Contents

About the Editors	iii
Author Acknowledgments	XV
Author Biographies	xix
Author Acknowledgments Author Biographies Introduction Part I Legal Context Chapter 1	xxvii
Dout I	
Part I Legal Context	1
Chapter 1	
All Care, No Responsibility	3
Justine Nolan	
Introduction	3
The State (Not Nonstate) Duty to Protect Human Rights	6
Corporate Responsibility (Not Necessarily Accountability) for Human	
Rights: Soft Law Getting Softer?	11
Grasping at Straws? Alternative Mechanisms to Protect Human Rights	20
Conclusion	25

Chapter 2

Multinational Corporations and Their Responsibilities under International Law	27
Ralph G. Steinhardt	
The George Washington University Law School	
	27
5	29
International Law Recognizes the Legal Responsibilities of	
1	39
Conclusion	50
Chapter 3	
International Human Rights Law Perspectives on the UN Framework and	
Guiding Principles on Business and Human Rights	51
Robert McCorquodale	
Introduction S	51
The State's Duty to Protect Human Rights	53
Extraterritoriality	55
Attribution to a State for Actions of Business Enterprises	59
Corporate Responsibility to Respect	64
Corporate Social Responsibility	65
Responsibility 6	66
Due Diligence	68
Access to Remedy	72
States Remedies	72
Business Enterprises Remedies	75
	77
Chapter 4	
International Law's Invisible Hand and the Future of Corporate Accountability	
	79
Penelope Simons	
Associate Professor, University of Ottawa, Faculty	
of Law—Common Law Section, Canada	
	79
	86
The "Protect, Respect and Remedy" Policy Framework, the Guiding	
	88
	94

Cont	'ENTS V	/11
The Postcolonial Era and Economic Governance	9	5
International Financial Institutions and Human Rights Governa International Trade and Investment Law: Entrenching Liberaliz		7
Measures	10	1
Feminist Insights: Corporate Actors and the Structure of Internat Law	tional 10	5
International Law's Invisible Hand and the Future of Corporate		
Human Rights Accountability	11	1
Conclusion	11	8
Chapter 5		
Trade and Investment Arrangements and Labor Rights	12	1
Jeffrey S. Vogt Introduction Free Trade Agreements The United States (2001 to Present) The Bush Administration Labor Template		
Introduction	12	_
Free Trade Agreements	12	
The United States (2001 to Present)	12	2
The Bush Administration Labor Template	12	
The compromise of May 10, 2007	12	
An Obama Labor Template?	12	
What Have These Agreements Accomplished?	13	0
Preratification/Certification	13	
Postratification	13	
Labor Rights in FTAs outside of the United States	14	
Canada	14	-
European Union	14	-
Conclusions	14	
Unilateral Trade Preferences	14	-
The United States	14	
GSP	14	
Case 1: Bangladesh	14	
Case 2: Uzbekistan	15	
Other U.S. Preference Programs	15	
Haiti	15	
The European Union	15	
Evolution of Substantive Obligations	15	
In Practice	15	
EU GSP Reform	16	
The United States versus the European Union	16	
Bilateral Investment Treaties	16	3

Promoting Workers' Rights	164
The United States	164
In Practice	168
European States/European Union	168
A New EU Approach?	170
BITs Used to Frustrate Workers' Rights	171
Full Protection and Security	171
Fair and Equitable Treatment and Expropriation	172
Stabilization Clauses	173
Conclusion	174

Part II **Domestic Policy, Legislation, and Litigation** 177 Chapter 6 Human Rights Litigation in U.S. Courts against Individuals and Corporations 179 Beth Stephens Introduction 179 The Alien Tort Statute: Human Rights Litigation in U.S. Courts 180 The Early History of the ATS 180 The Filártiga Case 182 From Filártiga to Sosa 183 An Overview of ATS Litigation 184 The Multifaceted Goals of Human Rights Litigants 185 Corporate-Defendent Litigation under the Alien Tort Statute 187 Recognizing Private-Party Liability under the ATS 187 Corporate-Defendant Litigation, from *Unocal* through *Kiobel* 188 The Unresolved Debates over Alien Tort Statute Liability 190 Can Corporations Be Sued under the ATS? 190 Does the ATS Apply to Conduct That Occurs in the Territory of Another Sovereign State? 192 What Standard Governs Whether a Defendant Can Be Held Liable for Aiding and Abetting Violations of International Law? 193 Determining the Proper Forum for ATS Cases 194 U.S. Human Rights Litigation and the Global Accountability Movement 196 Why Are Civil Human Rights Lawsuits Feasible in U.S. Courts? 196 Analogous Human Rights Claims in Other Systems 198 Conclusion 198

С	Contents	ix
Chapter 7		
The Implications of <i>Kiobel</i> for Corporate Accountability Litigation under	• the	
Alien Tort Statute	tho	201
Paul Hoffman		
Introduction		201
The Kiobel Framework		202
Background		202
The Roberts Majority Opinion		204
The Alito Concurrence		208
The Breyer Concurrence		208
Some General Observations		209
The Issue of Corporate Liability		212
The Application of the <i>Kiobel</i> Presumption		213
Categorical or Case-by-Case Analysis		213
Cases against U.S. Defendants		216
Cases Involving Both Domestic and Extraterritorial Conduct		218
The Lessons of <i>Morrison</i>		218
Cases Advancing U.S. Foreign Policy Interests		219
No Safe Haven		220
The Transitory Tort Doctrine		222
The Future Direction of Corporate Complicity Litigation		223
Conclusion		225
Chapter 8		
Environmental Litigation against Corporations: Where Now?		227
Neil A.F. Popović		
Framing the Issue(s)		227
Defining the Problem (Factually)		228
Defining the Challenge (Legally)		228
The Range of (Litigation) Approaches and Their Varying Effectiv	reness	229
The Alien Tort Statute		229
Direct Attack—Environmental Harm as Human Rights Violation	l	230
Indirect Attack—Environmental Harms Associated with Human	ı Rights	
Violations		233
"Mixed" Claims		235
Aiding and Abetting		237
The Special Problem of Corporate Liability		238
Justiciability Issues		240
Procedural Hurdles—Jurisdiction, Venue, and Extraterritoriality	1	242