights; 2) business enterprises, as specialized organs of society, are required to *respect* human rights; and 3) rights and obligations must be matched by appropriate *remedies* when breached.<sup>44</sup>

The obligations announced by the Guiding Principles did not create new obligations under international law to provide victims greater access to remedies, but rather provided a framework to reiterate already-existing duties of State and non-State actors in this realm.<sup>45</sup> However, a vast quantity of international legal sources demonstrates that the Guiding Principles in fact fall behind the current state of international law on extraterritorial duties in the area of human rights; namely, the State duty to regulate corporations subject to their jurisdiction or control.<sup>46</sup> For example, Principle 2 provides that “States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.”<sup>47</sup> However, the Principle is qualified by the following:

“At present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory...or jurisdiction. Nor are they generally prohibited from doing so, provided there is a...jurisdictional basis. Within these parameters some human

---

<sup>43</sup> See Contribution of the Special Rapporteur on the Right to Food, *supra* note 33 at p. 1.

<sup>44</sup> Guiding Principles on Business and Human Rights, Annex to A/HRC/17/31 at p. 6 (2011).

<sup>45</sup> See Contribution of the Special Rapporteur on the Right to Food, *supra* note 33 at p. 2.

<sup>46</sup> *Id.* at p. 5. Moreover, it is noteworthy that in 2003, the UN Sub-Commission on the Promotion and Protection of human rights adopted Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights Norms, which provided a comprehensive approach to corporate accountability through binding legal obligations and periodic UN monitoring of corporate efforts to investigate human rights violations. However, the failure the UN Commission on Human Rights to ultimately adopt the Norms contributed to a dangerous roll-back on the progression of corporate accountability. See Connie de la Vega, Amol Mehra, & Alexandra Wong, *Holding Businesses Accountable for Human Rights Violations: Recent Developments and Next Steps* at p. 3, available at <http://library.fes.de/pdf-files/iez/08264.pdf> (July 2011).

<sup>47</sup> See Guiding Principles on Business and Human Rights, *supra* note 44.

rights treaty bodies recommend that...States take steps to prevent abuse abroad by [businesses] within their jurisdiction. There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad.”<sup>48</sup>

This qualification seriously ignores an explicit recognition by several human rights sources that States have obligations to control the conduct of non-State actors where their extraterritorial activity may lead to human rights violations.<sup>49</sup> As noted earlier, the Committee on Economic, Social and Cultural Rights takes a strong position on State obligation to avoid human rights violations extraterritorially in addition to in-country violations.<sup>50</sup> Specifically, they affirmed in General Comment 14 that States should prevent third parties from violating economic, social and cultural rights “if they are able to influence [them] by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law.”<sup>51</sup> The Committee on the Elimination of Racial Discrimination has similarly called upon States to regulate third parties within their territory to prevent them from inflicting extraterritorial harm.<sup>52</sup> For example, the Committee called upon Canada in 2007 to “[t]ake appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada.”<sup>53</sup>

The foregoing sources demonstrate that the Guiding Principles on Business and Human Rights insufficiently capture the corpus of international human rights law that

---

<sup>48</sup> See Guiding Principles on Business and Human Rights at Commentary to Principle 2, *supra* note 44.

<sup>49</sup> See Contribution of the Special Rapporteur on the Right to Food, *supra* note 33 at p. 4.

<sup>50</sup> *Supra* note 34.

<sup>51</sup> The Committee on Economic, Social and Cultural Rights, General Comment 14, *The right to the highest attainable standard of health*, E/C.12/2000/4 at para. 39 (2000).

<sup>52</sup> See Contribution of the Special Rapporteur on the Right to Food, *supra* note 33 at p. 4.

<sup>53</sup> The Committee on the Elimination of Racial Discrimination, Concluding Observations: Canada, CERD/C/CAN/CO/18 at para. 17 (2007).

affirms that State regulation of transnational corporations in their extraterritorial activities is included within the umbrella *State duty to protect*. As such, the circulation of the Guiding Principles as the governing authority for human rights-friendly business standards, without more, dangerously ignores existing State extraterritorial obligations at the price of further infringement of human rights. This concern is particularly threatening in the area of water pollution, given the expansive list of industrial activities that contribute to this form of environmental degradation.<sup>54</sup>

Recall the question posed in Section III of what would have happened in the BP oil spill case if the company was not located in the United States. The aforementioned obligations make clear that Britain would have had a responsibility, as the country able to “influence [BP] by the way of legal or political means,”<sup>55</sup> to “[t]ake appropriate legislative or administrative measures”<sup>56</sup> to provide a redress of harm to the victims.<sup>57</sup> In order to uphold the prevailing standard that human rights obligations transcend State borders, the international community must continuously endorse the principle that States have the extraterritorial duty to regulate transnational corporations subject to their jurisdiction or control, as well as a duty to provide access to remedies.

## V. Good Practices

The damages caused by international water pollution, including monetary losses, extensive human rights violations, and in the worst cases, loss of life, demonstrate the necessity of promoting good practices to prevent and mitigate transboundary and

---

<sup>54</sup> Water Pollution Guide, *Industrial Water and Water Pollution*, available at <http://www.water-pollution.org.uk/industrialwaste.html> (accessed 19 Feb. 2015).

<sup>55</sup> *Supra* note 51.

<sup>56</sup> *Supra* note 53.

<sup>57</sup> See Guiding Principles on Business and Human Rights, *supra* note 44.

extraterritorial harm in this context. As wisely recognized by UN Water, attention to transboundary water management presents a unique opportunity for mutual State benefit in several areas, including trade, economic development, food security, political security, poverty alleviation, and regional integration.<sup>58</sup> This report argues that human rights promotion is an additional benefit that can be achieved by addressing transboundary water pollution. Moreover, States who commit to regulating extraterritorial activity of transnational corporations under their control will ultimately open the door to the respecting of human rights by foreign companies operating within their own territory. The following sections demonstrate States who have complied with or taken responsibility for their extraterritorial obligations.

a. Mitigating Transboundary Environmental Harm

A good example of State attention to transboundary harm is the proactive approach codified in the Espoo Convention on Environmental Impact Assessment in a Transboundary Context.<sup>59</sup> The Convention obliges States to notify and consult with each other on all major projects likely to have a significant environmental impact across State borders.<sup>60</sup> An example of successful application of the Convention was the license renewal and modernization of the Chancy-Pougny hydropower station along the Rhône River, which is shared by France and Switzerland.<sup>61</sup> The project involved replacement of outdated turbines with new materials, construction of a fishway to assist in stabilizing natural migration, and implementation of measures to

---

<sup>58</sup> See *Transboundary Waters: Sharing Benefits, Sharing Responsibilities*, supra note 18 at p. 3.

<sup>59</sup> Espoo Convention on Environmental Impact Assessment, available at [http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/Espoo\\_Convention\\_authentic\\_ENG.pdf](http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/Espoo_Convention_authentic_ENG.pdf) (1991). As of January 2015, there were 45 parties to the Convention, including most European States.

<sup>60</sup> UN Economic Commission for Europe, *Introduction to the Espoo Convention*, available at <http://www.unece.org/env/eia/eia.html> (accessed 20 Feb. 2015).

<sup>61</sup> UN Economic Commission for Europe, *Chancy-Pougny Hydropower Station*, available at <http://www.unece.org/env/eia/pubs/factsheet4.html> (accessed 20 Feb. 2015).

stop erosion of the Rhône streambed.<sup>62</sup> A transboundary environmental impact assessment began in 1994 and involved consultation with both France and Switzerland, who had provided licenses to Société des forces motrices de Chancy-Pougny (SFMCP), the company in control of the dam.<sup>63</sup> Eventually, after authorities in both countries had reviewed SFMCP reports and made adjustments in accordance with their respective laws, the final version of the assessment was completed in 1998.<sup>64</sup> Given the Rhône River's supply of water and energy to both countries, it is easy to imagine the potential legal and political battles that could have ensued in the absence of this collaborative process. The cooperation of France and Switzerland in this example demonstrates how the Espoo Convention compels States to confront transboundary effects that may adversely impact human rights *before they occur*.

b. Regulation and Accountability of Extraterritorial Activity

In light of its endorsement of the Guiding Principles on Business and Human Rights,<sup>65</sup> the Human Rights Council in June 2014 encouraged States to develop National Action Plans (NAPs) to implement the Guiding Principles at the national level.<sup>66</sup> At the time, some States had already begun working on NAPs at the request

---

<sup>62</sup> Id.

<sup>63</sup> Id.

<sup>64</sup> Id.

<sup>65</sup> *Supra* note 42.

<sup>66</sup> Business and Human Rights Resource Centre, *DIHR & ICAR release report on National Action Plans on business & human rights*, available at <http://business-humanrights.org/en/dihr-icar-release-report-on-national-action-plans-on-business-human-rights#c103422> (1 July 2014). See also Human Rights Council, Resolution on “*Human rights and transnational corporations and other business enterprises*,” A/HRC/26/L.1 at para 2 (23 June 2014).

of the European Union or the Council of Europe.<sup>67</sup> To date, six countries have created a NAP, and several others have already begun the process.<sup>68</sup>

As noted earlier, the inherent gap in human rights protection reflected in the Guiding Principles suggests that several NAPs will likely fall short of the standard advocated for in this paper; namely, the recognition that States are obligated to address extraterritorial human rights violations stemming from activities within their jurisdiction or control, as well as regulate and hold accountable transnational corporations domiciled in their territory.<sup>69</sup> Despite the potential shortcomings of future NAPs, Britain included in its NAP an impressive emphasis on human rights obligations of businesses operating abroad.<sup>70</sup> For example, in its section on corporate responsibilities to respect human rights,<sup>71</sup> Britain's NAP declares that its companies should "*treat as a legal compliance issue the risk of causing or contributing to gross human rights abuses wherever they operate.*"<sup>72</sup> The NAP mentions this commitment to holding companies accountable for extraterritorial activities by noting the UK Bribery Act, which makes UK-based companies liable for acts of bribery committed anywhere in the world.<sup>73</sup> Although unrelated to water pollution, the example demonstrates the UK's proactive approach regarding transnational corporate

---

<sup>67</sup> The Danish Institute for Human Rights, *National Action Plans on Business and Human Rights*, p. v., available at <http://accountabilityroundtable.org/wp-content/uploads/2014/06/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf> (June 2014).

<sup>68</sup> Business and Human Rights Resource Centre, *National Action Plans*, available at <http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans> (accessed 2 Feb. 2015).

<sup>69</sup> See Section IV of this report.

<sup>70</sup> See National Action Plans on Business and Human Rights, *supra* note 67 at p. 12.

<sup>71</sup> See Pillar II of Guiding Principles, *supra* note 44.

<sup>72</sup> Britain's National Action Plan, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*, Section 3, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236901/BHR\\_Action\\_Plan\\_-\\_final\\_online\\_version\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf) (September 2013).

<sup>73</sup> *Id.* at Section 2.

accountability in general. As such, the approach is a useful model for promoting State compliance with international obligations to regulate and hold companies accountable for extraterritorial human rights violations.

VI. HRA Recommendations

a. HRA urges the Council to:

1. Recognize the emphasis placed by both the Committee on Economic, Social and Cultural Rights and several Special Procedures to the Human Rights Council on the notion that States have extraterritorial obligations to protect against violations flowing from state and non-state actors, and
2. Request the Working Group on Business to discuss at their November 2015 forum best State practices of holding private companies accountable for extraterritorial activities that negatively impact the environment and human rights, particularly in regard to global water pollution.

b. HRA urges States to:

1. Provide venues for redress of environmental harms inflicted by State and non-state actors under their jurisdiction or control in extraterritorial activities.
2. Adopt a global perspective when tackling water pollution to ensure that harm is addressed within areas where transboundary waters flow.
3. Recognize that State agreements to protect against contamination of transboundary and extraterritorial water provide a wealth of opportunity for economic development, political gain, and regional stability to the mutual benefit of all parties involved.