

- Rights* (Princeton: Princeton Center for International Studies, 1988). A thoughtful if slightly dated overview.
- Moore, Jonathan, ed., *Hard Choices: Moral Dilemmas in Humanitarian Intervention* (Lanham: Rowman and Littlefield, 1998). A good collection by practitioners and theorists about different views toward, and experiences with, humanitarian assistance.
- Natsios, Alexander, *US Foreign Policy and the Four Horsemen of the Apocalypse: Humanitarian Relief in Complex Emergencies* (Westport: Praeger, 1997). The author, who was at different times both a US official and a key player for World Vision, a church-related private relief organization, focuses on the USA but stresses the interactions of governments, international organizations, and private actors like the ICRC.
- Power, Jonathan, *Amnesty International: The Human Rights Story* (New York: McGraw-Hill, 1981). A solid if somewhat dated overview.
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- Smith, Jackie, Charles Chatfield, and Ron Pagnucco, eds., *Transnational Social Movements and Global Politics: Solidarity Beyond the State* (Syracuse: Syracuse University Press, 1997). A good collection of case studies featuring private networks and their impact on human rights.
- Steiner, Henry J., *Diverse Partners: Non Governmental Organizations and the Human Rights Movement* (Cambridge, MA: Harvard Law College, 1991, for the Harvard Law School Human Rights Program and the Human Rights Internet). A short analysis of the different types of private actors working on human rights issues.
- Tolley, Howard J., Jr., *The International Commission of Jurists: Global Advocates for Human Rights* (Philadelphia: University of Pennsylvania Press, 1994). A careful look at a well-known, Geneva-based human rights NGO with a legal focus. Also an attempt to blend political history with social science theory.
- Weiss, Thomas G., "The Humanitarian Identity Crisis," in *Ethics & International Affairs*, 13 (1999), 1–22. A leading scholar of humanitarian affairs nicely summarizes much debate, while advocating major changes in international action. Accompanied by other views on the same topic in the same journal.
- Welch, Claude E., *Protecting Human Rights in Africa: Strategies and Roles of Non Governmental Organizations* (Philadelphia: University of Pennsylvania Press, 1995). A good overview of this subject, with a generally favorable view of African NGOs and their impact over time, despite a hostile environment.
- Willetts, Peter, ed., "The Conscience of the World": *The Influence of Non-Governmental Organizations in the UN System* (Washington: Brookings, 1996). An excellent collection with a very good chapter on Amnesty International and human rights by Jane Connors.

8 Transnational corporations and human rights

We saw in chapter 7 that the international law of human rights was directed mainly to public authorities like states and their governments, but that private actors like traditional human rights groups helped shape the rights discourse and action. In this chapter we will show that transnational corporations have a tremendous effect on persons in the modern world, for good or ill. For the first fifty years after the adoption of the United Nations Charter and Universal Declaration of Human Rights, these business enterprises mostly fell outside the mainstream debate about the promotion and protection of internationally recognized human rights. This situation was changing on the eve of the twenty-first century. Attention to transnational corporations and human rights constitutes a new frontier in the international discourse on human rights. Non-profit human rights groups, along with the media and particularly consumer organizations and movements, are targeting the corporations. The result is renewed pressure on public authorities, especially states, to adopt regulations ensuring that business practices contribute to, rather than contradict, internationally recognized human rights.

Enormous impact

It has been long recognized that business enterprises that operate across national boundaries have an enormous impact on the modern world. If we compare the revenues of the twenty-five largest transnational corporations (TNCs) with revenues of states, as in table 8.1, we see that only six states have revenues larger than the nine largest TNCs. If we were to include transnational banks in this figure, the power of private for-profit enterprises would be even more evident.

The world's 200 largest TNCs are incorporated in just ten states, as shown in table 8.2, above all in the United States and Japan. This means, of course, that if one could affect the national policies of these TNCs in this small number of states, one could greatly affect TNCs' global impact.

Table 8.1. *States and TNCs compared (sums in US\$ billion)*

State/TNC	Revenues	Year
USA	1,248	1994
GERMANY	690	1994
JAPAN	595	1995
UK	389	1994/95
ITALY	339	1994
FRANCE	221	1993
Mitsubishi	184	1995
Mitsui	182	1995
Itochu	169	1995
General Motors	169	1995
Sumitomo	168	1995
Marubeni	161	1995
Ford Motor	137	1995
Toyota Motor	111	1995
Exxon	110	1995
NETHERLANDS	110	1992
Royal Dutch/Shell Group	110	1995
SWEDEN	109	1995/96
Nissho Iwai	98	1995
SPAIN	97	1994
AUSTRALIA	96	1995/96
Wal-Mart Stores	94	1995
CANADA	90	1994/95
Hitachi	84	1995
Nippon Life Insurance	83	1995
Nippon Telegraph & Telephone	82	1995
AT&T	80	1995
Daimler-Benz	72	1995
International Business Machines (IBM)	72	1995
Matshushita Electric Industrial	70	1995
General Electric	70	1995
KOREA, SOUTH	69	1995
Tomen	68	1995
Mobil	67	1995
Nissan Motor	63	1995
Volkswagen	61	1995
Siemens	61	1995
BRAZIL	59	1994
Some other countries:		
KENYA	2.4	1990
SENEGAL	0.9	1996
UGANDA	0.6	1994/95
NICARAGUA	0.4	1996

Sources: Data on Corporations: "Fortune's Global 500. The World's Largest Corporations" in *Fortune*, 5 August 1996.

Data on State Revenues: *The World Factbook* by the CIA as posted on the World Wide Web.

Table 8.2. *The world's largest TNCs: home country, revenues and profits*

Country	Number of firms	Annual revenues	Annual profits	Global revenues %	Global profits %
Japan	62	3,196	46.0	40.7	18.3
United States	53	1,998	98.0	25.4	39.2
Germany	23	786	24.5	10.0	9.8
France	19	572	16.0	7.3	6.3
United Kingdom	11	275	20.0	3.5	8.0
Switzerland	8	244	9.7	3.1	3.9
South Korea	6	183	3.5	2.3	1.4
Italy	5	171	6.0	2.2	2.5
UK/Netherlands	2	159	9.0	2.0	3.7
Netherlands	4	118	5.0	1.5	2.0
Venezuela	1	26	3.0	0.3	1.2
Sweden	1	24	1.3	0.3	0.5
Belgium/Netherlands	1	22	0.8	0.3	0.3
Mexico	1	22	1.5	0.3	0.6
China	1	19	0.8	0.2	0.3
Brazil	1	18	4.3	0.2	1.7
Canada	1	17	0.5	0.2	0.2
Total	200	7,850	251.0	100.0	100.0
World GNP		25,223			
200 TNC Revenues as Pct. of World GNP				31.2	

Source: *Le Monde Diplomatique*, April 1997, p. 16.

Data for 1995; revenue and profit figures in US\$ billions.

Debate continues as to whether TNCs, because of their enormous economic power, which can sometimes be translated into political power, are beyond the effective control of national governments. A classic study concluded that TNCs were not, in general, beyond the reach of the "sovereign" state.¹ At the same time, however, most observers today agree that it is difficult for a given state to effectively regulate "its" corporations abroad for a variety of reasons. Business enterprises move resources, especially capital, rapidly around the globe, and it is only with some difficulty and a time lag that national governments know what TNCs are doing. Also, TNCs normally have considerable influence in national political systems, especially through pro-business political parties and personalities. This, of course, makes regulation of business difficult to achieve.

Moreover, it is difficult for one state to act alone in this regard.

¹ Raymond Vernon, *Sovereignty at Bay: The Multinational Spread of US Enterprises* (New York: Basic Books, 1971).

International law has not historically encouraged states to try to project extra-territorial jurisdiction in economic matters.² And if the state did so, it might restrict "its" corporations in global competition so that the state received fewer economic benefits and competitors more. When in 1977 the USA passed anti-corruption legislation (the Foreign Corrupt Practices Act) making it illegal for corporations registered in the country to pay bribes to get contracts from foreign parties, this put those firms at a competitive disadvantage in global competition. It was only in 1998 that the USA could persuade its partners in the Organization for Economic Cooperation and Development to level the playing field by adopting a multilateral convention, implemented through national legislation, on the subject.³ The logic of cooperation under conditions of anarchy, or in this case unregulated market competition, is an important subject.

The central question is not so much the power of TNCs, or the difficulty of their regulation. Both points are readily agreed to. The more complex question is what, on balance, the impact of TNCs is on persons and their human rights in the modern world. On this there is considerable debate. It follows that there is also a lively exchange on whether there should be more public regulation of TNCs in the name of human rights.

A critical view

Few persons other than Social Darwinists look with favor on the early stages of the capitalist industrial revolution. There was a certain national economic advance that was achieved via basically unregulated capitalism, and certainly the property owners benefited. But now there is almost universal rejection of the human conditions (not to mention environmental damage) of that early industrial capitalism, illustrated by the novels of Charles Dickens. No western market democracy, and no capitalist state in any developed country, now endorses pure *laissez-faire* economics. Even modern political conservatives such as Ronald Reagan and Margaret Thatcher endorsed certain aspects of regulated or welfare state capitalism (Thatcher was a strong defender, for example, of the British National Health Service). Socially responsible pro-business

² But see Mark Gibney and David R. Emerick, "The Extraterritorial Application of United States Law and the Protection of Human Rights: Holding Multinational Corporations to Domestic and International Standards," *Temple International and Comparative Law Journal*, 10, 1 (Spring 1996), 123–145.

³ AP, "Congress Passes Bill to Curb International Business Bribery," *New York Times*, October 22, 1998, A5.

persons recognize that capitalism is a harsh system, that not all persons benefit, that some persons require the protection of the state for a life with dignity under an economic system based on the right to private property.⁴ It has never proved persuasive to argue that both the poor and the rich have the same freedom to sleep under the bridges as they wish.

This brief reference to historical patterns is an important critique of unregulated business. If left to itself, even in western countries that manifested so much concern for the individual that they evolved into liberal and/or social democracies, unregulated business has often exploited, crushed, de-humanized, and affronted human dignity. Once the bonds of community, found in rural and agricultural settings, were replaced by the urban and more impersonal conditions of industrial capitalism, the have-nots were clearly in need of protection from the power of the haves. Whatever the difficulties of the political process, relatively humane national regulation of the for-profit system was achieved (at least relative to Dickens' England). The intervention of the state was used to offset the enormous power of the Henry Fords and Andrew Carnegies and the other "robber barons" of early industrial capitalism.⁵ One of the great problems immediately after the Cold War in places like Russia and Albania, *inter alia*, was that this regulation of the robber barons had yet to be made effective. This is why the successful financier, investor, and philanthropist George Soros has written that the greatest threat to democracy in the former communist lands of the Soviet Union and Eastern Europe is precisely capitalism.⁶

What has not been tolerated in the national political economies of the West for about a century, namely unregulated capitalism, has been allowed to proceed in international relations – at least until recently. And while one can chart growing international law in the domain of economics, most of that regulation is designed to encourage free trade and commercial activity, certainly not to restrict it in the name of human rights. The General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) are primarily designed to encourage international capitalism, not regulate it according to social values. This was also the main thrust of NAFTA (North American Free

⁴ See Michael Novak and Leslie Lenkowsky, "Economic Growth Won't End Poverty," *New York Times*, July 24, 1985, A19. The authors were associated with the American Enterprise Institute, a conservative, pro-business think tank in Washington.

⁵ On the political system as a counterweight to business power in the West, see especially E.E. Schattschneider, *The Semi-Sovereign People: A Realist's View of Democracy in America* (New York: Holt, Rinehart and Winston, 1960).

⁶ George Soros, "The Capitalist Threat," *Atlantic Monthly*, 279, 2 (February 1997), 45 and *passim*.

Trade Agreement), with provisions on ecology and labor rights added only as afterthoughts when demanded by American unions and others. There is a disconnect between much of the normative framework for *national* capitalism (to prevent gross exploitation) and the main concern of regulation of *international* capitalism (to stabilize capitalism regardless of exploitation).

In the national political economy, at least from the view of nationality and with class considerations aside, we are all "us." In the international political economy, there is an "in" group – us – and an "out" group – them. Nationalism being what it is, as long as the benefits flow to "us," the moral imperative to show concern for "them" is reduced. The World Development Report, produced by the United Nations Development Program, regularly chronicles the large and growing gap between the wealthy global north and the impoverished global south. As one would expect in a situation of mostly unregulated international economics where a sense of global community is weak, the elites with property rights and capital prosper, and many of the have-nots live a life on the margins of human dignity. Dickens would not be surprised.

Against this background, one can easily find horror stories of unprincipled TNCs making handsome profits at the expense of clearly exploited employees and bystanders. Authors from Stephen Hymer to David Korten have chronicled the record.⁷ Various TNCs, from United Fruit to Coca-Cola, actively opposed progressive governments and laws designed to advance labor rights and other human rights.⁸ Debora L. Spar of the Harvard Business School believes that the social record of TNCs engaged in the extraction of natural resources in foreign countries has been especially poor.⁹ On the one hand the TNC must have cozy relations with the (all-too-often reactionary) government that controls access to the resource. The TNC and local government share an interest in a docile and compliant labor force. On the other hand, the TNC has little interest in other aspects of the local population. The resource is mostly sold abroad, with a certain amount of the profits going to the governmental elite. If that elite does not act progressively to reinvest the

⁷ Stephen Hymer, "The Multinational Corporation and the Law of Uneven Development," in J.W. Bhagwati, ed., *Economics and World Order* (New York: Macmillan, 1971), 113–140; David Korten, *When Corporations Rule the World* (West Hartford: Kumarian Press, 1995). See also Richard J. Barnet and John Cavanagh, *Global Dreams: Imperial Corporations and the New World Order* (New York: Simon & Schuster, 1994).

⁸ For example, regarding United Fruit in Guatemala, see Stephen C. Schlesinger and Stephen Kinzer, *Bitter Fruit: The Untold Story of the American Coup in Guatemala* (Garden City, NY: Doubleday, 1982).

⁹ Debora L. Spar, "Multinationals and Human Rights: A Case of Strange Bedfellows," in *Human Rights Interest Group Newsletter*, American Society of International Law, 8, 1 (Winter 1998), 13–16.

profit into infrastructures that improve the lot of the local population, such as education, health care, and ecological protection, the TNC has seen little short-term economic interest in the situation.

The most fundamental *raison d'être* of the TNC is precisely economic self-interest, not to be a human rights actor. At least that has been the historical situation. "Investors and executives tended to see human rights as a matter for government officials and diplomats to implement, and resisted pressures to have their businesses used as tools for political reform ... The globalization of the economy and the globalization of human rights concerns, both important phenomena in the second half of this century, developed separately from each other."¹⁰

Some extractive TNCs went beyond cooperation with, and active support for, a reactionary elite. United Fruit in Guatemala (1954) and ITT in Chile (1973) actively cooperated with the US government in helping to overthrow politicians (Arbenz in Guatemala and Allende in Chile) who were champions especially of labor rights for their nationals.¹¹

To note one more example that has been much in the news, it is also reasonably clear that Royal Dutch Shell in Nigeria cooperated closely with military governments in suppressing local resistance to prevailing policies centering on extraction of oil in Ogoniland. Not only did Shell make it possible, at company expense, for the Abacha government to violently suppress those objecting to environmental degradation by Shell in Ogoniland. But also Shell refused to intercede with the government to object to the execution of Ken Saro-Wiwa, one of the most outspoken leaders of the Ogoni people in Nigeria. In reaction to considerable criticism, Shell took a number of steps to elevate the discourse about human rights as related to its business operations. But on balance the facts to date indicate that Shell has been less than fully socially responsible in its operations in Nigeria.¹²

¹⁰ Lance Compa and Tashia Hinchliffe-Darricarrere, "Enforcing International Rights through Corporate Codes of Conduct," *Columbia Journal of Transnational Law*, 33 (1995), 665.

¹¹ On Arbenz and Guatemala, in addition to footnote 8 above, see especially Piero Gleijeses, *Shattered Hope: The Guatemalan Revolution and the United States 1944–1954* (Princeton: Princeton University Press, 1991). On Allende and Chile, see especially Richard Z. Israel, *Politics and Ideology in Allende's Chile* (Tempe: Arizona State University Press, 1989).

¹² There is a small library of publications on Shell in Nigeria. See, for example, Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities* (New York: Human Rights Watch, 1999).

A more positive view

At the same time that Professor Spar, as noted above, believes that extractive TNCs in particular have a poor social record, she observes that there are other types of TNCs: consumer products firms, manufacturing firms, service and information firms. Some of these, she argues, are engaged in business that is compatible with several human rights. She goes so far as to argue that TNCs sometimes export human rights values.¹³ According to her research, some TNCs are interested in not just cheap labor but a good labor force that is highly educated and exists in the context of stable democracy. Thus Intel chose Costa Rica for one of its foreign plants. Firms intending to sell in foreign markets have an interest in a well-paid labor force with disposable income to buy their products.

Above all, Spar argues, all firms have an economic interest in avoiding negative publicity that might damage their sales. Thus TNCs do not want to face consumer boycotts and negative publicity because of the harsh, exploitive conditions in their foreign plants, or cooperation with pariah regimes. She cites a number of firms that have altered their policies, especially to establish codes of conduct for business practices and to allow independent monitoring of labor conditions, in relation to widespread criticism: Starbucks Coffee, the Gap clothiers, Nike, Reebok, Toys R Us, Avon, etc. She notes that a number of firms have pulled out of Burma, where a highly repressive military government has been internationally condemned: Levi Strauss, Macy's, Liz Claiborne, Eddie Bauer, Heineken, etc. She cites as especially effective the international campaign against child labor in the making of soccer balls, which led major TNC sporting firms to certify that no child or slave labor was used in the making of the balls. After all, one might add, if it is common practice to certify that tuna are not caught with nets that endanger dolphins, why not certify that consumer products are not made with processes that violate human rights?

Moreover, beyond reacting to negative publicity that might hurt the firms' bottom line on their economic books, some observers note that TNCs export standard operating procedures that are sometimes an improvement over those previously existing in a developing country. TNC plants in the global south may provide infirmaries for health care,

¹³ In addition to her views already noted, see her article "The Spotlight and the Bottom Line: How Multinationals Export Human Rights," *Foreign Affairs*, 77, 2 (March–April 1998), 7–12. See further Kenneth A. Rodman, "Think Globally, Punish Locally: Non-State Actors, Multinational Corporations, and Human Rights Sanctions," *Ethics & International Affairs*, 12 (1998), 19–42.

or improved safety conditions. TNCs, even while paying wages below standards in the global north, may pay wages in developing countries that permit growth, savings, and investment over time.

After all, the Asian Tigers like Taiwan made remarkable economic progress from the mid-1950s to the mid-1990s on the basis of an economy open to TNCs. Countries like South Korea and Taiwan not only became more prosperous over time, with a skilled work force, but also became liberal and social democracies, at least relative to their past. Thus, it is argued, there is nothing inherent in the operations of TNCs that requires that they block beneficial change in host countries or that they oppose human rights standards. While they have certainly done so in the past on occasion, an emerging world of liberal market democracies, or even social democracies, would be perfectly compatible with a bottom line in the black for TNCs. After all, the major trading partners of the USA are other market democracies like Canada and the states of the European Union. One does not need gross exploitation to make capitalism work, Marxist analysis notwithstanding.

One study has found that the presence of TNCs and direct foreign investment is positively correlated with the practice of civil and political rights in developing countries. Those same civil and political rights were also positively correlated with higher GNP, US foreign assistance, and higher debt. Direct foreign investment was also positively correlated with the Physical Quality of Life Index, measuring longevity, nutrition, and education. Hence the author of this study concluded that in the modern world TNCs were engines of progressive development, associated with both improved civil-political and socio-economic rights.¹⁴ There are other optimistic accounts of the social and political workings of capitalism over time.¹⁵

A balance sheet

Yet it remains reasonable to expect that if left alone, many TNCs will opt for short-term profits at the expense of human dignity for many persons affected directly and indirectly by their practices. It seems there must be countervailing power, either from the state, or from human rights organizations and movements, if TNC practices are to

¹⁴ William H. Meyer, "Human Rights and Multi-National Corporations: Theory v. Quantitative Analysis," *Human Rights Quarterly*, 18, 2 (Spring 1996), 368–397; and his book making the same points, *Human Rights and International Political Economy in Third World Nations: Multinational Corporations, Foreign Aid, and Repression* (Westport, CT: Praeger, 1998). There followed a debate about his methods and conclusions.

¹⁵ Max Singer and Aaron Wildavsky, *The Real World Order: Zones of Peace, Zones of Turmoil*, rev. edn (Chatham, NJ: Chatham House Publishers, 1996).

be made basically compatible with the International Bill of Rights. Given what we have noted before, namely that many parties are not enthusiastic about the IBR, effective human rights are usually wrestled from below in a tough struggle.¹⁶ The clear experience of the global north is that unregulated capitalism is injurious to human dignity and social justice.

Events in Indonesia during 1998 fit this pattern. The authoritarian Suharto government, with the support of many TNCs, clung to the *status quo* under the general banner of "Asian values" – meaning for present purposes that authoritarian Asian states had found a model of successful economics that did not require broad political participation, independent labor unions, and other manifestations of internationally recognized human rights. There was a pattern of impressive economic growth, but the continuation of much poverty – exactly as predicted by Novak and Lenkowsky.¹⁷ But the "Asian flu" of economic recession caused a re-evaluation of "crony capitalism," led by students, labor groups, and others demanding more attention to human rights. Suharto stepped down, the succeeding government ceased to be a champion of "Asian values," and numerous changes occurred. Parts of the elite took reform measures, under popular pressures, which was precisely the pattern that had obtained in the West during earlier periods.

Relevant also was the history of Nike and Reebok in Asia. Both companies had sub-contracted the production of athletic shoes and soccer balls, *inter alia*, to firms that operated sweatshops, employed child labor, and otherwise violated internationally recognized labor rights. Negative publicity caused both companies to alter certain policies, and at one point Nike hired a prominent American public figure, Andrew Young, to examine some of its Asian operations. But a debate continued over whether the companies were engaged primarily in public relations and damage control, or in substantive change in keeping with human rights standards. (As noted in chapter 3, certain labor rights such as freedom from slavery, freedom to bargain collectively, freedom of association, etc. are considered to be part of basic human rights.) The controversy was especially troubling to Reebok, which had pioneered certain policies related to human rights such as sponsoring rock concerts to benefit Amnesty International and making an annual human rights award. These two companies and others did participate in a program designed to guarantee that child labor was not used in the manufacture

¹⁶ See further, for example, Rhoda Howard, *Human Rights in Commonwealth Africa* (Totowa, NJ: Rowman & Littlefield, 1986).

¹⁷ Cf. Novak and Lenkowsky, "Economic Growth".

of soccer balls carrying their brand name (small fingers had proved useful in sewing).¹⁸

Regulation for human rights?

Three points are noteworthy about TNCs and international regulation in the name of human rights:

1. the weakness of current international law, especially as developed through the United Nations system, in regulating the social effects of international business;
2. the growing importance of consumer and other social movements, including the communications media, in providing non-profit critiques of for-profit behavior; and
3. the facilitative actions of some states, especially the USA during the Clinton Administration, but not Japan, in trying to close the gap between much TNC practice and human rights standards.

Weakness of international law

As noted earlier in this chapter, international law has had little to say about the social effects of TNC action. International law is directed mostly to states. States are held responsible for human rights conditions within their jurisdiction. The basic rule of international law is that TNCs are not subjects of that law, but only objects through the intermediary role of the state where they are incorporated.¹⁹ Thus, TNCs are not directly responsible to international law, and TNCs – outside of the EU framework – have mostly escaped direct regulation under international law.

UN narrowly defined

During the 1970s when the United Nations was the scene of debates about a New International Economic Order, there were demands from the global south, supported by the communist East, for a binding code of conduct on TNCs. Like the NIEO itself, this binding code for TNCs never came to fruition, due to blocking action by the capital exporting states whose primary concern was to protect the freedom of "their" corporations to make profits. (The OECD, made up of the westernized

¹⁸ As with Shell in Nigeria, so with particularly Nike in Asia, there is a small library on the subject. See further, for example, Philip Segal, "Nike Hones Its Image on Rights in Asia," *New York Times*, June 26, 1998, 1. In 1998 alone, the *New York Times* and other members of the global media carried numerous stories on this subject.

¹⁹ See further the Barcelona Traction case, *International Court of Justice Reports*, 1970, 3.

democracies, approved a non-binding code, but it has generated little influence.) A code of conduct for TNCs was negotiated in UNCTAD (UN Conference on Trade and Development) but never formally approved. A series of statements from UNCTAD, controlled by the developing countries, has been generally critical of the TNC record, but these statements were muted during the 1980s and thereafter. Attracting direct foreign investment via TNCs, not scaring it away, became the name of the game.

That left a series of critical statements about TNCs from the UN Human Rights Sub-Commission (as noted in chapter 3, officially this is the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities). A typical statement was issued by a special rapporteur in August 1998. El Hadji Guisse of Senegal called for criminal penalties in the national law of home states to regulate TNC actions that violated internationally recognized social and economic rights.²⁰ Previous statements along the same lines had generated little influence. Not the least of problems was that many of the international standards on socio-economic rights remained too vague for judicial interpretation, much less criminal penalties.

UN broadly defined

The International Labor Organization has not played a highly effective role in efforts after the Cold War to target abusive practices by TNCs. In part this was because national business associations made up one-third of the membership of the ILO. Another reason was that some western states, chiefly the USA, did not favor channeling their major concerns through the ILO. During the Cold War the ILO had fallen out of favor with Washington due to various political battles. By the turn of the century the ILO had not recovered from these bruising struggles and had not proved to be a dynamic organization capable of achieving striking developments in defense of labor rights.

The ILO was old and distinguished, and it has long manifested a human rights program in relation to labor rights. As we noted in chapter 3, since 1919 it had developed a series of reasonable – if sometimes vague – standards about international labor rights pertaining to a safe and healthy work environment, non-discrimination, fair wages, working hours, child labor, convict or forced labor, freedom of association, the right to organize, and the right to collective bargaining. But despite an elaborate system for reviewing and supervising its conventions, the ILO

²⁰ Inter press service, "Human Rights: Holding Transnationals in Check," Global Policy Forum, <http://www.igc.apc.org/globalpolicy/soecon/tncs/humrig.htm>.

was unable to achieve very much "support in international practice – at least in the sense of universal compliance by multinational corporations with these standards."²¹ The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977) also failed to affect the practice of TNCs. In theory during the Cold War, labor rights should have been an area for cooperation between East and West, if not north and south. But the ILO was able to produce little progressive change during the Cold War,²² as after. The abstract norms might remain valid. The principles underlying the basic conventions might have entered into customary law and become binding even on non-parties that were members of the ILO. The question was how to develop a political process that paid them some concrete attention.

A bright spot in the global picture after the Cold War was the growing attention to child labor. The International Convention on the Rights of the Child was almost universally accepted – only the USA and the Sudan refused to ratify. This law obligated states to protect child workers against forced and unsafe labor, *inter alia*.²³ UNICEF, the UN's premier agency dealing with children, was increasingly linking itself to this treaty and was seeing itself as much an actor for human rights as for relief and development. At a global conference in 1997 UNICEF expressed some optimism that the worst forms of exploitation of the 250 million working children could be successfully challenged, as had proved true with regard to much child labor in the garment industry.²⁴

Trade law

On the other side of the coin, embryonic trade law might not prove so supportive of growing attention to human rights. As noted earlier in this book, there was fear that dispute panels under the new World Trade Organization would strike down national and sub-national legislation designed to curtail TNC activity in repressive states like Burma. Observers were waiting to see whether human rights legislation, such as from the state of Massachusetts, and new ordinances by the City of Los Angeles, would be struck down in the WTO as an impermissible restraint on free trade. (There was also some possibility that such

²¹ Diane F. Orentlicher and Timothy A. Gelatt, "Public Law, Private Actors: The Impact of Human Rights on Business Investors in China," *Northwestern Journal of International Law and Business*, 14 (1993), 116 and *passim*.

²² Ernst A. Haas, *Human Rights and International Action* (Stanford: Stanford University Press, 1970).

²³ Especially Article 32.

²⁴ Reuters, "Child Labor Conference Ends on Hopeful Note," http://www.yahoo.com/headlines/970227/international/stories/children_1.html.

human rights legislation by sub-national entities [states and cities in a federal system] would be struck down on different grounds by national courts.²⁵ In 1996 the WTO did adopt a declaration, sponsored by the USA, pledging members to respect labor rights. The declaration was non-binding and vague. But some observers were fearful that just as the WTO had struck down some US trade decisions – based on its environmental regulations – as restraints on free trade, so the WTO might prove equally hostile to human rights regulations.

Non-profit dynamism

Chapter 7 charted the growth of an international civic society in which various non-profit organizations and movements, including human rights groups, were increasingly active on public policy issues. This chapter follows up by showing that numerous organizations and movements have begun to focus on TNC practices in the light of human rights standards. One may use the broad phrase “social responsibility” in reference to TNCs, but human rights values are part of that concern (which also includes anti-bribery and anti-corruption measures, along with ecological matters).²⁶ As far back as 1972 the International Chamber of Commerce adopted a non-binding code of conduct for TNCs. Some business executives formed the Caux Round Table, which promotes TNC social responsibility, including “a commitment to human dignity, [and] political and economic freedoms.”²⁷ The Royal Netherlands Academy of Sciences recognized Corporate Watch in relation to the Netherlands School of Human Rights Research.²⁸ Standard human rights organizations like Human Rights Watch and Amnesty International began to pay more attention to TNCs.²⁹ Groups that had long tracked business practices in the interests of consumers, such as Ralph Nader’s Global Trade Watch in Washington, began to focus more

²⁵ Matthew Schaefer, “Searching for Pareto Gains in the Relationship Between Free Trade and Federalism: Revisiting the NAFTA, Eyeing the FTAA,” *Canada-United States Law Journal*, 23 (1997), 441–488.

²⁶ See further Lance A. Compa and Stephen F. Diamond, eds., *Human Rights, Labor Rights, and International Trade* (Philadelphia: University of Pennsylvania Press, 1996); John W. Houck and Oliver F. Williams, *Is the Good Corporation Dead: Social Responsibility in a Global Economy* (Lanham, MD: Rowman & Littlefield, 1996); and Lee Tavis, *Power and Responsibility* (Notre Dame: Notre Dame Press, 1997).

²⁷ <http://www.cauxroundtable.org/>.

²⁸ <http://www.corpwatch.org>. This is a quasi-public institution but operated by individual academics.

²⁹ One has only to observe the web sites or publication lists of these NGOs. See for example <http://www.hrw.org/about/initiatives/corp.html>.

on human rights issues. Labor unions like the AFL-CIO were highly active on transnational labor issues.

In some cases of private pressure there has been undeniable success – as in the reduction of child labor in the making of soccer balls by TNCs, or by forcing Nike to take a closer look at its sub-contractors in Asia. The “Sullivan Principles” at least directed attention to the effects of apartheid on working conditions in the Republic of South Africa under white minority rule, even if Reverend Sullivan of Philadelphia eventually concluded that his code – intended to affect investments – was inadequate for achieving major improvements in an integrated work force in South Africa. The “McBride Principles” directed attention to sectarian discrimination in employment practices in Northern Ireland, as any number of investors in that British province tied their investments to these principles designed to reduce prejudice against Catholics or Protestants. As noted, other firms have been shamed into altering their policies in the light of human rights values. Starbucks Coffee opened its foreign operations to human rights monitors, Heineken withdrew from doing business in Burma, and Levi Strauss withdrew from manufacturing in China for a time.

By 1999 American TNCs could choose among three new codes of conduct in response to various pressures about labor rights in foreign trade.³⁰ One, devised by some very cautious firms, was vague, weak, and not widely accepted. One, endorsed by the Clinton Administration, covering a broad range of labor issues but avoiding for now the tough nut of “a living wage,” was gaining support and media attention. A third, with a complicated formula for dealing with wage issues in addition to other rights, was the most challenging.

In the fall of 1998, a group of companies in the apparel and footwear industries, including Liz Claiborne, Nike, Reebok, and others, agreed to open their overseas operations to independent human rights monitors under formal agreement. The “Apparel Industry Partnership” or “Fair Labor Association” provided for periodic inspection by the Lawyers Committee for Human Rights, based in New York, and other respected human rights NGOs under detailed provisions.³¹ The deal was brokered by the Clinton Administration, which had worked for over two years to get such an agreement. While arrangements were criticized by various American labor groups, some American university students, and others as not going far enough, this development was hailed by its supporters as a major advance in providing specific attention to labor rights on a

³⁰ For background see *Business and Human Rights* (Cambridge, MA: Human Rights Program, Harvard Law School, 1999).

³¹ For one summary see <http://www.lchr.org/sweatshop.summary.htm>.

transnational basis.³² About twenty major American universities with well-known sports programs and popular sports apparel, like Michigan, Notre Dame, and Nebraska, among others, joined this arrangement.³³

Under the AIP/FLA, reports on companies will be made public, allowing consumers to take whatever action they want on the basis of the reports. The reports will focus on a workplace code, detailed in the agreement, and be based on a selected percentage of the companies' operating facilities. Analysis of wages will be pegged to a US Department of Labor study regarding employee basic needs in the country at issue. There is also a procedure for filing complaints against the company. A "no sweat" label can be added to products made in compliance with this agreement.

Also in 1998, a number of companies including Toys R Us and Avon created the Council on Economic Priorities. This CEP deals with the usual labor rights in foreign subsidiaries or sub-contractors, but also with what constitutes a "living wage" in different countries. On this latter point, according to a specific formula, one calculates the cost of basic human need in caloric terms. This is done in a way that allows specific numbers to be provided country by country. The formula has been generally regarded as appropriate. But the CEP terms were sufficiently demanding for some business groups and commentators to endorse the AIP/FLA as indicated above, on the grounds that a specific "living wage" standard would curtail some foreign investment leading to loss of jobs in the global south.³⁴ After all, certain governments as in Malaysia have been very explicit about low wages constituting one of their important comparative advantages in global markets.

Still other companies created the American Apparel Manufacturers Association. While this arrangement provided monitoring of labor rights, the standards were so low that it was generally discredited by most human rights groups, unions, attentive university students, and other observers outside the apparel industry.

In other developments the achievement of success by private human rights actors and movements has been even more debatable. As noted already, Shell Oil was not forced out of Nigeria, nor into providing clearly different policies in Ogoniland where Shell operations had allegedly damaged the environment, nor into saving the life of Ken

³² Steven Greenhouse, "Groups Reach Agreement For Curtailing Sweatshops," *New York Times*, November 5, 1998, A18.

³³ Steven Greenhouse, "17 Top Colleges Enter Alliance on Sweatshops," *New York Times*, March 16, 1999, A15.

³⁴ Aaron Bernstein, "Sweatshop Reform: How to Solve the Standoff," *Business Week*, May 3, 1999, 186-190.

Saro-Wiwa and his Ogoni compatriots who had protested against Shell policies. At best Shell was forced into paying more attention to public relations and fending off calls for major boycotts and sanctions. Yet the story about Shell and Nigeria is not over, and it remains to be seen whether relations between this TNC and post-Abacha governments in Lagos remain the same as in the past. Private advocacy for better TNC policies may yet prove at least somewhat influential in this case. In chapter 7 we noted the elusive nature of "success" for human rights groups and movements, as well as noting the importance of long-term education in changing views over time.

Finally in this section we should note that some private actors have brought law suits in national courts against TNCs and their global operations. For example, in the USA, the Alien Tort Statute of 1789 allows civil suits against private parties where a violation of the law of nations is involved, regardless of the nationality of the parties. Most of the case law under this statute has concerned torture.³⁵ But in the 1990s certain individuals sought to sue the Unocal oil firm, based in California, for engaging in or allowing sub-contractors to engage in forced labor and other human rights violations in its operations in Burma. The US district court in question, in a jurisdictional ruling of considerable potential importance, allowed the case to proceed to the substantive phase where a judgment is expected at the time of writing.³⁶ A judgment holding TNCs legally and financially liable for violations of the international law of human rights would be a major development.

Nation state action

In the 1970s, as already noted, western or home state governments tried to fend off demands for new international law to regulate TNCs as part of the NIEO. By the 1990s this situation had partially changed, as a number of governments – including some that were pro-business and right of center – in westernized democracies advocated at least codes of conduct and other non-binding measures designed to advance social responsibility, including attention to human rights, in the activities of TNCs. The German government of Helmut Kohl underwrote the "Rugmark campaign," designed to ensure that Asian rugs were not made with child labor. The Chretien government in Canada also began to address the issue of child labor abroad. The Clinton Administration

³⁵ Beth Stevens and Steven R. Ratner, *International Human Rights Litigation in US Courts* (Irvington-on-Hudson, NY: Transnational Publishers, 1996).

³⁶ William J. Aceves, "Doe v. Unocal," *American Journal of International Law*, 92, 2 (April 1998), 312-314.

brokered the AIP/FLA arrangement discussed above, while trying to pressure Shell because of its policies in Nigeria. European governments, through the European Parliament, tried to embarrass British Petroleum over its policies in Colombia which allegedly led to the repression of labor rights through brutal actions by the army in constructing a BP pipeline. As one might imagine, debate ensued about how much governmental action was enough in addressing TNC action for human rights.

In general it can still be said that home state governments remain reluctant to firmly and effectively use public law to regulate TNCs in the name of international human rights. The real shift that is underway is for national governments to prod "their" corporations to regulate themselves, under non-binding codes and now increasingly NGO monitoring. The sanction at work is that of negative publicity and consumer sanctions. This has proved somewhat effective for those companies that sell directly to individual consumers, as Heineken and Nike, *inter alia*, will attest.

A review of US foreign policy and TNC action for human rights, however, is an example that indicates more vague rhetoric than concrete examples of effective action – certainly beyond the AIP/FLA agreement.³⁷ The United States, under both Democrat and Republican administrations, is still wary of "statism" that would intrude deeply into the marketplace.

In 1996 the US Department of Commerce advanced a code called The Model Business Principles linked to universal human rights. The code referred to a safe and healthy workplace, fair employment practices, and free expression and opposition to political coercion in the workplace, along with environmental and anti-corruption concerns. But aside from the AIP/FLA agreement, it seems that nothing much has come about in the wake of this code. The Department of Commerce is normally pro-business, and was notably so in the Clinton Administration by comparison with the Labor Department under Robert Reich. As in most governments, there was tension between competing elements.

It is said that the State Department, the Office of the US Trade Representative, and other US bodies take up labor concerns in foreign countries. It is true that the Annual Country Human Rights Reports, compiled by the State Department's Bureau of Democracy, Human Rights, and Labor, consider labor issues. But it is well known that there has been a persistent gap between the recording of violations of internationally recognized human rights in these reports, which has been done fairly conscientiously since 1976, and any effective follow-up steps

³⁷ See http://www.state.gov/www/global/human_rights/business_principles.html.

by the USA. Washington's trade statutes include language that allows trade to be made conditional on human rights behavior.³⁸ But as in EU relations with non-European trade partners, this conditionality is rarely if ever invoked in practice.

It is also true that US foreign policy officials make speeches on behalf of labor rights and corporate social responsibility, but concrete action by the USA in opposing certain TNC practices is not always easy to demonstrate. The United States has been more active, for a longer period of time, in opposing TNC bribery than in opposing child labor and other violations of labor rights.

It can be noted, however, that the USA joined a number of other actors like UNICEF in providing funds to allow underage children to return to school rather than work in Asian sweatshops. The Departments of Commerce and Labor do publish information on child labor abroad, and provide a list of codes of conduct and possible monitoring organizations for TNC use if they so choose. And the United States continues to support certain ILO programs, even if these have not always proved very effective.

Conclusions

Whereas not so long ago TNCs were urged not to get involved in the domestic affairs of host states, now there has been a considerable shift in expectations; TNCs are frequently urged by citizens and their governments to undertake a more active commitment to international human rights.³⁹ As a *New York Times* editorial noted: "A quarter-century ago, business argued that protecting the environment was not their job. Few American companies would say so today. A similar change may be developing in corporate attitudes about human rights. Companies are increasingly recognizing that their actions can affect human rights, and that respecting rights can be in their business interest."⁴⁰

Despite the fact that public international law, and especially criminal law, does not apply thus far to TNCs, there are ways to reorient private corporations to public standards of human rights. Non-binding codes of

³⁸ Compa and Hinchliffe-Darricarrere, "Enforcing International Rights," 667.

³⁹ The Dutch Sections of Amnesty International and Pax Christi International, *Multinational Enterprises and Human Rights* (no place: AI and PCI, no date), 22–23. See further Thomas Donaldson, "Moral Minimums for Multinationals," in Joel H. Rosenthal, ed., *Ethics and International Affairs: A Reader*, 2nd edn (Washington: Georgetown University Press, 1999), 455–480.

⁴⁰ Quoted in "Human Rights and Business: Profiting from Observing Human Rights," *Ethics in Economics*, 1998 (nos. 1 & 2), 2, 125 B. Broad St., Columbus, Ohio, www.businessethics.org.

conduct, devoid of monitoring mechanisms, have proved uniformly weak in the 1970s and 1980s, whether originating from the International Chamber of Commerce, the OECD, the ILO, the US government, or in draft form from UNCTAD. But private codes, in the form of negotiated agreements, accompanied by independent monitoring and public reporting, hold some promise for changing corporate behavior. This is especially so when such agreements have the backing of governments which can be expected to assist in implementation. Recall that the AIP/FLA is underwritten by the US government, whose Department of Labor will carry out studies, *inter alia*, to promote compliance. Recall that the Rugmark campaign was underwritten by the German government.

It is in this a-legal gray area of public and private action that one is most likely to see progress in the near future in getting TNCs to pay more attention to human rights standards. The pressure will come mostly from the non-profit side, in the context of media exposure, with the threat of consumer or citizen action that endangers the corporation's profit margin. But socially responsible partners will exist within some corporations and governments. The process is likely to remain quasi-legal and extra-judicial, although national court cases making TNCs liable for civil penalties for human rights violations could be a factor of great significance.

One sees the general process at work not only in the global garment and shoe industries, and the occasional company with a conscience like Heineken or Starbucks. One also sees general change at work when German corporations offer compensation for having cooperated with forced labor arrangements during the Nazi period. The threat of civil law suits has prompted Volkswagen and others to create "humanitarian funds" to compensate victims, even though such payments are not required by German law.⁴¹ These German developments followed in the wake of similar legal threats against the major Swiss banks, with various legal actions also threatened by cities and states within the USA. This private and public campaign resulted in ameliorative policies by the leading Swiss banks with regard to certain Jewish depositors during and after World War II. All of this is part of a new psychological environment in which TNCs are expected to engage in socially responsible policies. Many of these policies center on international standards of human rights.

⁴¹ See *New York Times*, for example, December 4, 1998, A6 and A23.

Discussion questions

- Are transnational corporations too large and powerful for control by public authorities? To what extent are international authorities, compared with national authorities, important for the regulation of TNCs?
- What is the experience in OECD countries with regard to private, for-profit corporations and their impact on labor at home? Has the lesson of this experience been properly applied to international relations?
- Are human rights considerations, when applied to TNCs, actually a form of western imperialism in that the application of human rights standards to protect workers actually impedes economic growth and prosperity in the global south?
- If you are a stockholder in a TNC, do you really want "your" company to pay attention to human rights as labor rights if it reduces the return on your investment? What if you are both an owner and a consumer at the same time: does this change any important equation in your thinking? Why should we expect American and European owners or consumers to be concerned about Asian, African or Latin American workers?
- Are companies like Nike and Reebok engaged in public relations maneuvers by joining a-legal codes of conduct like AIP/FLA, or do they show a real commitment to the human dignity of the workers in their Asian sub-contractors? Is there any real difference between Nike and Royal Dutch Shell when it comes to social issues in foreign countries?
- Can TNCs be effectively counter-balanced on sweatshop issues by a movement featuring primarily university students, unions, human rights groups, and the media? Is it necessary for governments to lend their support to such a movement? Can private a-legal codes of conduct be effective on TNC policies?
- Given that the ILO has been around since about 1920, why does so much action on labor rights take place outside the procedures of this organization? Can one make more progress on labor rights by circumventing international law and organization? Conversely, should we make TNCs directly accountable under international law, instead of indirectly accountable through nation states? Is politics more important than law?

Suggestions for further reading

- Barnet, Richard J., and John Cavanagh, *Global Dreams: Imperial Corporations and the New World Order* (New York: Simon & Schuster, 1994). A hard look at TNCs and public policy from left of center.
- Compa, Lance A., and Stephen F. Diamond, eds., *Human Rights, Labor Rights, and International Trade* (Philadelphia: University of Pennsylvania Press, 1996). A good collection that provides a solid overview.
- Donaldson, Thomas, "Moral Minimums for Multinationals," in Joel H. Rosenthal, ed., *Ethics and International Affairs: A Reader*, 2nd edn (Washington: Georgetown University Press, 1999), 455–480. A good, short treatment of ethical conduct in the world of TNCs.
- Gilpin, Robert, *The Political Economy of International Relations* (Princeton: Princeton University Press, 1987). A classic study. Chapter 6 deals with TNCs. Not much explicitly on human rights, but lots on TNC behavior in broad political perspective.
- Haas, Ernst A., *Human Rights and International Action* (Stanford: Stanford University Press, 1970). Concludes that the ILO during the Cold War was not able to improve labor rights in the communist bloc.
- Houck, John W., and Oliver F. Williams, *Is the Good Corporation Dead: Social Responsibility in a Global Economy* (Lanham, MD: Rowman & Littlefield, 1996). A thorough examination of the concept of social responsibility in relation to corporate behavior.
- Hwyer, Stephen, "Multinational Corporations and the Law of Uneven Development," in J. W. Bhagwati, ed., *Economics and World Order* (New York: Macmillan, 1971), 113–140. A classic study of the evils TNCs can do.
- Korten, David, *When Corporations Rule the World* (West Hartford: Kumarian Press, 1995). Another critical look, some would say hyper-critical, at TNCs and the damage they can do.
- Meyer, William H., *Human Rights and International Political Economy in Third World Nations: Multinational Corporations, Foreign Aid, and Repression* (Westport, CT: Praeger, 1998). A quantitative study finding positive correlations, in general, between the presence of TNCs in the global south and lots of good things. The author's methodology has been questioned by other scholars.
- Rodman, Kenneth A., "Think Globally, Punish Locally: Non-State Actors, Multinational Corporations, and Human Rights," *Ethics and International Affairs*, 12 (1998), 19–42. Notes the growing pressure on corporations to better respect labor rights, principally from human rights organizations and consumer movements.
- Schlesinger, Stephen C., and Stephen Kinzer, *Bitter Fruit: The Untold Story of the American Coup in Guatemala* (Garden City, NY: Doubleday, 1982). American corporations team with the US government to overthrow the Arbenz government in Guatemala, ushering in several decades of brutal repression.
- Soros, George, "The Capitalist Threat," *Atlantic Monthly*, 279, 2 (February 1997), 47 and *passim*. The successful Hungarian financier and philanthro-

pist warns of the dangers of unregulated capitalism in Eastern Europe and the former Soviet Union.

- Spar, Deborah, "The Spotlight and the Bottom Line: How Multinationals Export Human Rights," *Foreign Affairs*, 77, 2 (March–April 1998), 7–12. A short essay that is basically positive about the role of regulated or pressured corporations. The author notes that some corporations have a very poor record on human rights.
- Tavis, Lee, *Power and Responsibility* (Notre Dame: Notre Dame Press, 1997). Another useful look at social responsibility and corporate behavior.
- Vernon, Raymond, *Sovereignty at Bay: The Multinational Spread of US Enterprises* (New York: Basic Books, 1971). A classic study arguing that TNCs have not escaped control by the modern state.