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RESEARCH ARTICLE

The interdependence between the State and businesses: the case of the *Workers of the Fireworks Factory v. Brazil* before the Inter-American Court of Human Rights

La interdependencia entre el Estado y las empresas: el caso Empleados de la Fábrica de Fuegos Vs. Brasil ante la Corte Interamericana de Derechos Humanos

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ABSTRACT: How do the State's duty to protect and the responsibility of businesses to respect human rights fit together? Although the United Nations (UN) Guiding Principles distinguish between the two duties, their separation does not always hold in the face of concrete violations, in which the omission of one and the conduct of the other become intertwined. This article addresses that question through *Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil* (2020), in which the Inter-American Court of Human Rights (IACtHR) declared the State responsible for the 1998 explosion of a fireworks factory, for failing to enforce its own regulatory guidelines for an activity it had itself classified as especially dangerous. The Court drew on the UN Guiding Principles only briefly; it is in the reasoned opinion of Judge Eduardo Ferrer Mac-Gregor Poisot that this framework is developed in greater depth. Through the phenomenological-hermeneutic method, with an analysis of the case law, the article argues that, although the judgment holds only the State responsible, State omission is intelligible only in relation to a business activity whose risk was already known. This interdependence allows us to discuss an asymmetrical co-responsibility, in which neither duty replaces the other and the boundary between public and private remains relevant for attributing legal responsibility. The article also considers what the monitoring of compliance reveals about

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how this co-responsibility is translated into policies and practices in Brazil, and asks how far it can be read as a joint duty enforceable against both State and businesses.

KEYWORDS: business and human rights; Inter-American Court; Fireworks Factory; interdependence; co-responsibility

RESUMEN: ¿Cómo se articulan el deber del Estado de proteger y la responsabilidad de las empresas de respetar los derechos humanos? Aunque los Principios Rectores de las Naciones Unidas (ONU) distinguen entre ambos deberes, su separación no siempre se sostiene frente a violaciones concretas, en las que la omisión de uno y la conducta del otro se entrelazan. Este artículo aborda esa cuestión a partir del caso *Empleados de la Fábrica de Fuegos en Santo Antônio de Jesus y sus familiares Vs. Brasil* (2020), en el que la Corte Interamericana de Derechos Humanos (Corte IDH) declaró la responsabilidad del Estado por la explosión de una fábrica de fuegos artificiales en 1998, por no haber hecho cumplir sus propias directrices de regulación de una actividad que él mismo había clasificado como especialmente peligrosa. La Corte recurrió a los Principios Rectores de la ONU solo de manera breve; es en el voto razonado del juez Eduardo Ferrer Mac-Gregor Poisot donde ese marco se desarrolla con mayor profundidad. Mediante el método fenomenológico-hermenéutico, con análisis de la jurisprudencia, se sostiene que, aunque la sentencia juzga únicamente al Estado, la omisión estatal solo es inteligible en relación con una actividad empresarial cuyo riesgo ya era conocido. Esta interdependencia permite discutir una corresponsabilidad asimétrica, en la que ningún deber sustituye al otro y la frontera entre lo público y lo privado sigue siendo relevante para la atribución de responsabilidad jurídica. El artículo considera, además, lo que la supervisión del cumplimiento revela sobre cómo esa corresponsabilidad se traduce en políticas y prácticas en Brasil, y se pregunta hasta qué punto puede ser leída como un deber conjunto exigible al Estado y a las empresas.

PALABRAS CLAVE: empresas y derechos humanos; Corte Interamericana; Fábrica de Fuegos; interdependencia; corresponsabilidad

I. INTRODUCTION

The reactive nature of law is nothing new. At times, it arrives late, when the harm is already irreparable. Although intended for everyone, without distinction, its observance is frequently neglected by public and private actors, and the consequences fall, above all, on those who are already in a situation of vulnerability. In Brazil, cases such as Mariana[1] and Brumadinho[2] show how the negligence of businesses in the face of the risks of their activities and, to some extent, the State's failure to oversee those activities can combine in disasters causing hundreds of deaths.

This article begins with a case in which that combination recurs on a different scale: *Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*[3], submitted to the Inter-American Court of Human Rights (IACtHR) in September 2018 and decided in a judgment issued in July 2020. On 11 December 1998, an explosion at the fireworks factory, known in the rural area of the Bahian municipality as *Vardo dos Fogos*, killed sixty people and left six

1 Ministério Público Federal (2026).

2 Conselho Nacional de Justiça (2021).

3 *Fireworks Factory v. Brazil* (2020) (Portuguese version).

survivors; among the victims were pregnant women and children[4]. The risk of the activity was known; it was not the first explosion, and, in 1996, one of the factory's owners had been convicted in criminal proceedings for an earlier explosion. Even so, almost two decades separated the facts from the submission of the case to the Court, without reparation for the victims. The Court declared the international responsibility of the Brazilian State for the violation of rights such as those to life, personal integrity, and work, among others, for failing to enforce its own regulatory guidelines for an activity that the State itself had classified as especially dangerous.

The case raises a question that has run through the field of Business and Human Rights since the formulation of the United Nations (UN) Guiding Principles[5]: how do the State's duty to protect and the responsibility of business enterprises to respect human rights fit together? The Guiding Principles distinguish between the two duties, but it remains to be seen whether that separation holds in the face of concrete violations, in which the omission of one and the conduct of the other become intertwined. The judgment holds only the State responsible, which leads one to ask to what extent State omission can be understood without reference to the business activity that gave rise to it. To ground the duty to regulate, supervise, and oversee, the Court drew on the Guiding Principles, though only briefly; it is in the reasoned opinion of Judge Eduardo Ferrer Mac-Gregor Poisot that this framework is developed in greater depth.

The aim of this article is to examine what the case allows us to say about this articulation. It starts from the hypothesis that the analysis of State omission reveals a relationship of interdependence between the duties of the State and of businesses, which would allow us to discuss asymmetrical co-responsibility, without erasing the relevance of the boundary between public and private for attributing legal responsibility. The aim is not to claim that the Court judged the business, but to examine what the reasoning of the judgment and the reasoned opinion allow us to say about the relationship between the two duties. The article adopts the phenomenological-hermeneutic method[6], with an analysis of the case law: the judgment and the reasoned opinion are read based on the case itself, in dialogue with the Guiding Principles. In this perspective, interpretation is not the neutral extraction of a pre-given meaning but a movement between the text and the questions the interpreter brings to it; the article therefore makes its guiding question explicit (the articulation between the two duties) and returns to it at each stage of the analysis.

The article is organized into two parts, in addition to this introduction and the conclusions. The first examines the international responsibility of the State in the case, the Court's reasoning, and the reasoned opinion of Judge Ferrer Mac-Gregor, distinguishing the Court's brief use of the Guiding Principles from the development the opinion gives them, and closes with an overview of the monitoring of compliance with the judgment. The second, taking the Guiding Principles as an interpretive key and drawing on the sociology of risk, examines the relationship of interdependence between the duties of the State and of businesses and discusses the terms in which it

4 The Inter-American Commission reported 64 deaths; after identifying the victims, the Court recognized 60 deceased persons, among them 20 children, and six survivors, among them three children. *Fireworks Factory v. Brazil* (2020), pp. 15-17.

5 Office of the United Nations High Commissioner for Human Rights (2011).

6 Gadamer (2018).

would support the co-responsibility of these actors. The conclusions return to the question and discuss the limits and potential of this co-responsibility.

II. THE INTERNATIONAL RESPONSIBILITY OF THE STATE IN *WORKERS OF THE FIREWORKS FACTORY V. BRAZIL*

In this first part of the article, the case *Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*, decided by the Inter-American Court of Human Rights, is analyzed. The analysis begins with the facts as they occurred at the time and the proceedings that followed and then examines how the Court grounded and decided the case. Before going into the details of the case, it should be noted that the explosion, which occurred on 11 December 1998, took place one day after the Brazilian State recognized the contentious jurisdiction of the Inter-American Court, on 10 December 1998, which places the facts within the Court's temporal competence.

After its introductory sections (the proceedings before the Court, jurisdiction, the preliminary objections, the preliminary considerations, and the evidence), the judgment sets out the facts, which are summarized here insofar as they are relevant to this article. On 11 December 1998, around noon, an explosion occurred at the fireworks factory located in a rural area of the municipality of Santo Antônio de Jesus, in Bahia. The region, as the judgment points out, was marked by the vulnerability of its population, and this was reflected in the factory's workforce, which was made up mostly of women and children. Because it was a rural and highly vulnerable area, its inhabitants had no better employment options: this was the work available. The judgment itself describes the production of fireworks in the region as "characterized by a high degree of informality, its clandestine nature, the use of child labor, and work by women"[7]. As a result, people subjected themselves to precarious working conditions to subsist, and the verb "subsist" is used here deliberately, given that some areas of the municipality did not even have access to basic sanitation[8].

The women who worked at the factory sometimes brought their children along to increase their income and sustain the family unit[9], with no observance of age limits or of the best interests of the child. Working conditions were precarious and, because the activity was dangerous, the regulations in force at the time already provided for special oversight. Before turning to the normative framework, another point deserves mention: the 1998 explosion was not the first. As reported in the judgment, in 1996 one of the factory's owners had been convicted for an

7 *Fireworks Factory v. Brazil* (2020), p. 20.

8 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 20.

9 In this sense, Judge Ricardo C. Pérez Manrique stressed in his opinion that the case shows "[…] a situation of structural poverty of Afro-descendant women and girls, in some cases even pregnant, who had no economic alternative but to accept dangerous work under exploitative conditions. The wage for this work was miserable, to the point that the women brought their children along to increase the number of *estalos de salão* produced, as a way of increasing their pay. The confluence of these factors and the existence of this pattern of intersectional discrimination meant that the women and children who were victims had no alternative but to work there." *Fireworks Factory v. Brazil* (2020), concurring opinion of Judge Pérez Manrique, p. 10. (Translation by the authors).

explosion resulting from the handling of fireworks and, between 1991 and 1998[10], more than forty deaths were recorded in the country in connection with this activity; in other words, the explosion at *Vardo dos Fogos* alone killed more people than all such deaths recorded nationwide over the preceding seven years.

At the time, the Brazilian State had regulations for the operation of fireworks factories. Decree No. 55,649 of 28 January 1965 assigned to the Ministry of War the responsibility for authorizing and overseeing the production and trade of products such as fireworks[11], and allowed this function to be delegated to other government bodies through agreements. In Bahia, the state where the factory was located, there were provisions to the same effect, such as State Decree No. 6,465 of 1997, which assigned to the state's Public Security Secretariat the authority to approve the operation of establishments that produced or sold fireworks and to inspect their production, sale, burning, and use[12]. However, the normative framework at the time was not limited to the regulation of business activity and State oversight. It must be recalled that the facts occurred after the promulgation of the 1988 Constitution of the Federative Republic of Brazil, which listed, in Articles 6 and 7, social rights and workers' rights, respectively, to which the provisions of the Consolidation of Labor Laws (CLT) were added. Finally, and no less importantly, the Statute of the Child and Adolescent, in force at the time, prohibited work by children under fourteen and barred adolescents from dangerous, unhealthy, or arduous work.

This normative framework was observed neither by the company nor by the State. It is striking that, even after earlier explosions and deaths already recorded in the country, no action was effectively taken to prevent new harm. Instead of a preventive stance being adopted, harm kept recurring, and the law was left to act reactively. The problem is that, even reactively, it was late in arriving.

The Court itself acknowledged, with concern, that "almost 17 years elapsed between the lodging of the initial petition before the Commission" and the submission of the case to the Court[13]. During that period, other proceedings were under way: a criminal proceeding, still pending at the time of the judgment; civil and labor proceedings; and an administrative proceeding. Although most of them provided for monetary compensation as a form of reparation, it is important to stress that life projects were cut short by the company's negligence and by the State's failure to oversee the activity; that is, even after the loss of lives, the victims' dignity was not recognized within a reasonable time[14].

As to the Court's reasoning, it begins with a caveat: the explosion occurred at a privately owned factory, and the State cannot be held responsible for every human rights violation committed by private parties within its jurisdiction. It is therefore necessary to analyze the circumstances of the case and the concrete fulfillment of the obligations of guarantee in order to establish whether

10 *Fireworks Factory v. Brazil* (2020), p. 22.

11 *Fireworks Factory v. Brazil* (2020), p. 30.

12 *Fireworks Factory v. Brazil* (2020), p. 31.

13 *Fireworks Factory v. Brazil* (2020), p. 5.

14 Jardim *et al* (2026), p. 183.

international responsibility is attributable to the State[15]. Having previously established that the manufacture of fireworks is a dangerous activity, the Court finds that, in the concrete case, the State was obliged to regulate, supervise, and oversee workplace safety conditions to prevent accidents caused by the handling of dangerous substances[16]. It is at this point that the Court draws, briefly, on the United Nations Guiding Principles on Business and Human Rights: to reinforce its conclusion, it recalls that "[i]n meeting their duty to protect, States should: (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights and periodically to assess the adequacy of such laws and address any gaps […]"[17]. As can be seen, the quotation concerns the State's duty to protect.

In the operative paragraphs, the Court unanimously declared the State responsible for (i) the violation of the rights to life and of the child, to the detriment of the sixty people who died in the explosion, among them twenty children; and for (ii) the violation of the rights to personal integrity and of the child, to the detriment of the six survivors, among them three children. By six votes to one, it declared (iii) the violation of the rights of the child, to equal protection of the law, to non-discrimination, and to work, to the detriment of the sixty people who died and the six survivors, among them twenty-three children, with Judge Eduardo Vio Grossi dissenting. It also unanimously declared (iv) the violation of the rights to judicial guarantees and judicial protection, to the detriment of the six survivors and the victims' family members; and (v) the violation of the right to personal integrity, to the detriment of the family members of the deceased and of the survivors[18].

As to reparations, the IACtHR addressed (a) the injured party; (b) the obligation to investigate; (c) rehabilitation measures; (d) measures of satisfaction, including the publication of the judgment and a public act acknowledging responsibility; (e) guarantees of non-repetition; (f) compensation for material and non-material damages; as well as (g) costs and expenses and (h) the manner of complying with the ordered payments. Among its provisions, it stated that the judgment constitutes a form of reparation[19]. Among the measures ordered, the following stand out for the purposes of this article: that the State systematically and periodically inspect fireworks production sites, that it submit a report on the progress of Federal Senate Bill PL 7433/2017, and that it submit a report on the application of the National Guidelines on Business and Human Rights[20]. The Court will supervise full compliance with the judgment[21].

A review of the compliance monitoring proceedings before the Inter-American Court of Human Rights shows that the Court has supervised the implementation of the judgment since its notification on 26 October 2020. In its resolution of 2 September 2024, the Court found only partial compliance with the payment of compensation for pecuniary and non-pecuniary dam-

15 *Fireworks Factory v. Brazil* (2020), p. 42.

16 *Fireworks Factory v. Brazil* (2020), p. 42.

17 *Fireworks Factory v. Brazil* (2020), p. 42.

18 *Fireworks Factory v. Brazil* (2020), pp. 86-89.

19 *Fireworks Factory v. Brazil* (2020), pp. 86-89; Teixeira and Menin (in press).

20 *Fireworks Factory v. Brazil* (2020), pp. 86-89.

21 *Fireworks Factory v. Brazil* (2020), pp. 86-89.

age and with the reimbursement of costs and expenses, several payments remaining pending[22]. The proceedings remain ongoing, with reports submitted by the State, observations filed by the victims' representatives, and other procedural submissions continuing to be registered before the Court[23]. Several years after the judgment was delivered, therefore, compliance remains under the Court's supervision. For the purposes of this article, the most telling measures are the structural guarantees of non-repetition highlighted above (the systematic inspection of production sites, the report on Bill PL 7433/2017, and the report on the application of the National Guidelines on Business and Human Rights), since they are the ones that most directly test how the State's duty to protect is being translated into policies and practices. The Guiding Principles on Business and Human Rights were addressed in greater depth in the reasoned opinion of Judge Ferrer Mac-Gregor.

Judge Eduardo Ferrer Mac-Gregor Poisot's reasoned opinion, annexed to the judgment in *Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*, immediately introduces the question of business and human rights, a central concern of this article, which is why we focus on it. The judge opens by asking: "Can the State be held internationally responsible for human rights violations caused by acts committed by a private company?"[24] The question is a pressing one, given that the State's omission consisted precisely in failing to oversee a private company, the fireworks factory, and thereby to protect the victims' rights[25]. Ferrer Mac-Gregor states that he fully shares the decision in the judgment and that he issues his opinion to emphasize and deepen certain elements of the case that he considers crucial in the Inter-American System. To that end, he divides his analysis into six parts: (i) business and human rights, with the State's obligation of guarantee in the face of the actions of private parties; (ii) the right to fair and satisfactory conditions of work, for the protection of safety, health, and hygiene conditions; (iii) poverty as part of economic status and of structural and intersectional discrimination; (iv) equal protection of the law, without discrimination; (v) material or substantive equality as regards the victims; and (vi) conclusions. Given the scope and length of this article, we will address item (i) and return, briefly, to item (iii).

Ferrer Mac-Gregor opens the first major part of his opinion categorically, noting that the Court's case law has held that "a State cannot be held responsible for every human rights violation committed by private parties within its jurisdiction"[26], on the ground that "the erga omnes nature of the conventional obligations of guarantee incumbent upon States does not imply unlimited responsibility for any act of private parties"[27]. This means, therefore, that the State, a public actor, is not automatically answerable for every harm resulting from the action of a company, a private actor. For its responsibility to be declared, it is necessary to examine the State's action, or omission, in each concrete case, since the State, in addition to undertaking to respect the rights and

22 *Fireworks Factory v. Brazil* (2024).

23 *Fireworks Factory v. Brazil*, compliance monitoring proceedings.

24 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 1.

25 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, pp. 1-2.

26 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 3.

27 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 3.

freedoms recognized in the American Convention (negative obligation), also has the duty to adopt measures to guarantee them (positive obligation). If it neglects either of these obligations, whether by action or omission, one may then speak of possible international responsibility of the State, regardless of the hierarchy of its organs or powers[28]. In the present case, as the judge rightly points out, the violations of the rights to life and personal integrity, of the rights of the child, and of the right to fair and satisfactory conditions of work resulted from omissions or inaction on the part of the Brazilian State. The main obligation was to adopt "the necessary measures" "to prevent" those violations, and the appropriate way of doing so was oversight, which was provided for even in national legislation itself[29].

It is then that the judge turns to the United Nations Guiding Principles on Business and Human Rights (also known as the Ruggie principles), observing that the judgment invokes them to "reinforce" the obligations of States regarding business activities, in this case activities of a dangerous or high-risk nature[30]. Ferrer Mac-Gregor stresses that this is not the first time the Court has resorted to the Principles; nevertheless, "it is the first case in which the application of what is contained in those principles finds harmonious expression in the obligations that must be observed" under Articles 1.1 and 2 of the American Convention and other international instruments, such as Conventions 81 and 155 of the International Labour Organization[31]. This approach has since been consolidated in the Court's case law, notably in *Miskito Divers (Lemoth Morris et al.) v. Honduras* (2021) and *Inhabitants of La Oroya v. Peru* (2023), in which the Court again relied on the Guiding Principles to specify the State's duties regarding business activities[32].

The judge explains that the Guiding Principles start from the idea that States must ensure three principles, or basic obligations, in the context of business activities under their jurisdiction: to protect, to respect, and to remedy[33]. It should be noted, however, that in the architecture of the Guiding Principles themselves the three pillars are not all addressed to States: the duty to protect falls on States, the responsibility to respect falls on business enterprises, and access to remedy involves both. Given the facts of the case, that is, the actions of private parties, he focuses solely on the obligation to protect, while stressing that the obligations to respect and to remedy are equally fundamental for human rights to be effective in this type of situation. The Principles provide that States must "protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises"[34]. Ferrer Mac-Gregor draws an important consequence from this: although States are not, *per se*, responsible for the actions of private parties, they may nonetheless be so if they have not adopted measures, or have not made effective the measures adopted, to guarantee, preventively, the human rights at stake[35]. The

28 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 3.

29 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 3.

30 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 4.

31 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 4.

32 *Miskito Divers v. Honduras* (2021); *La Oroya v. Peru* (2023).

33 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 4.

34 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 4.

35 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 4.

principles further provide that States must enforce laws aimed at, or having the effect of, leading business enterprises to respect human rights and "periodically to assess the adequacy of such laws and address any gaps," as well as exercise "adequate oversight in order to meet their international human rights obligations"[36].

Drawing on the Inter-American Commission's report Business and Human Rights: Inter-American Standards[37], the judge indicates that States' obligations regarding businesses translate into four sub-obligations, understood as part of the obligation to guarantee and to adapt domestic law: (i) to prevent violations in the context of business activities; (ii) to regulate and adopt provisions of domestic law; (iii) to oversee those activities; and (iv) to investigate, punish, and ensure access to comprehensive reparations for victims[38]. In his view, however, the duties to regulate and to oversee are expressions of how prevention can be carried out[39]. Prevention, in turn, is an obligation of means or conduct, such that its breach is not demonstrated by the mere fact that a right has been violated, and it requires "comprehensive measures" combining a legal framework of protection, its effective application, and prevention policies and practices[40]. Regulation is not enough: an institutional apparatus with competence over the rule is needed, and that apparatus must also actually ensure, in practice, that what has been regulated is carried out, which is why oversight, supervision, or inspection take on special importance[41].

Finally, the judge stresses that, according to the Commission, prevention is at stake when "the State itself generates or consolidates a situation of risk for the enjoyment of human rights"[42]. To link State conduct to the creation of the risk, according to the Commission, it will be necessary to establish the connection between concrete actions or omissions and the creation or consolidation of real risk situations, in this case "linked to business actions"[43]. These are circumstances that, as addressed in the judgment, led to the State's international responsibility in this case.

It is also worth returning to what the judge emphasizes in addressing poverty and structural and intersectional discrimination[44]. Fireworks manufacturing was the main source of work, if not the only employment option, for the women of that region, who had a low level of schooling and who were labeled "not very reliable, and for these reasons could not access other employment"[45]. In them converged poverty, being women and Afro-descendants and, in some cases, pregnancy or being girls, which, in the judge's terms, increased their disadvantages. Moreover, Article 24 of the Convention gives rise to a mandate of material equality, under which States

36 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 4.

37 Inter-American Commission on Human Rights and REDESCA (2019).

38 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 5.

39 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 5.

40 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, pp. 5-6.

41 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, pp. 5-6.

42 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 6.

43 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 6.

44 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, pp. 2 and 15-21.

45 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 2.

must "vigorously confront situations of exclusion and marginalization"[46]. For the purposes of this article, it is worth highlighting a reading that this framework allows: this was a population so vulnerable that it stood, to some extent, at the margins of the attention of both the State and the business activity that provided its livelihood. Earlier explosions and deaths already recorded were not enough for attention to be turned to these people[47].

Ferrer Mac-Gregor's opinion, therefore, deepens the State's duty to protect: it delimits when the State is answerable for the acts of private parties, shows that regulating and overseeing are ways of preventing, and links prevention to the risk that the State itself generates or consolidates. By express choice, the judge sets aside the corporate responsibility to respect and the pillar of access to remedy. Even so, in speaking of risk situations "linked to business actions" and of the oversight of private activities, the opinion suggests that the State's duty is not fulfilled in isolation, but in relation to what businesses do, or fail to do. It is this relationship that the next part examines: starting from the Guiding Principles, it seeks to understand how, in this case, the duties of the State and of businesses are articulated.

III. FROM THE GUIDING PRINCIPLES TO INTERDEPENDENCE AND CO-RESPONSIBILITY

The Guiding Principles on Business and Human Rights, although well established and widely disseminated, still lack one crucial element: binding force. They distinguish the State's duty to protect from the corporate responsibility to respect human rights, yet they do not, in themselves, create new legal obligations[48]. In the case examined here, the Court was able to rely on them to reinforce an obligation already derived from the American Convention, namely the duty to ensure rights, which is binding upon the State. For the company, however, there is no equivalent conventional obligation. This lack of legally binding force invites reflection on how far it is in a company's interest to implement these principles and, more importantly, in the State's interest to supervise their implementation. Nor should it be overlooked that the State itself, as a public actor subject to the jurisdiction of the Inter-American Court, frequently encounters resistance and, not infrequently, fails to comply with the Court's decisions[49]. If the State itself struggles to comply with the Court's rulings, what can reasonably be expected of companies operating within its territory when they are called upon to implement non-binding principles designed to prevent human rights violations and safeguard the rights of their employees?

The emphasis placed on the third point of Judge Ferrer Mac-Gregor's reasoned opinion in the previous part was not accidental. The fireworks factory was located in a rural area characterized by extreme vulnerability, where some communities lacked even basic sanitation services

46 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 2.

47 *Fireworks Factory v. Brazil* (2020), reasoned opinion of Judge Ferrer Mac-Gregor Poisot, p. 21.

48 Saldanha (2018); see also Office of the United Nations High Commissioner for Human Rights (2011), General Principles, p. 1, which states that nothing in the Guiding Principles "should be read as creating new international law obligations".

49 For illustrative examples, see Menin and Saldanha (2024); Teixeira and Menin (in press).

and fireworks production constituted the principal, if not the sole, source of employment. It is difficult to expect individuals living under such conditions to possess the means necessary to identify and confront, on their own, the risks to which they were exposed. Moreover, the risk was evident. Fireworks manufacturing is inherently hazardous; the 1998 explosion was not the first incident, and one of the factory owners had already been convicted in connection with an earlier explosion. The Court also described the unsafe and unhealthy working conditions that the State failed to prevent by neglecting to enforce its own regulatory standards. It should not be forgotten that business activity may itself operate, as it did here, as a producer of risk.

The point is that, in cases such as this, the boundary between the public and the private becomes increasingly blurred. Risks generated by private enterprises within a State's territory ultimately require institutional management by that very State, such that the actions of one become intertwined with those of the other. This does not mean, however, that the distinction disappears. The Court correctly emphasized that a State cannot be held responsible for every business activity carried out within its jurisdiction. It is therefore necessary to reflect on the role of each of these actors within the risk society, a concept that is central to understanding contemporary social transformations. Risk precedes harm, and once harm materializes, the law tends to respond reactively, as occurred in the present case. To briefly examine the concept of risk, it is useful to turn to sociology, which has long engaged with the subject, although its implications for legal responsibility remain less systematically explored in legal scholarship[50].

The centrality of risk in contemporary societies is associated with a broader transformation of modernity. As Bernstein argues[51], modernity marked a profound rupture by attributing to individuals and institutions the capacity to project and influence the future, shifting the understanding of events from a logic of fate to one guided by decision-making and the management of uncertainty. Within this framework, risk assumes a structuring role in decision-making processes, influencing both individual choices and large-scale public policies.

It is against this backdrop that the contributions of Giddens become particularly relevant[52]. For him, contemporary societies are experiencing a profound transformation in the nature of risk. Whereas earlier societies were dominated by external risks associated with natural phenomena and characterized by relative predictability, modern societies increasingly confront manufactured risks[53], that is, risks generated by human action itself, particularly through scientific, technological, and economic development[54]. This transformation entails not only an expansion in the scale of risks but also an increase in their complexity, given that such threats often lack sufficient historical precedents to permit their full anticipation. Giddens further observes that a large proportion of contemporary political decision-making involves managing risks that

50 Giddens (1999).

51 Bernstein (1996).

52 Giddens (1990); Giddens (1999).

53 Giddens (1999).

54 Emblematic examples of this new configuration, as highlighted in the introduction, are the Mariana (2015) and Brumadinho (2019) disasters in Minas Gerais, resulting from the collapse of dams operated by major mining companies (Samarco/Vale-BHP and Vale), as well as the Chevron oil spill (2011) off the Brazilian coast. These events illustrate risks generated by economic and technological activities linked to corporate conduct.

do not originate within the political sphere yet nevertheless require institutional and political responses[55].

Giddens also argues that risk and responsibility are closely intertwined, since both presuppose decision-making processes, whose consequences can, albeit in increasingly complex ways, be attributed to particular actors. As risks increasingly arise from human decisions, the attribution of responsibility becomes more difficult, especially in contexts characterized by high levels of interdependence. The expansion of manufactured risks is associated with a reconfiguration of traditional forms of responsibility, within a setting where the effects of decisions become diffuse and are often difficult to trace back to specific actors. This dynamic contributes to a crisis of responsibility, in which traditional legal mechanisms reveal their limitations when confronted with large-scale potential harms[56].

The sociological literature on risk likewise emphasizes its socially produced character, demonstrating that events frequently perceived as natural are, in reality, profoundly shaped by social, economic, and political factors[57]. In this sense, situations of vulnerability do not arise merely from the occurrence of particular events, but from the ways in which societies organize and distribute resources, protection, and exposure to harm[58]. Security and stability for some groups are often produced at the cost of exposing others to heightened risks, thus revealing the structural and unequal nature of contemporary risk distribution. In Santo Antônio de Jesus, this unequal distribution is readily apparent: poor women and children, for whom fireworks production represented the primary source of income, occupied the most exposed position within an activity conducted under unsafe conditions and inadequately regulated by the State.

The distinction between risk and danger is also central to this debate and is examined in greater depth by Luhmann[59] within the framework of social systems theory. According to Luhmann, risk is linked to decisions and refers to the possibility of harm resulting from choices made in the present, whereas danger refers to harm attributable to factors external to the decision-making process. This distinction shifts analytical attention toward the decisions that precede harm, reinforcing the centrality of responsibility in risk management and offering valuable insights for legal analysis. From this perspective, the 1998 explosion was not an externally imposed danger but rather the materialization of a risk attributable to decisions and omissions: the decision to operate the activity under the conditions in which it was conducted and the failure to regulate and supervise it effectively.

In a similar vein, Ulrich Beck[60] develops the concept of the risk society to describe a stage of modernity in which dangers generated by social development itself acquire a global reach. Contemporary society, in his view, ceases to be organized primarily around the distribution of

55 Giddens (1999).

56 Giddens (1999), pp. 7-8, where the author argues that the transition from external to manufactured risk "is bringing about a crisis of responsibility".

57 Motta (2010).

58 Panoussis (2023).

59 Luhmann (1993).

60 Beck (2009); Beck (2011); Beck (2015).

wealth and becomes increasingly structured around the distribution of risks, which affect different social groups unequally. Beck also draws attention to the phenomenon of organized irresponsibility, characterized by the difficulty of attributing responsibility within complex systems in which multiple actors contribute to the production of risks without effective mechanisms of accountability. Reflecting on Beck's work, Giddens highlights the exemption from responsibility for the consequences produced by such systems[61].

Taken together, these contributions help to conceptualize what the case reveals. If risk arises from decisions and omissions, and responsibility follows from decisions, then the decisive question is whose decisions and omissions produced the risk; and, in the light of the facts set out above, the 1998 explosion cannot be understood solely through the conduct of a single actor. The risk was produced by a business activity and was allowed to materialize through the State's failure to regulate and supervise that activity adequately. This is the interdependence highlighted here. From this perspective, the Guiding Principles may be understood as an attempt to organize the distribution of responsibilities whose absence Beck's notion of "organized irresponsibility" seeks to describe: the State bears the duty to protect, while the company bears the responsibility to respect.

This interdependence, however, does not erase the distinction between their respective obligations. The boundary between the public and the private remains relevant for the attribution of legal responsibility. The Court adjudicates only the responsibility of the State, whose duty to ensure rights stems from conventional obligations. By contrast, the corporate responsibility to respect human rights under the Guiding Principles exists independently of the State's willingness or ability to comply with its own obligations, without diminishing them[62]. Hence the notion of asymmetrical co-responsibility: shared in relation to risk and the need for prevention, yet asymmetrical with respect to the source and enforceability of each obligation. State protection does not dispense with corporate respect for human rights, and corporate respect does not dispense with State protection. The remaining question is how far this co-responsibility can be interpreted as a legally enforceable joint obligation, a matter addressed in the concluding remarks.

IV. CONCLUSIONS

The case *Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil* reveals a situation that goes beyond the mere attribution of international responsibility to the Brazilian State. Although the Court adjudicated only the conduct of the State, the analysis of the judgment and of Judge Eduardo Ferrer Mac-Gregor's reasoned opinion shows that the vio-

61 Although Giddens's discussion of Beck's work centers on the lack of accountability of subpolitics, the idea of irresponsibility, transposed to the context of this article, sheds light on a point repeatedly emphasized by the author: the absence of accountability for the harms, or "consequences," to use the terminology employed by both authors. Giddens (1996), pp. 146-147.

62 Office of the United Nations High Commissioner for Human Rights (2011), Commentary to Principle 11, p. 13: the corporate responsibility to respect "exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations".

lations at issue cannot be understood independently of the business activity from which they arose. State omission and the economic activity carried out by the factory appear, in this regard, as mutually implicated phenomena, making it possible to understand the relationship between the State's duty to protect and the corporate responsibility to respect human rights through the notion of interdependence.

The hypothesis underlying this research was that an examination of State omission would reveal a relationship of interdependence between the duties of the State and those of business enterprises, thereby supporting a discussion of asymmetrical co-responsibility between these actors. The analysis supports this hypothesis. The case demonstrates that the risks which culminated in the 1998 explosion stemmed neither exclusively from business activity nor solely from State inaction. Rather, they were produced through the interaction between an inherently dangerous economic activity, conditions of structural vulnerability, and the State's failure to effectively enforce the regulatory, supervisory, and oversight measures that it had itself established.

This finding, however, does not eliminate a fundamental tension. If risks are produced interdependently, the same cannot be said of the legal mechanisms of accountability. While the State's duty to protect is grounded in conventional obligations and supported by relatively well-defined, if not always effective, mechanisms of supervision, corporate responsibility continues to rely on instruments which, despite being widely recognized and disseminated, remain devoid of legally binding force. A first question therefore emerges: to what extent is it possible to speak of co-responsibility when only one of the actors is directly subject to the international system of accountability?

Reading the case through the lens of the sociology of risk further deepens this problem. As demonstrated, the risks that materialized in the 1998 explosion were neither unknown nor unavoidable. They were risks generated by human decisions, embedded in a context of extreme social vulnerability, and repeatedly ignored by those who possessed the capacity to identify and manage them. In this respect, the case appears to confirm that contemporary risks cannot be understood solely in terms of their occurrence, but must also be approached through the social, economic, and institutional structures that permit their production, reproduction, and unequal distribution.

There is, however, an additional element running throughout the case that deserves particular attention: time. The explosion occurred in December 1998. More than two decades elapsed between the facts and the Court's judgment. The Court itself expressly acknowledged, with concern, the delay in securing effective responses for the victims and their families. Moreover, compliance monitoring remains ongoing, with, at the very least, the payment of compensation and the reimbursement of costs still only partially complied with as of the Court's 2024 resolution. Time therefore assumes a central role in the analysis of the case. For populations living in conditions of structural vulnerability, delay is not a neutral factor. It prolongs the effects of the violation, postpones access to justice, and compromises the effectiveness of measures intended to prevent its recurrence.

This observation leads to a second reflection. The Guiding Principles are structured around the pillars of protection, respect, and remedy. In the case under examination, all three appear to have failed simultaneously. The State failed to provide adequate protection. The business activity

failed to respect the most basic rights of workers. And remedy has proven slow, incomplete, and still subject to international supervision decades after the events occurred. The conceptual distinction between these pillars remains important, yet the case invites us to question whether they can truly be understood as separate spheres, or whether the dynamics of human rights violations require a more relational understanding of the ways in which they interact.

Ultimately, the most significant contribution of the case may not lie in providing definitive answers, but rather in exposing the limits of the categories currently employed to think about the relationship between business, the State, and human rights. The distinction between the State's duty to protect and the corporate responsibility to respect remains essential for the attribution of legal responsibility. Yet the empirical reality revealed by the case appears more complex than the conceptual separation upon which the Guiding Principles are built. If interdependence adequately describes the manner in which risks are produced, managed, and repaired, it remains to be seen whether the legal instruments currently available are capable of operating according to the same logic, or whether they continue to rely on boundaries that are far more clearly defined than those found in the reality they seek to regulate. Developments beyond the case point in this direction: the negotiation, within the UN Human Rights Council, of a legally binding instrument on business and human rights; the adoption of mandatory human rights due diligence regimes, such as the French law on the duty of vigilance (2017) and the European Union's Corporate Sustainability Due Diligence Directive (2024); and, in Brazil, Bill PL 572/2022, which would establish a national framework law on human rights and business[63]. Whether such instruments can convert asymmetrical co-responsibility into enforceable joint obligations without collapsing the distinction between the State's duty and corporate responsibility is precisely the question the case leaves open.

Perhaps it is precisely here that the contemporary challenge of the Business and Human Rights field lies: not merely in determining who must answer after a violation has occurred, but in understanding how risks are jointly produced, managed, and distributed before harm materializes. The case examined here suggests that this question remains open. And if it remains open, it may be because the realities of the risk society continue to challenge legal categories developed for a world in which the boundaries between the public and the private appeared far easier to identify.

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63 United Nations Human Rights Council, Resolution 26/9, of 2014; France, Loi nº 2017-399, of 2017; Directive (EU) 2024/1760, of 2024; Brazil, Projeto de Lei nº 572, of 2022.

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The authors declare that there are no conflicts of interest regarding the research, authorship, or publication of this article.

AUTHOR CONTRIBUTIONS

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