

# **The Role of Corporates as Non-State Actors in Supporting Ongoing Responses to the COVID-19 Outbreak**

**Zahra Moshref Javadi**

DOI: 10.22034/IRUNS.2020.126540

Received: 1 February 2020

Accepted: 23 May 2020

## **Abstract**

On 30 January 2020, the World Health Organization referred to the COVID-19 outbreak as a public health emergency of international concern. Since then, many governments have been trying to set rules to control the situation. However, it was clear from the outset that they would fail to tackle this problem if non-state actors such as businesses or companies did not take appropriate measures in that respect. Nevertheless, many businesses have either refused to comply with the relevant restrictions or sought to change them. If a company does not provide the facilities required for this situation or submits a false report concerning the essential measures, the world may face a chain of events impacts of which would be global. Therefore, the international community might consider specific responsibilities that should be shouldered by these actors. This challenge raises profound questions about the role that corporates, as non-state actors, may play in cooperating with states and international organizations. This article argues that, under these circumstances, these non-state actors bear responsibility for their failure to implement the required measures.

**Keywords:** social responsibility, due diligence, corporates, non-state actors, COVID-19

---

\* PhD Candidate, Faculty of Law and Political Science, Allameh Tabataba'i University. All websites accessed 25 April 2021.

## Introduction

There are various approaches regarding the “international legal personality” and “subjectivity” of non-state actors in international law. This matter has been developed from the state-centric to subject matter of international law concerning “law-taker” and “law-maker”. This issue has been well-established where the situation involves a non-international armed conflict, terrorist attacks or sanctions – that is, when the main party is a non-state actor. With the advent of international humanitarian law and international human rights law, the issue of binding international law on actors other than states became a major challenge in the legal literature.<sup>1</sup> In other words, these events provided a basis for recognizing non-state actors and developing their status. From this perspective, another example in the international system could be the outbreak of Covid-19, which has become a global issue affecting not only states benefits, but also the interests of the international community as a whole. Common global interest not only requires solidarity among different actors, it requires a new set of rights and obligations to be applied to them.

COVID-19 has precipitated a global crisis during which many states and organizations are seeking to establish specific sets of rules to protect people. However, it has become a formidable challenge to states and made them shoulder different responsibilities. How can the international community tackle this global crisis without considering other factors and actors? Can we consider states the only actors having an obligation to fight COVID-19? Could non-state actors, such as businesses or companies, ignore this crisis and remain passive having no duties or responsibilities toward the international community? As a

---

<sup>1</sup> Jean D’ASPREMONT, Participant in the International Legal System Multiple perspective on non-state actors in international law, 1<sup>st</sup> ed. (London: Routledge, 2011), at 5.

matter of fact, all non-state actors, even those who are deemed illegal, have been endeavoring to protect their policies and mitigate the impacts of the virus on their systems. For instance, companies such as Zillow, Google, and Twitter have adopted the work-from-home policy.<sup>2</sup> Even armed non-state actors, which may question the foundation of international law as well as the relevant obligations, have attempted to comply with the fundamental rules that protect their community from the risks of the pandemic.<sup>3</sup> Nevertheless, the fact that the pandemic has continued to impact people around the world would mean that more and more individuals and businesses face problems as a result of the rules restricting their acts. For example, when Tesla's CEO, Elon Musk, tweeted that his company would start operating in Fremont, CA in disobedience of a local Alameda County stay-at-home order,<sup>4</sup> this raised again the question of what the role of non-state actors is during the COVID-19 pandemic.

Nonetheless, that is not the whole story. Indeed, COVID-19 has demonstrated that all of us are living in a global village where our acts affect each other. Thus, solidarity is vital in the international system. This solidarity could have three elements: helping each other to achieve a common objective, equality of the partners and mutuality of

---

<sup>2</sup> INSIDER, 21 major companies that have announced employees can work remotely long-term. Available at: <https://www.businessinsider.com/companies-asking-employees-to-work-from-home-due-to-coronavirus-2020#in-april-zillow-ceo-rich-barton-announced-plans-to-work-from-home-through-the-end-of-2020-the-company-has-since-extended-that-indefinitely-on-july-29-the-company-announced-it-would-offer-employees-the-ability-to-work-from-home-permanently-1>.

<sup>3</sup> As an example, the Islamic State of Iraq and Syria (ISIS) issued guidelines advising terrorists on how to tackle Covid-19, including a travel ban, washing hands, and putting their faith in God. Available at: <https://www.dailymail.co.uk/news/article-8108525/ISIS-issues-advice-terrorists-tackle-coronavirus-including-putting-faith-God.html>.

<sup>4</sup> Elon MUSK, Tweet. Available at: <https://twitter.com/elonmusk/status/1259945593805221891?s=20>.

obligations.<sup>5</sup> Thus, without global solidarity and support, many people will be deprived of international efforts that enable them to contain the virus. Now is the time for solidarity, not elimination.

The spread of COVID-19<sup>6</sup> suggests that this issue could not be solved solely by states; it requires both states and non-state actors to act and accept related duties and responsibilities. This means that there is a horizontal relationship between these actors; this calls for reasonable measures of all parties. Based on their roles, non-state actors could have specific rights and duties.

Global crises such as the COVID-19 pandemic could emerge on various occasions as they have occurred over different eras. For instance, the recognition of a non-international armed conflict is a case in which not only are states responsible, but also certain obligations are imposed on non-state actors.<sup>7</sup> However, the issue in question is beyond war. It is a matter of the international system, in which decisions should be made on the accountability of individuals in different scenarios. In this sense, tackling COVID-19 pandemic can be viewed as a pilot project and a touchstone to find the status of non-state actors in the system.

Businesses are found to be the one of the main sectors affected by the COVID-19 pandemic. Accordingly, many micro and small and medium-sized enterprises such as tourism companies have lost their revenues. For example, the World Tourism Organization (UNWTO) estimated that international tourist arrivals could decline by 20-30% in 2020.<sup>8</sup> Hence, the affected enterprises and industries might attempt to

---

<sup>5</sup> Rüdiger WOLFRUM, Chie KOJIMA, eds., *Solidarity: A Structural Principle of International Law*, (Heidelberg: Springer, 2010), at 77.

<sup>6</sup> 34,495,176 confirmed cases and 1,025,729 deaths until 03/10/2020). Available at: <https://covid19.who.int/>.

<sup>7</sup> For example, see Common Article 3, Geneva Conventions, 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 UNTS 609 (Entered into force 7 December 1978) [Protocol II].

<sup>8</sup> The World Tourism Organization (UNWTO), *International Tourist Arrivals Could Fall by 20-30% In 2020*, March 2020. Available at: <https://www.unwto.org/news/international-tourism-arrivals-could-fall-in-2020>.

tackle their problems by taking various measures; these measures, however, do not always comply with the rules and obligations that could help them fight COVID-19 in order to avoid bankruptcy. Given that these measures could lead to complicated problems, it is important to determine the rights and obligations of these enterprises and industries.

The goal of this article is to shed some light on the rights and duties of corporates in global crises such as the COVID-19 pandemic. This article raises two important questions: what are the rights and responsibility of corporates regarding COVID-19? How are their statuses defined in these circumstances? The article will answer these two questions through an analysis of the notion and status of non-state actors in international law, accompanied by an examination of the rights and responsibilities of corporates during the pandemic.

## **I. General Status of Non-State Actors in International Law**

Although, in principle, it is possible to apply the term ‘non-state actor’ to all actors who do not have governmental elements but are involved in international relations,<sup>9</sup> it is used herein to refer to legal entities of business and corporations having no governmental affiliations.

Bearing in mind that much has been written on the notion of international legal personality, it is important to note that the status of non-state actors is not well-defined under international law. There are several theories and approaches on this subject. Examples include the state-only conception which recognizes states as the only international legal persons, the posteriori conception under which the legal personality of any entity depends solely on the content of international norm addressing it, the individualistic conception, and the participant

---

<sup>9</sup> Markus WAGNER, “Non-State Actors” (July 2013) Max Planck Encyclopedia of Public International Law [MPEPIL], para 1. Available at: <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1445>.

conception reflecting that there are no international legal persons, only participants in the international legal order.<sup>10</sup> This article neither approves nor refutes these approaches.

Historically speaking, since the Treaty of Westphalia, states have been defined as the subject or the main actor of international law that have rights, obligations, and responsibilities against violation of obligations.<sup>11</sup> It laid down the basis to justify the claim that states could possess international legal personality.<sup>12</sup> The state-centric approach could lead to a structure under which other actors would be recognized as the objects or law-takers of these situations or as addressees. This approach was advanced by the advisory opinion of the International Court of Justice (ICJ) in the *Reparation for Injuries Suffered in The Service of the United Nations* case.<sup>13</sup> Although the Court specified that it would be impossible to consider the UN, an international organization, a state, it nonetheless held that it is an “international person.”<sup>14</sup> Additionally, the Court considered the needs of the international community and the nature of the entity’s functions to determine whether the UN had international legal personality.<sup>15</sup> Under the functional approach, one can understand an entity as having

---

<sup>10</sup> Astrid KJELDGAARD-PEDERSEN, *the International Legal Personality of the Individual*, 1<sup>st</sup> ed. (United Kingdom: Oxford University Press, 2018), at 14.

<sup>11</sup> The Peace of Westphalia, concluded in 1648 in Münster (Germany), ended the Thirty Years War, which started with an anti-Habsburg revolt in Bohemia in 1618 but became an entanglement of different conflicts concerning the constitution of the Holy Roman Empire, religion, and the state system of Europe. Available at: <https://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0073.xml>.

<sup>12</sup> Eduardo SZAZI, *NGOS: Legitimate Subjects of International Law*, 1<sup>st</sup> ed. (Netherlands: Leiden University Press, 2012), at 204.

<sup>13</sup> *Reparation for Injuries Suffered in The Service of the United Nations Case*, Advisory Opinion, [11 April 1949] I.C.J. Rep.

<sup>14</sup> *Ibid.*, at 9.

<sup>15</sup> William Tomas WORSTER, “Relative International Legal Personality of Non-State Actors” (2016) *Brooklyn Journal of International Law*, Vol. 42, No. 1, at 209.

international legal personality to the extent necessary to execute its tasks.<sup>16</sup> The Court observed that “[The UN] is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.”<sup>17</sup>

*The Court also stated:*

the subjects of law in any legal systems are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the community needs. Throughout the history, the development of international law has been influenced by the requirements of international life, and the ever-increasing collective activities of states have already multiplied the cases of actions upon the international plan by certain entities which are not states.<sup>18</sup>

It therefore follows that the ICJ has set out broad principles that could be applied to non-state actors, meaning that states are not the only entities bearing international legal personality.<sup>19</sup> Thus, the role and status of non-state actors gradually shifted the attention of the international system. Observers of a post-Westphalian international system note a growth in the influence and power of businesses and incapability on the part of governments to appropriately govern corporate operations and impacts.<sup>20</sup>

Nowadays, the international system requirements cannot be defined and supplied without considering other actors excluded from the body of states. For example, fragmentation in international law and emersion of different institutions and subjects such as the International Centre for Settlement of Investment Disputes (ICSID), World Trade Organization (WTO), international environmental law, international humanitarian

---

<sup>16</sup> Ibid. at 220.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid. at 8.

<sup>19</sup> NGOS: Legitimate Subjects of International Law, *supra* note 12, at 207.

<sup>20</sup> Denis G ARNOLD, “Corporations and Human Rights Obligations’ (2016) *Business and Human Rights Journal* Vol 1:2, at 266.

law, and sustainable development bestow a novel status upon non-state actors that mainly corporate within the context of the international system. Similarly, the 2030 Agenda for Sustainable Development required governments, parliaments, and the UN as well as other international institutions, local authorities, indigenous people, civil societies, businesses, private sectors, scientific and academic communities, and everyone to follow the goals.<sup>21</sup> Article 1 (2) of the ICSID Convention provides facilities for investment disputes between states and nationals of other countries such as companies to settle their disputes. It has made it clear that the roles, rights, and duties of the private international investment have been recognized.<sup>22</sup>

There is no denying that non-state actors have contributed to the formation and modification of various rules, principles, decisions, soft laws, and non-legal norms. There are multiple areas and issues where the system could not ignore the roles of other actors. For example, the tripartite structure of the International Labor Organization is an area in which the governments and the socioeconomic partners of the member states can freely and openly debate and elaborate labor standards and policies. The International Labor Conference, consisting of two government delegates, an employer delegate, a worker delegate, and their respective advisers, adopt international labor standards through conventions and recommendations.<sup>23</sup> This approach demonstrates that the international system would consider new requirements and requests in different areas, which are not merely based on the practice of states. Like states, non-state actors such as companies, individuals, and non-governmental organizations must be regarded as participants on

---

<sup>21</sup> Transforming Our World: The 2030 Agenda for Sustainable Development, UN. Org A/Res/70/1, at Para 52.

<sup>22</sup> Convention on the Settlement of Investment Disputes between states and Nationals of Other States, 18 March 1965, 575 UNTS 159 (entered into force on October 14, 1966).

<sup>23</sup> ILO, About the ILC, Available at: <https://www.ilo.org/ilc/AbouttheILC/lang-en/index.htm>.



different occasions such as the outbreak of a global pandemic. It does not mean that they would have the same rights or obligations but that they should be considered principal and responsible.

## **II. Status of Corporates in Crises like COVID-19**

According to statistics, the COVID-19 pandemic has affected different aspects of the international community going beyond states. In June 2020, the World Bank declared that the COVID-19 pandemic would cause a 6.2% decline in global per capita GDP, making it the deepest global recession since the 1945-1946 period.<sup>24</sup> In addition, in its April forecast, the World Trade Organization (WTO) indicated that the volume of global merchandise trade in the optimistic scenario would be -12.9%.<sup>25</sup> At the same time, the loss of revenues in 2020 as a result of the COVID-19 outbreak has forced many individuals into unemployment and companies into bankruptcy, destroying valuable economic relationships that will take time to rebuild.<sup>26</sup> Many companies have filed for bankruptcy in 2020. For example, ALDO Group, a Montreal-based shoe retailer, operating at nearly 3,000 locations in more than 100 countries, filed bankruptcy.<sup>27</sup> Some companies are downsizing their workforce. British Airways announced, at the end of April, that it would cut up to 12,000 jobs from its 42,000-strong workforce. Likewise, Anglo-German travel firm Tui declared that it

---

<sup>24</sup> Global Economic Prospects, World Bank Group, June 8, 2020 at 15. Available at: <https://www.worldbank.org/en/publication/global-economic-prospects>.

<sup>25</sup> WTO, Trade Set to Plunge as COVID-19 Pandemic Upends Global Economy, 8 April 2020. Available at: [https://www.wto.org/english/news\\_e/pres20\\_e/pr855\\_e.htm](https://www.wto.org/english/news_e/pres20_e/pr855_e.htm).

<sup>26</sup> World Bank Group, supra note 24, at 42.

<sup>27</sup> Hank TUCKER, "Coronavirus Bankruptcy Tracker: These Major Companies Are Failing Amid the Shutdown". Available at: <https://www.forbes.com/sites/hanktucker/2020/05/03/coronavirus-bankruptcy-tracker-these-major-companies-are-failing-amid-the-shutdown/#5da03cc83425>.

might cut 8,000 jobs worldwide as it wanted to reduce its overhead cost.<sup>28</sup> These facts illustrate how global crises could become an issue for all actors, including individuals and businesses. Thus, such crises may not be overcome by the sole acts and obligations of states, it requires that non-state actors take the necessary measures and fulfill their obligations as well.

Another important issue to consider is the impact of the COVID-19 pandemic on human rights, especially economic and social rights. Unemployment and food insecurity, widespread closure of schools leading to the interruption of education among more than 1 billion children, reduction of care, increasing domestic violence, lack of access to healthcare, and insufficient access to relevant information have been on the rise in this pandemic.<sup>29</sup> It is therefore clear that states are not the only actors that must respect these rights; business enterprises, too, must respect human rights. They must refrain from infringing on the human rights of others, and instead report adverse human rights impacts with which they are involved.<sup>30</sup>

The international community could not reasonably refer to individuals only as objects or law-takers in the situation where a considerable number of them play a vital role. Based on the impact of non-state actors on a legal regime, some human rights and international humanitarian law treaties allow them to become parties to agreements. For example, Articles 4(3) and 38 of the Convention on the Rights of Persons with Disabilities and Article 96(3) of the Protocol Additional

---

<sup>28</sup> Pascale DAVIES, Alice TIDEY, “Coronavirus job cuts: Which companies in Europe are slashing their workforces because of COVID-19?” Available at: <https://www.euronews.com/2020/07/06/coronavirus-job-cuts-which-companies-in-europe-are-slashing-their-workforces-because-of-co>. See also: Tui Group, *Half-Year Financial Report 1 Oct. 2019- 31 March 2020 (13 May 2020)*, at 6 and 7.

<sup>29</sup> United Nations, COVID-19 and Human Rights We are all in this together, April 2020, at 8. Available at: [https://www.un.org/sites/un2.un.org/files/un\\_policy\\_brief\\_on\\_human\\_rights\\_and\\_covid\\_23\\_april\\_2020.pdf](https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf).

<sup>30</sup> Denis G ARNOLD, *supra* note 20, at 268.

to the Geneva Conventions of August 12, 1949, related to the protection of victims of international armed conflicts (Protocol I), 1977, recognized the status in which non-state actors could be qualified as the main subject of the rules.

By nature, these events and impacts would suggest that there is a non-state or non-governmental element in every stage. The economic climate depends on various non-state entities, employers, employees, and businesses divided from their states; since, they contribute to the international trade and economy. Like state entities, non-state actors such as companies should comply with different principles of international law. If the topic of international legal personality is considered relevant to the creation of rights and obligations in international law, it is appropriate as a rule of procedure. It explains who can bring a case to which courts. It does not change the rights, obligations, and responsibilities of non-state actors in international law.<sup>31</sup> Codification of guidelines about the commitment of businesses by the Organization for Economic Co-operation and Development (OECD), the tripartite structure of ILO, and the mission on UN Global Compact reflect the rights and obligations of non-state actors. Therefore, when a crisis such as COVID-19 impacts these non-state actors, it would be a mistake to assume that they have no roles, rights, and duties. In other words, to the extent that these actors are affected, they can be subject to rights and obligations, for they are recognized as actors.

Moreover, human rights form the norms and rules which control the way states and non-state actors treat individuals and groups based on principles concerning what society considers essential to a proper life.<sup>32</sup>

---

<sup>31</sup> Andrew CLAPHAM, "Rethinking the Role of Non-State Actors under International Law". Available at: [https://legal.un.org/avl/ls/Clapham\\_IL.html#](https://legal.un.org/avl/ls/Clapham_IL.html#).

<sup>32</sup> Marks STEPHEN P. "Human Rights: A Brief Introduction. Working Paper", Harvard School of Public Health, Working Paper, 2014, at 1. Available at:

According to John Ruggie, the responsibility for respecting human rights for non-state actors such as business entities refers to the internationally recognized human rights.<sup>33</sup> As he states:

The responsibility for respecting human rights is a global standard of the expected conduct for all business enterprises wherever they operate. It exists independently of states' abilities and/or willingness to fulfill their own obligations of human rights and does not diminish those obligations. It also exists over and above the compliance with national laws and regulations protecting human rights.<sup>34</sup>

Their main task is to regulate the interplay between individuals and power structures.<sup>35</sup> By definition, "governments and other duty-bearers are under an obligation to respect, protect, and fulfill human rights, which form the basis for legal entitlements and remedies in case of non-fulfillment."<sup>36</sup> Individuals are the main concern and subject of human rights. In fact, human rights have been established to protect individuals. However, the COVID-19 pandemic, like many other crises, does not only concern the relationship between governments and people. It depends partly on the acts of each participant worldwide. Thus, it is obvious that respecting or violating human rights as a consequence of the COVID-19 pandemic can be a matter of concern not only for states and their leaders but also for non-state actors.

An assessment of the activities of non-state actors alongside their conditions and concerns reveal that various non-state actors have played an important role since the outbreak of COVID-19. For example, the

---

<https://dash.harvard.edu/bitstream/handle/1/23586712/Human%20RightsA%20Brief%20Introduction,%202014%20ed.pdf?sequence=1>.

<sup>33</sup> Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John RUGGIE, A/HRC/17/31, 2011, at 13.

<sup>34</sup> Ibid.

<sup>35</sup> United Nations (Office of the High Commissioner for Human Rights, Human Rights Handbook for Parliamentarians N° 26, 2016, at 19.

<sup>36</sup> Ibid.

World Health Organization (WHO) has issued various guidelines to support businesses during the pandemic, although states have set some rules to decrease the impact of the pandemic on businesses. It is therefore reasonable to argue that, the impacts of the measures taken by corporations and business and their major roles concerning the pandemic could not be ignored. This means that relevant rights and obligations can be defined and reflected in this respect at the same time that these actors influence the spread or containment of this pandemic.

### **III. Rights of Non-State Actors in the COVID-19 Pandemic**

Regarding the COVID-19 pandemic, there is a list of rights for different groups as well as lists of obligations and responsibilities for other actors, especially those of states against the international community and individuals. The rights and obligations of each actor can be identified through an analysis of different documents and reports issued by the WHO, the ILO, and human rights bodies since the outbreak of the pandemic. The most important ones for legal corporations can be specified as follows:<sup>37</sup>

#### *a) Provision of Facilities*

In the context of human rights, the primary duty is to respect the rights. The level of required protection and fulfillment of rights varies depending on the substance of the rights concerned and the context. There is no difference in where these rights should be applied, although the territorial and extra-territorial applications of these rights are quite controversial. For instance, in the General Comment No. 31 of the International Covenant on Civil and Political Rights (1966) (ICCPR),

---

<sup>37</sup> Covid-19 Guidance, United Nations Human Rights Office of the High Commission, 13 May 2020. Available at: [https://www.ohchr.org/Documents/Events/COVID-19\\_Guidance.pdf](https://www.ohchr.org/Documents/Events/COVID-19_Guidance.pdf).

the Human Rights Council (HRC) held that the enjoyment of rights would not be limited to citizens to ensure and respect covenant rights. It also includes situations where the states are acting outside their territories.<sup>38</sup> Therefore, it is an absolute duty for states to fulfill their obligations of human rights wherever they are concerned. According to the ICJ, the international instruments for human rights are applicable with respect to the acts done by a state in the exercise of its jurisdiction outside its territory.<sup>39</sup>

The General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR) stated, “The right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services, and conditions required for the realization of the highest attainable standard of health.”<sup>40</sup> And good health cannot be ensured by a state, nor can states provide protection against every possible cause of human ill health as it composes various causes.<sup>41</sup> As for the right to health in the workplace, the factors for respect and fulfillment of the right to health consist of preventive measures that minimize the causes of health hazards in the working environment.<sup>42</sup>

Moreover, based on Article 12.2 (c) of the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR), the right to treatment relates to the establishment of a system of urgent medical care

---

<sup>38</sup> James CRAWFORD, *Brownlie's Principles of Public International Law*, 8<sup>th</sup> ed, (United Kingdom: Oxford University Press, 2012), at 653. See also: CCPR General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted at Eightieth Session of Human Rights Committee, on 29 March 2004 (contained in CCPR/C/21/Rev.1/Add. 13), Para 10.

<sup>39</sup> *Armed Activities on the Territory of the Congo (DRC v Uganda)*, [2005], I.C.J., at 168, 242-3.

<sup>40</sup> CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4), Para. 9.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*, at 15

in cases of epidemics and health threats. In this respect, control of a disease needs governmental efforts to individually or collectively develop relevant technologies, improve surveillance and data collection, and take other measures concerning immunization programs.<sup>43</sup>

From the very beginning, the WHO issued various guidelines concerning physical and social distancing to reduce and cancel mass gatherings in an effort to prevent the spread of COVID-19. The advice includes working from home, staying at home, and supporting adaptations for workplaces.<sup>44</sup> These preventive measures can only be applied when states provide proper infrastructure for companies and industries. Indeed, they were necessary steps to prepare individuals to access the right to health.

However, with companies failing to observe the relevant rules, it would be unlikely that individuals could access health (especially in cases where states do not provide the minimum requirements). A prerequisite to the COVID-19 containment is that states recognize the issues of companies in general. Making inquiries from the companies, preparing due diligence from the market, and devising legal and business plans to reduce the costs of companies may also prove useful. For example, National Headquarters for Corona Disease Management has set some rules on the subject of tax protection of economic actors.<sup>45</sup> These acts help corporations fulfill internal and international obligations. Thus, states must concede that non-state actors, including corporations, have rights especially when it comes to the emergency situations and in regards to the obligations of these actors. In this

---

<sup>43</sup> Ibid. at 16.

<sup>44</sup> Overview of public health and social measures in the context of COVID-19, Interim guidance, WHO, 18 May 2020, at 1.

<sup>45</sup> National Headquarters for Corona Disease Management, Enactment no. 165233, dated 27/12/1398 [17/03/2020].

context, if states fail to ensure that business enterprises providing services operate in a manner consistent with the state's human rights obligations, this may have both reputational and legal consequences for them.<sup>46</sup>

*b) Access to Information*

Access to information in the context of health is the right to seek, receive, and deliver information and ideas on health issues.<sup>47</sup> For example, WHO members are obliged to announce relevant laws, regulations, official reports, and statistics about health, and to provide statistical and epidemiological reports.<sup>48</sup> When a state finds evidence of an unexpected or unusual public health event in its territory, which may constitute a public health emergency of international concern, it shall provide the WHO with relevant public information.<sup>49</sup> Furthermore, the object of the WHO is to recognize the acquisition of the highest possible level of health for all people.<sup>50</sup> Thus, the WHO shall provide information, counsel, and assistance in the field of health.<sup>51</sup>

If a state, the WHO, and other agencies focusing on health fail to provide accurate information, the other actors will not be able to correctly assess the situation. Thus, for example, many scholars believe that China's conduct concerning the COVID-19 pandemic violated the WHO regulations and constitution because it did not inform and report

---

<sup>46</sup> Guiding Principles on Business Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, United Nations Human Rights Office of the High Commissioner, HR/PUB/11/04 (2011), at 8.

<sup>47</sup> Committee on Economic, Social and Cultural Rights, *supra* note 40, at 4.

<sup>48</sup> Constitution of The WHO, 22 July 1946, A/RES/131 (entered into force 8 April 1948), Articles 63 and 64.

<sup>49</sup> International Health Regulations (2005), Third edition, WHO, 2016, Article 7.

<sup>50</sup> Constitution of The WHO, *supra* note 48, Article 1.

<sup>51</sup> *Ibid.* Article 2 (q).



the WHO in a manner specified by the accepted regulations.<sup>52</sup> It thus follows that the information provided in relation to the issue of health or disease is critical.

Providing or accessing information about COVID-19 does not necessarily relate to states' relevant obligations toward the WHO or other member states; it concerns all actors that are linked with the results, consequences, and effects of this disease. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. It may include entities carrying out public functions.<sup>53</sup> None-state actors, such as corporations, require this information to evaluate their conditions and restrictions. Large companies with considerable numbers of employees, customers, clients, and stakeholders can take measures correctly if they have access to the necessary information, including international and national data. In March 2020, the WHO released guidelines on how to prepare workplaces for the COVID-19 pandemic.<sup>54</sup>

It is worth mentioning that the attainment of necessary data would be essential, because this allows corporates to provide accurate assessment, measures, and due diligence, including in relation to the pandemic.

#### **IV. Obligation of Corporates in the COVID-19 Pandemic**

If states are assumed to apply all their rules and fulfill all their obligations concerning COVID-19, can it be taken for granted that there

---

<sup>52</sup> Peter TZENG, "Taking China to the International Court of Justice over COVID-19" (2 April 2020). Available at: <https://www.ejiltalk.org/taking-china-to-the-international-court-of-justice-over-covid-19/>.

<sup>53</sup> General Comment No. 34 Article 19: Freedoms of opinion and expression (12 September 2011), Human Rights Committee 102nd session, CCPR/C/GC/34, para 18.

<sup>54</sup> Getting Your Workplace Ready for COVID-19, WHO, 3 March 2020, at 1. Available at: <https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf>.

is no problem in this regard? The answer is no. It could be considered a problem in which all the actors should follow the rules and obligations. It has an impact on human rights, humanitarian needs, and safety and security of the international community. As the UN's Framework the Immediate Socio-Economic Response to the COVID-19 Crisis has cautioned, "The COVID-19 pandemic is far more than a health crisis; it is affecting societies and economies at their cores".<sup>55</sup> Given this, it may be argued that preventing and mitigating the spread of COVID-19 require both states and individuals to take appropriate measures.

The international community comes across a chain. This chain begins with states and ends with individuals. What about the linkage ring? Although the WHO and public health authorities all over the world are taking measures to contain the COVID-19 pandemic, all sections of the society including businesses and employers must play their parts if they wish to reduce and prevent the spread of this disease.<sup>56</sup> However, it would be impossible to tackle this problem without considering the roles of businesses or corporations. Policies and interventions will be effective only if all members of society are engaged in public health and social measures.<sup>57</sup> An effective engagement with non-state actors at global, regional and country levels, calls for due diligence and transparency measures applicable to these actors under regulations.<sup>58</sup> Engagement with non-state actors under WHO guidance covers a

---

<sup>55</sup> COVID-19, Socio-economic impact, UNDP. Available at: <https://www.undp.org/content/undp/en/home/coronavirus/socio-economic-impact-of-covid-19.html>.

<sup>56</sup> Ibid.

<sup>57</sup> Overview of Public Health and Social Measures in the Context of COVID-19, Interim Guidance, WHO, 18 May 2020 at 2. Available at: <https://www.who.int/publications/i/item/overview-of-public-health-and-social-measures-in-the-context-of-covid-19>.

<sup>58</sup> Framework of engagement with non-State actors, WHO, (WHA69.10), 28 May 2016, at 5.

variety of activities, ranging from major, prolonged collaborations to short-term interactions.<sup>59</sup>

The relevant principles of international law highlight three concepts with regard to the role of non-state actors, especially corporations or businesses, in the COVID-19 containment: social responsibility, due diligence and human rights due diligence.

*a) Social Responsibility: Obligation or Credit*

A major area of international law concerns the status of corporations or businesses in different areas such as armed conflict and human rights. Various notions have been formed under the responsibilities defined for companies. The concepts of “social responsibility” and “responsible business conduct” as well as the creation of multiple instruments such as “the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework”<sup>60</sup> result from the topics aiming at forming specific responsibilities and obligations for companies. Under these concepts, a series of duties has been defined or determined for companies. Most of these responsibilities have been regarded as social responsibility. As the International Labor Organization (ILO) has noted, “Corporate social responsibility is a way in which enterprises consider the impacts of their operations on society and affirm their principles and values both in their internal methods and processes and in their interactions with other actors.”<sup>61</sup>

Moreover, the OECD has recognized corporate social responsibility as the “responsible business conduct” requiring that all forms of

---

<sup>59</sup> Handbook for Non-State Actors on Engagement with the World Health Organization, WHO, (2018), at 13.

<sup>60</sup> United Nations, supra note 29.

<sup>61</sup> The Promotion of Sustainable Enterprises, Report VI, International Labour Conference, ILO, 96th Session, Geneva, 2007, at 115.

conduct should comply with the applicable laws and internationally recognized standards.<sup>62</sup> The issues of responsible business conduct encompass human rights, including workers and industrial relations, environmental aspects, bribery and corruption, disclosure, and consumer interests.

Corporates should follow policies in different countries and consider the views of other participants. It is necessary that corporations contribute to economic, environmental, and social progress concerning sustainable development. They should respect human rights and refrain from imposing exceptions that do not contemplate human rights, environmental, health, safety, or other issues. They must contribute to risk-based due diligence through identification, prevention, and mitigation of actual and potential adverse impacts. They must also avoid causing or contributing to the harmful effects and instead seek to prevent or mitigate an adverse impact that is directly linked to their operations, products, or services through a business relationship.<sup>63</sup> Based on responsible business conduct, positive contribution can lead to sustainable development and inclusive growth. At the same time, it can avoid negative impacts and address them when they do occur. Risk-based due diligence and value creation are vital to this process.<sup>64</sup>

---

<sup>62</sup> Myanmar: Responsible Business Conduct and the OECD Guidelines for Multinational Enterprises, OECD, 2014. Available at: <https://www.oecd.org/daf/inv/mne/2014-Myanmar-Responsible-Investment-Conference-Background-Note.pdf>.

<sup>63</sup> OECD Guidelines for Multinational Enterprises, OECD Publishing, 2011, at 19 and 20. Available at: [https://www.oecd-ilibrary.org/governance/oecd-guidelines-for-multinational-enterprises\\_9789264115415-en](https://www.oecd-ilibrary.org/governance/oecd-guidelines-for-multinational-enterprises_9789264115415-en).

<sup>64</sup> Ibid.

The OECD, WHO, and other organizations have recognized the COVID-19 pandemic as a crisis requiring the acts of companies and businesses. As the OECD has stated:

The COVID-19 crisis has impacted the economy, people, and the planet. Adopting a responsible business conduct approach in government and business responses to the crisis will yield short-term and long-term benefits such as increased resilience, a fairer and more inclusive distribution of benefits from recovery measures, and a stronger contribution to sustainable development.<sup>65</sup>

It is well established that the COVID-19 pandemic has economic, social, and environmental impacts on different actors. Applying responsible business conduct to the COVID-19 crisis response will guarantee that environmental, social, and other governance issues are recognized as the critical points in the policy and implementation of business responses. These standards anticipate that businesses contribute to sustainable development while avoiding and addressing adverse impacts of their activities throughout their supply chains.<sup>66</sup> The use of these standards, accompanied by the measures taken in response to the COVID-19 crisis, not only could allow governments and companies to make meaningful decisions and address the environmental, social and governance issues related to the crisis, but also may ensure that such responses do not pose further risks to people, planet, and society.<sup>67</sup>

The ILO estimation indicates an increase in global unemployment rate ranging from 5.3 million people (the best-case scenario) to 24.7

---

<sup>65</sup> Tackling Coronavirus (Covid-19) Contributing to a Global Effort, COVID-19 and Responsible Business Conduct, OECD, at 1. Available at: [https://media.business-humanrights.org/media/documents/files/documents/OECD\\_COVID-19\\_and\\_Responsible\\_Business\\_Conduct\\_Full\\_Note.pdf](https://media.business-humanrights.org/media/documents/files/documents/OECD_COVID-19_and_Responsible_Business_Conduct_Full_Note.pdf).

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

million people (the worst-case scenario).<sup>68</sup> The COVID-19 crisis has caused financial and liquidity problems for companies. For corporations that can stand out, protecting the health and safety of workers would be the primary concern, whereas reducing workers' exposure to the COVID-19 in the workplace is a daunting challenge.<sup>69</sup>

These issues are not the only problems that the international community has faced since the outbreak of COVID-19. Environmental issues or the sales of forged goods are additional problems, as raised during the pandemic. Thus, the European Anti-Fraud Office has launched investigations into the imports of fake health and hygiene products such as face masks, testing kits, and disinfectants.<sup>70</sup>

The role of corporates, their impacts, and their activities in this chain should also be established. As regards the social responsibility of businesses and workplaces, there should be no social dishonor or discrimination at workplaces for any reasons in access to information, protection from the COVID-19, occupational health services, mental health, and psychosocial support.<sup>71</sup> Companies should follow processes that ensure employees support for measures taken by the company, avoid accidents, and protect employees and consumers to manage environmental, health and safety measures, address vulnerabilities. They should make sure of clearly defined responsibility for crises by

---

<sup>68</sup> COVID-19 and the World of Work: Impact and Policy Responses, ILO Monitor 1st Edition, 18 March 2020, at 3. Available at: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms\\_738753.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_738753.pdf).

<sup>69</sup> OECD, *supra* note 57, at 3.

<sup>70</sup> OLAF Launches Enquiry into Fake COVID-19 Related Products, European Anti-Fraud Office, European Commission, Press release No 07/2020 (20 March 2020). Available at: <https://ec.europa.eu/anti-fraud/media-corner/news/20-03-2020/olaf-launches-enquiry>.

<sup>71</sup> Coronavirus disease (COVID-19): Health and safety in the workplace, WHO. Available at: <https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-health-and-safety-in-the-workplace>.

making continuous plans considering probabilities and the reports on measures taken so as to address the financial, environmental, social, and risks that companies come across as a result of the COVID-19.<sup>72</sup> In this respect, companies are obliged to take measures, so as to fulfill their obligations. In other words, they should follow the recognized standards relevant to COVID-19. Complying with WHO regulations, respecting human rights, and evaluating their activities are regarded as the main criteria for the measures taken by companies, while due diligence for acts and plans of corporations would support their responsibilities.

*b) Due Diligence*

In the context of international law, due diligence is seen as an obligation of conduct to assess whether a subject complies with specified standards or principles, failure of which could lead to legal responsibilities.<sup>73</sup> The notion of due diligence has a long history in international law, especially when it comes to a state's responsibility in the area of environmental law. According to Principle 21 of the Stockholm Declaration, due diligence implies a commitment to consider all "necessary and practicable measures".<sup>74</sup> Although this commitment has been established in the context of environmental law, it would also reflect states' obligation concerning due diligence. In the *Corfu Channel* case, the ICJ articulated the due diligence principle, namely "every state's obligations not to allow knowingly its territory to be used for acts contrary to the rights of other states."<sup>75</sup>

---

<sup>72</sup> OECD, *supra* note 67.

<sup>73</sup> Timo KOIVUROVA, "Due Diligence, Max Planck Encyclopedia of Public International Law [MPEPIL]" (10 February 2010), online, Para. 1.

<sup>74</sup> Joanna KULESZA, *Due Diligence in International Law*, 26 Volume, (Boston: Brill Nijhoff, 2016), at 269.

<sup>75</sup> *Corfu Channel Case*, (United Kingdom of Great Britain and Northern Ireland v. Albania), [1949], I.C.J. Rep., at 4.

Therefore, a state is obliged to ensure that other states' rights and interests are not violated in its jurisdiction, including a place it has effective control.<sup>76</sup> Traditionally, this principle was applicable to the acts of states; however, since companies and businesses are growing in the international community, the concept of due diligence may apply to the actions of companies and businesses, as well. For instance, the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework contain principles to conduct human rights due diligence.<sup>77</sup>

The OECD states that, for corporates, due diligence will show actual or potential adverse impacts concerning human rights, environmental aspects, bribery, and corruption.<sup>78</sup> In this context, due diligence should help corporates anticipate and prevent or mitigate adverse effects. It will make it possible for them to decide whether to proceed with operations or business relationships.<sup>79</sup> An impact which can be illustrated is failure to provide the public and workers with proper, measurable, provable, and timely information on the potential environmental, health, and safety impacts of the activities of corporates.<sup>80</sup> Thus, a company should incorporate this responsibility into its policies and management system, identify and assess risks, prevent or deteriorate these impacts, follow up on the implementation and efficiency of due diligence, publicly report the relevant information, and cooperate in its remediation if possible.

As discussed earlier, the way in which businesses and companies respond to the COVID-19 crisis may have considerable impacts on

---

<sup>76</sup> Study Group on Due Diligence in International Law, International Law Association (ILA), Second Report, July 2016, at 3.

<sup>77</sup> United Nations Human Rights Office of the High Commissioner, *supra* notes 46.

<sup>78</sup> OECD Due Diligence Guidance for Responsible Business Conduct, 2018, at 15. Available at: <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

<sup>79</sup> *Ibid.* at 18.

<sup>80</sup> *Ibid.* at 40.



people, planet, and society. Implementation of due diligence could help companies make better decisions and address relevant issues effectively. It will also provide a situation in which these responses do not pose further risks to diverse actors. Companies should conduct due diligence with respect to risks connected to their operations, including their supply chains and other business relations.<sup>81</sup> The guidelines by the WHO or other organizations would be helpful for the assessment of situations and responses. For example, the employers and organizations must be aware that people who attend their meeting or workplace might contribute to the spread of COVID-19, and that approximately one in every five people contracting the novel coronavirus will need hospital treatment.<sup>82</sup> On this basis, the WHO has stated that “[d]ecision on closing or re-opening workplaces and suspending or downscaling work activities should be made in the light of risk assessment, capacity to implement preventive measures, and recommendations of national authorities for adjusting public health and social measures in the context of the COVID-19”.<sup>83</sup>

Following the risk assessment results and epidemiological analysis outputs, companies should prepare specific action plans to prevent and contain COVID-19. These plans should consist of measures that protect health, safety, and security in businesses. All possible risks for health and safety should be adequately assessed and controlled.<sup>84</sup>

In an emergency like the COVID-19 pandemic, companies as non-state actors are *obliged* to comply with the relevant rules and implement

---

<sup>81</sup> OECD, *supra* note 65, at 8-9.

<sup>82</sup> WHO, *supra* note 54, at 3.

<sup>83</sup> Considerations for public health and social measures in the workplace in the context of COVID-19 Annex to Considerations in adjusting public health and social measures in the context of COVID-19, WHO, 10 May 2020, at 4. Available at: <https://www.who.int/publications/i/item/considerations-for-public-health-and-social-measures-in-the-workplace-in-the-context-of-covid-19>.

<sup>84</sup> *Ibid.*

the required measures. This responsibility is beyond the obligations of states or citizens of a state; as actors in the international community, businesses or corporations should follow the rules. International authorities, on the other hand, must address these actors directly, and hold them accountable for their wrongdoings, without considering their states or nationalities.<sup>85</sup>

c) *Human Rights Due Diligence*

Under the modern paradigm, human rights can not only be violated by governments and their institutions but also by non-state entities such as companies. The “horizontal effect” of human rights has been discussed in the international human rights system.<sup>86</sup> The horizontal effect of human rights would place non-state actors under direct and explicit obligations to respect, protect and/or fulfil human rights.<sup>87</sup> In this regard, there have been cases in which human rights obligations were imposed against private actors.<sup>88</sup> Based on international standards, it is presumed that economic institutions should respect the rights stipulated in international instruments.<sup>89</sup> Moreover, there is an “indirect horizontal

---

<sup>85</sup> For instance, the WHO provides tips for health and safety at the workplace in the context of COVID-19 and considers duties for employers and employees.

<sup>86</sup> Lane LOTTIE, “the Horizontal Effect of International Human Rights Law in Practice: A Comparative Analysis of the General Comments and Jurisprudence of Elected United Nations Human Rights Treaty Monitoring Bodies” (2018) *European Journal of Comparative Law and Governance*, 5, at 26.

<sup>87</sup> *Ibid.* at 16.

<sup>88</sup> For example: ECJ Case C-131/12 *Google Spain, SL, Google Inc v. Agencia Espanola de Proteccion de Datos* 13 May 2014. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0131>. This case concerns the interpretation of Article 2, Article 4, Article 12 and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) and of Article 8 of the Charter of Fundamental Rights of the European Union.

<sup>89</sup> General Comment No. 24 on State obligations under

effect” where a government does not violate the rights but a non-state actor does. However, the victim files a lawsuit against the government or claims the human rights violation. Although a non-state actor violates human rights, the state is held responsible for neglecting its obligation to “protect”. Under this structure, when the state is directly accountable, indirect obligations derived from international law are imposed on non-state actors. In other words, by fulfilling the state's commitment to human rights protection, non-state actors are obliged to adhere to specific standards of human rights. Therefore, if the national laws are not adequately enacted, or the executive body does not accurately monitor the implementation of such duties, they will also be held responsible for the violation of human rights.<sup>90</sup>

The implementation of human rights for companies is considered to be one of the major subject matters of international law, including international human rights law. The system of international law and global concerns are moving in a trend where non-state actors are deemed responsible for protecting human rights. These matters could not be solved merely through the acts of states, for they require widespread and systematic measures that should be taken by all actors.

Since the outbreak of COVID-19, human rights including the right to health, the right to life, the right to privacy, and nondiscrimination have become crucial in the fight against the virus. The right to life and duty to protect life without discrimination, the right to health, and access to healthcare, the major challenge to freedom of movement are at the frontline in the current pandemic.<sup>91</sup> For this reason, the Office of the High Commissioner for Human Rights (OHCHR) has stated that “All

---

Rights in the context The International Covenant on Economic, Social and Cultural of business activities, E/C.12/GC/24 (10 august 2017), at 5.

<sup>90</sup> Supra note 85.

<sup>91</sup> United Nations, supra note 29, at 4.

businesses have an independent responsibility for respecting human rights [...] even in the time of economic hardships and public health crises, regardless of whether and how governments fulfill their own obligations”.<sup>92</sup>

It thus seems clear that the responsibility for respecting human rights is a global standard recognized for all the business enterprises wherever they operate.<sup>93</sup> This responsibility requires that businesses refrain from causing or contributing to adverse social impacts and instead attempt to prevent or decrease these impacts linked to their operations, products, or services.<sup>94</sup> Addressing adverse impacts on human rights necessitates taking acceptable measures for their prevention, mitigation, and other essential actions.

Consequently, human rights due diligence is considered an important step that must be taken in this pandemic alongside general due diligence. As John Ruggie, the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, has noted, “[to] discharge the [corporate] responsibility for respecting [human rights] requires due diligence. This concept describes the steps a company must take to become aware of, prevent, and address, adverse impacts on human rights.”<sup>95</sup>

Based on Principle 17 of the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’, the process of due diligence should entail evaluating actual and potential impacts on human rights. When it comes to the human rights impacts of COVID-19, corporations should pay

---

<sup>92</sup> United Nations, Human Rights Office of the High Commission, *supra* note 37, at 9.

<sup>93</sup> United Nations Human Rights Office of the High Commissioner, *supra* note 46, at 13.

<sup>94</sup> *Ibid.* Principle no. 13.

<sup>95</sup> Protect, Respect and Remedy: A Framework for Business and Human Rights, Report to the UN Human Rights Council (Framework Report), UN Doc. A/HRC/8/5 7 (April 2008), Para 56.

attention to any particular effects on individuals that might be at heightened risk of vulnerability or marginalization and take into account different risks that women and men may face.<sup>96</sup> When the company has or may have an adverse human rights effect, it is obliged to take the necessary steps to mitigate or prevent the impact.<sup>97</sup> Businesses must track their responses and efficiency. Thus, if a company or business finds that it has caused or contributed to the emergence of adverse effects, it should provide for or cooperate in its remediation through legitimate processes.<sup>98</sup> Concerning Covid-19, the United Nations Development Programme (UNDP) has considered a device, *Human Rights Due Diligence and COVID-19: Rapid Self-Assessment for Business (C19 Rapid Self-Assessment)*, to help businesses consider and manage the human rights impacts of their operations.<sup>99</sup> This assessment is regarded as a restricted but instructive view of human rights actions in the specific context of COVID-19 for companies.<sup>100</sup> The C19 Rapid Self-Assessment composes of six stages under which companies would conduct human rights due diligence named: Occupational Health & Safety, Labour Rights, Environmental & Community Impacts, Safeguarding Privacy, Preventing Stigma & Discrimination, and Corporate Policy & Management Considerations.<sup>101</sup>

As a result, a company will be held responsible if it fails to pay attention to the regulations and guidelines to protect employees in the

---

<sup>96</sup> United Nations Human Rights Office of the High Commissioner, supra note 46, at 20.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid. Principle 22.

<sup>99</sup> Human Rights Due Diligence and COVID-19: Rapid Self-Assessment for Business, UNDP. Available at: <https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/human-rights-due-diligence-and-covid-19-rapid-self-assessment-for-business.html>.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

workplace. It would also be responsible if it imports or exports fake products used in the fight against the COVID-19 pandemic, or sales its vaccine in future to a particular group. The responsibility lies with the company if it does not consider and assess the outcomes of its measures which may cause the adverse human rights impacts such as a violation of the right to life and the right to health.

### **Conclusion**

The main issue in fighting the COVID-19 pandemic concerns the status and measure of different actors in this respect. The COVID-19 crisis is a matter of concern for the international community as a whole. Therefore, we come across a chain in which all rings should be considered.

The question about non-state actors relates to their roles and duties in the international system. In the past, the needs and conditions of the international community could be settled by the states' measures. Thus, the state-centric view used to be effective and efficient. Nowadays, the requirements and crises of the system have developed; accordingly, it would be impossible to tackle the problem through the state-centric method. This means that the international community should decide on the accountability of individuals in these scenarios. Importantly, the COVID-19 crisis is too severe such that it would require the cooperation of non-state actors and businesses, as well.

In the face of the COVID-19 pandemic, two things should be taken into account when it comes to the issue of corporations: one concerning the rights of corporations, and the other pertaining to their obligations and responsibilities. To act effectively in response to the pandemic, non-state actors need to access facilities and public information. These obligations should be fulfilled by states, organizations, and even non-governmental organizations.

At the same time, as the COVID-19 pandemic has global impacts on health, safety, and business conduct, these circumstances require the acts and responses of businesses and companies. Although there are no legally binding instruments concerning the social responsibility of corporates and conducting due diligence internationally, this does not mean that companies can freely operate without assessing the impacts of their acts. Rather, they should determine the risks of their measures and respect different universal principles of international law. This article reviewed the guidelines and principles adopted by the WHO on risk assessment for companies, duties of employers, etc. These guidelines and principles create obligations and responsibility for businesses. A wrongful act by a company can make other measures ineffective.

This article also discussed the roles and impacts of corporations during the COVID-19 pandemic, and contended that they must be held accountable for the measures they take in that respect. As noted, these corporations must likewise assess their policies and respect human rights. In fact, many instructions issued by the WHO or other organizations have not only directly addressed businesses and companies but also have obliged these actors to comply with the instructions.<sup>102</sup> Many of these documents include “should” or “must” expressions directed at businesses to handle the measures that are supposed to be implemented. These measures determine the common practice of the international community regarding the position of non-state actors. They are not the passive addressees of laws and regulations; they have independent personalities.

---

<sup>102</sup> Supra note 83.