Tang, James T.H., ed., *Human Rights and International Relations in the Asia Pacific* (London: Pinter, 1995). A good collection, with attention to diverse foreign policies and human rights in Asia.

Vogelgesang, Sandy, *American Dream, Global Nightmare: The Dilemma of US Human Rights Policy* (New York: Norton, 1980). One of the first studies of human rights and US foreign policy suggests the difficulty of establishing a foreign policy that is both principled and consistent.

Wiarda, Howard J., *Cracks in the Consensus* (Westport: Praeger, 1998). Tries to assess the impact of US foreign policy on democratic developments in certain countries in modern times.

Zakaria, Fareed, "The Rise of Illiberal Democracy," *Foreign Affairs*, 76, 6 (November–December 1997), 22–43. An important article noting the difference between liberal and illiberal democracy. Whereas the United States has in the past supported some illiberal elected governments, as in El Salvador, presumably the West now intends to enlarge the *liberal* democratic community.

7   Non-governmental organizations and human rights

By now it should be clear that states, acting frequently through international organizations and/or diplomatic conferences, produce the international law of human rights by concluding treaties and developing customary law. The resulting law obligates states, primarily. In chapter 6 we examined state foreign policy against the background of the international law of human rights. But private actors can be important at both ends of this process, affecting legislation and implementation.[1]

This chapter starts with an analysis of non-governmental organizations and their advocacy of human rights ideas, which is directed both to the creation and application of human rights norms. No doubt the best known of these groups is Amnesty International. This analysis is eventually set within the confines of social movements. Such actors push for more liberalism in the form of human rights protection in international relations. The chapter then turns to those private groups that are mostly called relief or development agencies, or sometimes PVOs (private voluntary agencies) or VOLAGs (voluntary agencies). A classic example is Oxfam. These private actors are crucial especially for grassroots action that directly or indirectly attends to social and economic rights. Most can be said to be liberal or neo-liberal actors, in that they emphasize policies for the betterment of individuals under legal norms, rather than emphasizing the collective national interests of states as pursued through the application of power. Chapter 8 addresses private for-profit actors, commonly called multinational or transnational corporations when they act across national borders.

Private advocacy for human rights

There are perhaps 250 private organizations consistently active across borders that take as their reason for being (*raison d'être*) the advocacy of

[1] For an introductory overview, see William Korey, *NGOs and the Universal Declaration of Human Rights: "A Curious Grapevine"* (New York: St. Martin's Press, 1998).

some part of the international law of human rights and/or humanitarian affairs on a global basis.[2] From this group a handful have the requisite budget, contacts, expertise, and reputation to get the global media and major governments to pay them at least periodic attention across a range of issues and situations: Amnesty International, Human Rights Watch, the International Commission of Jurists, the International Federation for Human Rights, the International Committee of the Red Cross, the Human Rights Law Committee, Lawyers Without Borders, Doctors Without Borders, Physicians for Human Rights, Anti-Slavery International, PEN (Poets, Essayists, Novelists), Article 19 (devoted to freedom of expression), etc. When there is an international meeting touching on human rights, private groups that identify themselves as working primarily for international law, peace, world order, and women's issues, etc. may swell the numbers of active advocacy groups to several hundred – 200 to 800 might be an expected range. The core advocacy groups are usually called NGOs or INGOS – non-governmental organizations or international non-governmental organizations. A related phenomenon is a governmentally created, quasi-private human rights organization, or GONGO. Some GONGOs have been surprisingly active and independent, as in Indonesia and Mexico.

The oldest and best-funded human rights NGOs are based in the west and concern themselves primarily with civil and political rights in peace time and international humanitarian law in war or similar situations. Western societies have manifested the civil rights, private wealth, leisure time and value structures that allow for the successful operation of major human rights NGOs. To advocate human rights via a truly independent and dynamic NGO, there must be respect for civil rights and a civic society to start with. With the spread of liberal democracy and more open societies after the Cold War, the number of NGOs at least spasmodically active on some human rights issues has greatly increased. But the percentage of human rights groups, relative to the total number of NGOs active in international relations, has remained rather stable.[3]

Complicating the picture is the fact that other private groups that exist for secular or religious purposes may become international human rights actors at particular times and for particular causes. The Catholic Church in its various manifestations and the World Council of

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[2] Jackie Smith and Ron Pagnucco with George A. Lopez, "Globalizing Human Rights: The Work of Transnational Human Rights NGOs in the 1990s," *Human Rights Quarterly*, 20, 2 (May 1998), 379–412.

[3] Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998), 11.

Churches, *inter alia*, are examples of religious groups that fit this mold. Labor unions that normally focus on domestic "bread and butter" issues, like the AFL-CIO in the United States, may – and increasingly do – have a private foreign policy on rights questions. Labor unions, in order to try to protect labor wages and benefits in their home country, may find it necessary to address labor rights in foreign countries. "Ethnic lobbies" such as "the Greek lobby" or "the China lobby" may and occasionally do take up human rights issues of concern. There are numerous national civil rights groups, such as the American Civil Liberties Union in the United States, that occasionally turn to international issues. Given the existence of transnational issues, or the penetration of international relations into domestic affairs, it is increasingly difficult to separate national from international human rights groups. Increasingly this amalgam of private actors is referred to as civic actions groups, or as making up civil society.

Because traditional international human rights groups may indeed join with a variety of other actors to deal with particular human rights situations or issues, some prefer to speak of movements or coalitions rather than separate organizations.[4] Thus it was said that there was a movement to ban land-mines, or a movement in support of an international criminal court. According to Keck and Sikkink, such movements may include NGOs, local social movements, foundations, the media, churches, trade unions, consumer organizations, intellectuals, parts of inter-governmental organizations, and parts of national or sub-national governments.[5] Hence it was said sometimes that the movement in support of a UN criminal court was made up of "like-minded states" plus over 200 human rights NGOs plus elements of the communications media, along with individuals. The foreign minister of Canada, in his efforts to achieve a strong International Criminal Court, wrote in 1998: "With lessons learned from the successful campaign for a treaty banning land mines, we are engaging not only political leaders but also non-governmental organizations, media and citizens around the world."[6] Such movements or coalitions were indeed made up of diverse partners.[7]

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[4] See for example, Jackie Smith, Charles Chatfield, and Ron Pagnucco, eds., *Transnational Social Movements and Global Politics: Solidarity Beyond the State* (Syracuse: Syracuse University Press, 1997); and Keck and Sikkink, *Activists beyond Borders*.

[5] On the important but little studied matter of funding of NGOs by charitable foundations, see Jay Ovsiovitch, "Feeding the Watchdogs: Philanthropic Support for Human Rights NGOs," *Buffalo Human Rights Law Review*, 4 (1998), 341–364.

[6] Lloyd Axworthy, "Without Justice, No Security for Ordinary People," *International Herald Tribune*, June 16, 1998, 6.

[7] See further Henry J. Steiner, *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). See also

Increasingly individuals or organizations that operate web sites on the Internet may be part of a coalition active on one or more human rights issues. The collection and spreading of information about human rights on the Internet was a relatively new development in the 1990s that had the potential for considerable impact. For example, the International Monitor Institute started documenting human rights violations in the Balkans, moved to providing information on war crimes trials from the former Yugoslavia, and then created the Rwanda Archive.[8] This and other relevant electronic activity fed into the Rome Diplomatic Conference of July 1998 that approved a draft statute for an international criminal court.

The process

If we focus on the advocacy of traditional human rights organizations, either as separate entities or part of a movement, it is reasonably clear what these groups do.[9] First, the bedrock of all their activity is the collection of accurate information and its timely dissemination. For a group to generate influence on governments and other public authorities like the UN Human Rights Commission, it must manifest a reputation for accurate reporting and dissemination of information. States do not exist primarily to report the truth. They exist primarily to exercise power on behalf of national interests as they see them. Relevant is the old maxim about the role of ambassadors: they are sent abroad to lie for their country. Private human rights groups, on the other hand, do not fare very well if they do not develop a reputation for accurate reporting of human rights information.

Amnesty International (AI) has had a reputation since its founding in 1961 for accurate reporting primarily about prisoners of conscience – those imprisoned for their political and social views expressed mostly non-violently – and about torture and the death penalty, *inter alia*. It has a research staff in London of about 320 persons (plus about 100 volunteers) that is much larger than the staff of the UN Human Rights Centre in Geneva.[10] The International Committee of the Red Cross

(ICRC) has built up a reputation since 1863 for meticulously careful statements about prisoners of war and other victims of armed conflict and complex emergencies. Its staff of some 600 in Geneva, plus another 1,000 or so in the field (including those seconded from National Societies but not counting those hired locally), is extremely hesitant to comment unless its delegates in the field can directly verify what has transpired.[11]

While various actors may disagree with some of the policies that human rights NGOs advocate, very few scholars and responsible public officials challenge the record of accurate reporting over time by the most salient NGOs. The actors that do attack their veracity usually have something to hide. This was true of the Reagan Administration in the 1980s, which supported gross violations of human rights by its clients in Central America while trying to roll back what it saw as communism in especially El Salvador and Nicaragua. Reagan officials therefore attacked the veracity of AI, when it reported on brutal US clients, precisely because they found its reports – which were eventually proved accurate – irritating and embarrassing.[12]

Second, the human rights advocacy NGOs, on the basis of their analysis and dissemination of information, try to persuade public authorities to adopt new human rights standards or apply those already adopted. This activity can fairly be termed lobbying, but in order to preserve their non-political and tax-free status in most western societies, the groups tend to refer to this action as education.[13] The techniques are well known to students of politics. One can organize letter-writing campaigns, meet face-to-face with officials, arrange briefing sessions for staff assistants, submit editorials or "op ed" pieces to the print media, become a "talking head" on television, and so forth. A mass organization like AI will frequently combine a letter-writing campaign with elite contact. An organization like Human Rights Watch or the International Commission of Jurists, lacking a mass membership, eschews letter

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Laurie Wiseberg, "Human Rights Non-Governmental Organizations," in *The Role of Non Governmental Organizations in the Promotion and Protection of Human Rights* (Leiden: Stichting NJCM-Boekerig, N.D. [1989?]). And Keck and Sikkink, *Activists beyond Borders*.

[8] http://www.imisite.org.

[9] For a different approach see Howard J. Tolley, Jr., *The International Commission of Jurists: Global Advocates for Human Rights* (Philadelphia: University of Pennsylvania Press, 1994).

[10] For details about AI, see its News Service Release 108/99, March 1999.

[11] Details are available in the ICRC Annual Reports.

[12] See further David P. Forsythe, "Human Rights and US Foreign Policy: Two Levels, Two Worlds," in David Beetham, ed., *Politics and Human Rights* (Oxford: Blackwell, 1995), 111–130, especially 120.

[13] Claude E. Welch makes the argument that human rights NGOs are not interest groups because they are altruistic rather than self-centered actors seeking interests for themselves. This is not persuasive. There are public interest groups, like Common Cause in the USA, that are similar to the international human rights NGOs. They lobby in traditional ways for values that benefit society in general, and particular persons or groups of persons along the way. Common Cause is a public interest group, and so is Amnesty International. They are both interest groups. Compare Welch, *Protecting Human Rights in Africa: Strategies and Roles of Non Governmental Organizations* (Philadelphia: University of Pennsylvania Press, 1995), 44 and *passim*.

writing and other grassroots lobbying and concentrates on contact by the professional staff with public officials. The point is to press one's point of view, and of course its reasonableness under law, until it becomes controlling policy.

What is a "reasonable" approach to a human rights issue is a matter on which "reasonable" persons can differ. A danger for human rights NGOs is that in their single-minded pursuit of the issue of human rights, and with a concern for moral consistency, they may come across to public officials as moralistic, rigid, and politically naïve.[14] Top foreign policy officials are challenged to manage the contradictions inherent in the effort to blend security, economic, ecological, and human rights concerns into one overall policy.[15] We noted in chapter 6 how difficult it was for any state with multiple goals and interests, which means all of them, to present a consistent record on human rights issues. An NGO quest for perfect moral consistency may strike many foreign policy professionals as utopian. Only 11 per cent of surveyed NGOs reported success in achieving policy change in favor of the human rights positions they advocated.[16]

The other side of the coin, however, is that many movements that seemed moralistic and utopian at the outset resulted in changed policies and situations over time. Slavery, jousting, foot-binding, denial of the vote to women, and many other ideas were firmly institutionalized in many societies in the past. Being ideas, they were all subject to change, and all did change under relentless pressure over time.[17] What was utopian became practical. What was firmly entrenched, even central, became anachronistic.

Even agreement between governments and NGOs on general or long-term goals may lead to disputes about immediate tactics. In the 1990s, many human rights NGOs pressed for immediate action to arrest those indicted for gross violations of human rights in former Yugoslavia. Many

[14] See the debate in *Foreign Policy*, 105 (Winter 1996–1997), 91–106, between Aryeh Neier, formerly of Human Rights Watch, who stresses the importance of moral consistency for human rights NGOs ("The New Double Standard"), and Jeffrey Garten, a former US official, who stresses the many roads to progress and the necessity for flexible judgment in context – and by implication the tolerance of inconsistency ("Comment: The Need for Pragmatism"). This debate was covered in detail in chapter 4.

[15] On foreign policy as the inherent management of contradictions, see Stanley Hoffmann, "The Hell of Good Intentions," *Foreign Policy*, 29 (Winter 1977–1978), 3–26.

[16] Smith, et al., "Globalizing Human Rights," 392.

[17] On the role of ideas in international relations see especially John Mueller, *Quiet Cataclysm: Reflections on the Recent Transformation of World Politics* (New York: Basic Books, 1995); and Judith Goldstein and Robert O. Keohane, eds., *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change* (Ithaca: Cornell University Press, 1993).

US officials, supportive of international criminal prosecution in principle, but concerned about neo-isolationistic impulses within the public and Congress should there be US casualties, chose a policy on arrest that was more cautious than most human rights NGOs desired. Likewise during the 1990s, many human rights NGOs pressed for immediate sanctions on China in the context of continued systematic repression. Many US officials, desiring China's cooperation on a range of security, economic, and ecological issues, chose a policy on human rights in China that was more engaged and long term than many human rights NGOs desired. The broad responsibilities of top state officials guaranteed that from time to time their views of the "right" course of action would differ from those of NGO personnel.

During 1999 AI bitterly denounced the brief and *pro forma* meeting that had been called to discuss the application of the Fourth Geneva Convention of 1949 to the territories occupied through war by Israel in the Middle East.[18] AI wanted a longer and more substantive meeting to deal with such questions as interrogation methods used by Israel on Palestinian detainees. But the Palestinian Authority, the United States, Israel, and finally most other participants decided that after the election of the Barak government in Israel, restarting a general peace process took precedence over criticizing Israel about issues in the territories. AI emphasized human rights issues in Israeli-controlled areas, whereas the key public authorities thought that peace and stable relations between the Israelis and Palestinians constituted the top priority, after which one could make better progress on other issues.

Traditional human rights NGOs cannot utilize two basic resources of many successful interest groups when dealing with public officials, because human rights NGOs possess neither the large or concentrated membership to threaten electoral punishment, nor the budgets to threaten the withholding of significant financial contributions. In the absence of these two resources, these NGOs fall back on accurate information and energetic lobbying by whatever name. These are combined with knowledge of the timing of key public policy decisions (easier in the legislative rather than the executive process of decision making), and the development of access to key policy makers and media outlets.

Third, traditional human rights NGOs publish information in the hopes of long-term education. This blends with the objective of influencing policy in the short term through dissemination. Today's education may become the context for tomorrow's policy making. Those educated

[18] News Service Release 135/99, July 15, 1999.

today may be the policy makers of tomorrow. Virtually all of the traditional human rights NGOs manifest an active and extensive publishing program. Human Rights Watch has a publishing agreement with Yale University Press. Most of the human rights NGOs have a line in their budget for publishing books, brochures, reports, etc. They all make use of the Internet to disseminate their information. They wish to raise the consciousness of both policy makers and the attentive public, so as to provide a better environment for their lobbying efforts.

The issue of publication to create and maintain a supportive political environment for human rights policy is crucial, whether one pictures it as part of grassroots lobbying or long-term education. We know that in the USA in the 1990s, American public opinion in general tended to support pragmatic internationalism but not so much moral internationalism.[19] That is to say, American public opinion was supportive of an active foreign policy on trade and other issues such as interdicting illegal drugs from abroad, as long as some direct connection could be shown to the betterment of American society. But where projected foreign policies seemed to be based on morality divorced from self-interest, as was the case with ending starvation in Somalia, American public opinion was not so supportive if perceived national interests had to be sacrificed – e.g., the deaths of American soldiers. In this type of political environment, private human rights groups regularly bemoaned their lack of ability to significantly and consistently influence foreign policy and international relations.[20] This type of pragmatic environment worked to the advantage of those business and labor organizations that advocated business as usual and the downgrading of human rights concerns to the extent that they interfered with international trade.

Symptomatic of the situation in the USA, the one remaining superpower, was a growing consensus in both the executive and legislative branches that unilateral economic sanctions interfered with trade objectives, caused friction with allies, and were not very effective.[21] Economic sanctions in support of human rights goals were not very popular. Policy

[19] Ole Holsti, "Public Opinion and Human Rights in American Foreign Policy," in David P. Forsythe, ed., *The United States and Human Rights: Looking Inward and Outward* (Lincoln: University of Nebraska Press, 1999), ch. 7. This point was covered in chapter 6 of the present volume.

[20] In addition to Neier, "The New Double Standard," see Ellen Dorsey, "US Foreign Policy and the Human Rights Movement: New Strategies for a Global Era," in Forsythe, *The United States and Human Rights*, ch. 8.

[21] Eric Schmitt, "US Backs Off Sanctions, Seeing Poor Effect Abroad," *New York Times*, July 31, 1998, 1. But in 1999 the Clinton Administration announced unilateral economic sanctions against the Taliban government in Afghanistan, primarily in reaction to alleged state-supported terrorism, but also because of discrimination against women. The Congress and American public quietly deferred.

makers in Washington knew that they would not be subjected to mass public pressure in support of most human rights situations abroad. They knew that if foreign policy exceeded a certain permissive range and began to incur costs divorced from evident self-interest, that policy would be in trouble – as in Somalia from late fall 1993. This attitudinal environment helps explain the NATO policy of relatively high altitude air strikes on Yugoslavia in 1999 and the reluctance to commit ground troops in Kosovo. This general political environment undercut much effort by private human rights groups.

A pragmatic rather than moralistic political culture, as a general political environment, did not mean that no advances could be made on behalf of internationally recognized human rights. Some private human rights groups teamed up with the Black Caucus in Congress to successfully direct attention to the situation in repressive Haiti in the mid-1990s. The Clinton Administration, which had from its beginnings manifested some officials also interested in doing something about repressive rule in Haiti, was able to undertake a military operation in support of democracy there and essentially end Haitian emigration to the USA – but only as long as "significant" amounts of American blood and treasure were not sacrificed. Had Clinton's Haitian policy incurred the same costs as that in Somalia, namely the combat deaths of a dozen or so soldiers, it is highly likely the Haitian policy would have resulted in the same fate as the US's Somali policy – the withdrawal of congressional and public support. The same analysis could be applied to the deployment of US troops in Bosnia and their arrest of indicted war criminals. The executive could advance human rights abroad as long as no costs arose that important political circles might deem "significant." But if perceived major costs arose, especially human costs, the public would expect the executive to show a direct connection to expediential US concerns. (All of the examples noted above involve congressional influence, as much as NGO influence, along with the influence of the media.) Whether NGO human rights education could make transnational political culture more sensitive to, and supportive of, human rights concerns was an important question.[22]

Fourth and finally, some human rights advocacy groups also provide direct services to those victimized by human rights violations. They may

[22] NGO human rights education was joined by formal human rights education at all levels of learning, and by human rights education in professional associations. See further George J. Andreopoulos and Richard Pierre Claude, eds., *Human Rights Education for the Twenty-First Century* (Philadelphia: University of Pennsylvania Press, 1997); and Sia Spiliopoulou Akermark, *Human Rights Education: Achievements and Challenges* (Turku/Abo, Finland: Institute for Human Rights, Abo Akademi University, 1998).

engage in "judicial lobbying" or legal advocacy by participating in court cases. They may advise litigants or submit friendly briefs (*amicus curiae* briefs) in an effort to get courts to make rulings favorable to human rights standards. They may advise asylum seekers about how to present their claims to refugee status under international law. They may observe trials in the hopes of deterring a miscarriage of justice. A unique (*sui generis*) organization like the ICRC engages both in detention visits to help ensure humanitarian conditions of detention (and sometimes the release of the detainee on humanitarian grounds), and in multifaceted relief efforts for both prisoners and other victims of war and political conflict. Particularly the detention visits may be considered a form of advocacy, since the ICRC reports to the detaining authority and requests certain changes from it.

In sum to this point, the number of advocacy groups for various human rights causes grew dramatically in the last quarter of the twentieth century, even if the core group with a global focus and a link strictly to the international law of human rights and humanitarian affairs has remained relatively small. At the 1993 UN Conference on Human Rights at Vienna, the UN officially reported that 841 NGOs attended.[23] Particularly remarkable has been the number of groups advocating greater attention to women's rights as human rights. Their presence was felt both at Vienna and at the 1991 UN Conference on Women at Beijing. These and other UN conferences were sometimes criticized as nothing more than talking shops or debating societies. Hardly ever did states drastically change their policies after these meetings. But the conferences provided focal points for NGO organizing and networking. And at least for a time they raised the world's consciousness about human rights in general or particular rights questions. At the close of the twentieth century there were more private reports being issued on more human rights topics than ever before in world history. Women's rights, children's rights, prisoner's rights, etc. all drew extensive NGO attention. True, biases continued. Social and economic rights continued to be the step-children or illegitimate offspring of the human rights movement, especially on the part of NGOs based in the West. Nevertheless, an international civic society was emerging in which human rights advocacy groups and their allies were highly active.

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[23] UN Doc.: A/conf.157/24 (Report of the World Conference on Human Rights), 13 October 1993, Part I, p. 9.

Influence?

The most important question was not so much what the human rights groups did, and how; that was reasonably clear to close observers. Rather, the challenging question was how to specify, then generalize about, their influence.[24] It had long proved difficult to precisely analyze the influence of any interest group or coalition in any political system over time.[25] Why was it that in the USA the "tobacco lobby" seemed so powerful, only to suddenly be placed on the defensive in the 1990s and lose a series of votes in the US Congress that might produce tougher laws on tobacco advertising and use? Why was it that the "Israeli lobby," generally thought to be one of the more powerful in American politics, seemed to weaken in the 1990s and was certainly unable to block a whole series of arms sales to Arab states? Why was the "China lobby," presumably strong in Washington in the 1970s and 1980s, unable to block the relative reduction of US relations with Taiwan? These and other questions about the influence of lobbies in general, or in relation to foreign policy, are not easy to answer. It was often said that "special interests" dominated modern politics, but proving the precise influence of these "special interests" became more difficult the more one probed into specifics.

A pervasive difficulty in analyzing NGO influence centered around the concept of success. If one or more NGOs succeeded in helping a UN Security Council resolution creating a criminal court for Rwanda to be adopted, but the *ad hoc* court turned out to have little impact on the Great Lakes Region of Africa, could that be considered a success for NGO influence? But if later the *ad hoc* court contributed to the creation of a standing international criminal court at the UN, would the criteria for success change? If Amnesty International or the International Committee of the Red Cross prevented some instances of torture, how would one prove that success since the violation of human rights never occurred? If NGOs in Bosnia helped reduce political rape and murder, but in so doing, by moving vulnerable civilians out of the path of enemy forces, they thereby contributed to ethnic cleansing and the basic political objective of a fighting party, was that a success?

In dealing with the sometimes elusive notion of success or achieve-

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[24] See further Don Hubert, "Inferring Influence: Gauging the Impact of NGOs," in Charlotte Ku and Thomas G. Weiss, eds., *Toward Understanding Global Governance: The International Law and International Relations Toolbox* (Providence, RI: ACUNS Reports and Papers, No. 2, 1998), 27–54.

[25] Bernard C. Cohen, *The Public's Impact on Foreign Policy* (Boston: Little, Brown, 1973). In general see David P. Forsythe, *Human Rights and World Politics*, 2nd edn (Lincoln: University of Nebraska Press, 1989), ch. 6.

ment, sometimes it helped to distinguish among the following: success in getting an item or subject on the agenda for discussion, success in achieving serious discussion, success in getting procedural or institutional change, and finally success in achieving substantive policy change that clearly ameliorated or eliminated the problem. In the early stages of campaigns against slavery or female genital mutilation, it could be considered remarkable success just to get high state officials to think about the subject as an important problem.[26]

Relatedly, one of the most helpful contributions that a human rights NGO or movement could obtain was the supportive finding of an epistemic community. Epistemic communities are networks of scientists or "thinkers" who deal in "truth" as demonstrated by cause and effect. To the extent that there is widespread agreement on scientific truth, public policy tends to follow accordingly – albeit with a time lag during which advocacy or lobbying comes into play. If the scientific evidence of the harmful effects of "second-hand smoke" were stronger, those campaigning against smoking in public and indoor places would have an easier time of it. When medical personnel can show conclusively that female genital mutilation presents clear risks to those undergoing this ritual cutting in much of Africa and other places, the reporting and dissemination of this scientific truth aided those human rights groups trying to eliminate the practice.[27] Unfortunately, most decisions in support of international human rights involved political and moral choice rather than scientific truth.

The greatest obstacle to proving the influence of human rights NGOs was that in most situations their influence was merged with the influence of public officials in the context of other factors such as media coverage. Private human rights groups had long urged the creation of a United Nations High Commissioner for Human Rights, and the post was voted into being in 1993. Many private groups wanted to claim credit, but many governments had also been active in support of this cause. The UN Vienna Conference, made up of governments, had approved the plan. Salient personalities like former President Carter had campaigned vigorously for the creation of the post. And frequently media coverage is at work as well.

Likewise human rights NGOs like Helsinki Watch certainly pressured the European communists during the Cold War, acting in tandem with

[26] Keck and Sikkink, *Activists beyond Borders*.
[27] See further Ernst Haas, *When Knowledge is Power: Three Models of Change in International Organizations* (Berkeley: University of California Press, 1990); and Peter Haas, "Introduction: Epistemic Communities and International Policy Coordination," *International Organization*, 46, 3 (Winter 1992), 1–36.

private individuals and groups inside those communist states. But western states were also active on human rights issues through the CSCE process. When European communism fell, it was impossible to say scientifically what was the exact impact of the human rights NGOs compared with state pressures, or for that matter compared with the economic difficulties of the European communists themselves (as noted in chapter 4).

Most events have multiple causes, and it is often impossible to factor out in a precise way the exact impact of a human rights NGO or even a movement or coalition. In 1975 a relatively unknown member of the lower house of the US Congress, Donald Fraser, decided to hold hearings on human rights in US foreign policy. As chair of a sub-committee in the House of Representatives, Fraser had the authority to take such a decision by himself.[28] The Fraser hearings led to the reintroduction of the issue of human rights into US foreign policy after an absence of some two decades. But NGOs had some impact on these events in three ways.

Various anti-war NGOs and movements, which were the forerunners of several human rights NGOs in the USA, helped set the stage for the Fraser hearings.[29] It was growing domestic opposition to US policies in Vietnam, and a growing sense that US foreign policy had become amoral if not immoral, that contributed to the political climate in the USA in which Fraser acted. NGOs and social movements helped create that climate of opinion. Second, once scheduled, the Fraser hearings were the scene of testimony on human rights issues by AI-USA and other human rights NGOs. Third, Fraser's principal staff person on foreign poicy, John Salzburg, had worked for an NGO and still shared the values of a number of those in the NGO community in Washington. So although there is no clear evidence that NGOs pressed Fraser to take the momentous course of action he did, NGOs did have some influence, probably of rather high significance, in combining with Fraser and other public officials to emphasize human rights in US foreign policy.

Nial McDermot, an experienced staff member of the International Commission of Jurists, wrote accurately: "NGOs create the conditions in which governmental pressure can be effective."[30] It is in the synergy

[28] See further Donald M. Fraser, "Freedom and Foreign Policy," *Foreign Policy*, 26 (Spring 1977), 140–156; and John Salzburg, "A View from the Hill: US Legislation and Human Rights," in David D. Newsom, ed., *The Diplomacy of Human Rights* (Lanham: University Press of America, 1986), 13–20.
[29] Lowell W. Livezey, *Non Governmental Organizations and the Idea of Human Rights* (Princeton: Princeton University Center for International Studies, 1988).
[30] N. McDermot, "The Role of NGOs in the Promotion and Protection of Human Rights," in *The Role of Non Governmental Organizations*, 45–52.

or interplay of public and private action that one normally understands the full role of human rights NGOs and their coalitions. Thus influence by private human rights groups is normally exercised in a quasi-private, quasi-public way. Just as much policy making is now transnational or inter-mestic, involving both international and domestic players, so that policy making is also both public and private at one and the same time. Public officials may join with NGOs and the media, etc. to effectuate change. This is precisely why a focus on movements or coalitions or networks has come into vogue, although it is still challenging to try to determine which actor in the movement exercised crucial influence at crucial times.

In some situations it is relatively clear that human rights NGOs, or a coalition of them and their allies, have had direct impact on what might be termed a human rights decision. Several authors have shown that one can trace the release of one or more prisoners of conscience to action by AI.[31] One can also show that NGOs made significant contributions to the negotiation of human rights standards in certain treaties.[32] A strong case can be made that human rights NGOs, in combination with other actors such as media representatives *inter alia*, have helped transform the political culture of Mexico, Argentina, and other states in the Western Hemisphere which now show more sensitivity to human rights issues.[33] Many if not most of the UN monitoring mechanisms, from review committees to special rapporteurs, rely on NGO information in conducting their activities. When critical questions are raised, or critical conclusions reached, it is frequently on the basis, at least in part, of NGO information. The reduction of state funding for certain UN activities has increased the impact of NGOs in the human rights domain; the UN offices lack the resources to conduct their own extensive inquiries, and thus fall back on information from the human rights NGOs.[34]

[31] Jonathan Power, *Amnesty International: The Human Rights Story* (New York: McGraw-Hill, 1981); Egon Larsen, *A Flame in Barbed Wire: The Story of Amnesty International* (London: F. Muller, 1978). See also Jane Connors, "Amnesty International at the United Nations," in Peter Willetts, ed., *"The Conscience of the World": The Influence of Non-Governmental Organizations in the UN System* (Washington: Brookings, 1996).

[32] Peter R. Baehr, "The General Assembly: Negotiating the Convention on Torture," in David P. Forsythe, ed., *The United Nations in the World Political Economy* (London: Macmillan, 1989), 36–53; Lawrence J. LeBlanc, *The Convention on the Rights of the Child: United Nations Lawmaking on Human Rights* (Lincoln: University of Nebraska Press, 1995), chapter 2.

[33] Keck and Sikkink, *Activists beyond Borders*, 3.

[34] P.H. Kooijmans, "The Non Governmental Organizations and the Monitoring Activities of the United Nations in the Field of Human Rights," in *The Role of Non Governmental Organizations*, 15–22. Peter R. Baehr and Leon Gordenker, *United Nations University*

From time to time certain states have tried to block some human rights NGOs from receiving or renewing their consultative status with the UN system. This is a status that allows NGOs to circulate documents and speak in certain UN meetings. If NGOs had no influence, and never proved irritating to states, the latter would not be so interested in blocking the activities of the former. State opposition to, and criticism of, NGOs is a reasonably clear indication that states, meaning the governments that speak for them, pay some attention to human rights NGOs and worry about what they say. It is obvious that most states care about their reputations in international relations, and go to great efforts to try to block critical commentary.[35]

During 1999, the UN Committee on Non-Governmental Organizations, which reports to ECOSOC, withdrew consultative status for Christian Solidarity International, based in Zurich. That controversial NGO had antagonized the government of the Sudan in several ways. Likewise the committee refused to approve the credentials of Human Rights in China, based in New York, which had offended the government in Beijing.[36] So even after the Cold War, and despite the immense influence of western states in the UN system, mainly the states of the global south continued to try to limit the role of some human rights advocacy groups in UN proceedings.

It cannot be scientifically proved, but a null hypothesis is certainly interesting: if human rights NGOs had not existed during the past thirty-five years, human rights would have a much less salient position in international relations. Serious, even grave, human rights violations in Cambodia in the 1970s and Mexico in the late 1960s did not lead to international attention and pressure because local and international NGOs were not in place to report on and act against those violations.[37] More positively, what began as action by the Anti-Slavery Society in London in the early nineteenth century triggered a successful movement against slavery and the slave trade over about a century. It is quite clear as well that since 1863, what is now called the International Committee of the Red Cross has advanced the cause of international humanitarian

Public Forum on Human Rights and Non Governmental Organizations (Tokyo: United Nations University Lectures, September 14, 15, 18, 1996).

[35] A classic case in point is the effort by the Argentine Junta in the 1980s to try to block criticism of its human rights record in the UN Human Rights Commission, as recorded by Iain Guest in *Behind the Disappearances: Argentina's Dirty War Against Human Rights and the United Nations* (Philadelphia: University of Pennsylvania Press, 1990).

[36] Paul Lewis, "UN Committee, Under Pressure, Limits Rights Groups," *New York Times*, June 22, 1999, A3.

[37] On Mexico see Keck and Sikkink, *Activists beyond Borders*. On Cambodia, I refer to genocide on a massive scale after most foreign observers had been kicked out by the Khmer Rouge.

law, or the law of human rights in armed conflict. These are clear examples of NGOs that have had a broad impact on international relations, even if they frequently acted, or act today, in conjunction with public authorities. Public officials may take the decision to adopt human rights standards or seek certain forms of implementation. But they may act in an environment created to a considerable extent by human rights NGOs or human rights coalitions. Much of this influence is amorphous and remains difficult to specify. In the future it might prove possible to further elaborate the conditions under which a human rights NGO or movement might expect to be successful – e.g., where leaders of a state targeted for pressure are on record as favoring human rights in principle, where such leaders do not regard the human rights violation as crucial to their hold on power or to the security of their state, where a target state is not a pivotal or vital state to others in strategic or economic terms, etc.

In the meantime, human rights NGOs have helped create a climate of opinion in international relations generally sympathetic to human rights. In this regard these NGOs have helped restrict and thus transform the idea of state sovereignty. It can be stated in general that the responsible exercise of state sovereignty entails respect for internationally recognized human rights. States, like Iraq, that engage in gross and systematic violation of the most elemental human rights are not afforded the normal prerogatives that stem from the principle of sovereignty. During the 1990s Iraq was put into *de facto* receivership under United Nations supervision. This was because of the misuse of sovereignty via violations of human rights in Iraq and Kuwait, combined with aggression against Kuwait. A similar analysis could be made about Milosevic in Yugoslavia. It is still valid to say, as Francis Fukuyama wrote, that in dominant international political theory, the most fully legitimate state is the liberal democratic state that respects civil and political rights.[38] Advocacy groups for human rights play the basic role of reminding everyone of human rights performance, and particularly when gross and systematic violations occur that call into existence the basic right of a government to act for the state.

[38] Francis Fukuyama, *The End of History and the Last Man* (New York: The Free Press, 1992). Of course there is a gap between the political theory of legitimate states and the practice of international relations. In practice, persons and public authorities may grant legitimacy, meaning a sense of correct rule, on the basis of tradition, alliances, and/or effective exercise of power, and not just human rights performance. See David P. Forsythe, *Human Rights and Peace: International and National Views* (Lincoln: University of Nebraska Press, 1993), ch. 3. Compare Jack Donnelly, "Human Rights: A New Standard of Civilization?," *International Affairs*, 74, 1 (1998), 1–24.

Private action for relief and development

As we have seen, the International Bill of Rights contains economic and social rights such as the rights to adequate food, clothing, shelter, and medical care in peace time. International humanitarian law contains non-combatant rights to emergency assistance – referring to similar food, clothing, shelter, and medical care – in armed conflict.[39] United Nations resolutions have extended these same rights to "complex emergencies," an imprecise term meant to cover situations in which the relevant authority denies that there is an armed conflict covered by international humanitarian law, but in which civilians are in need and public order disrupted. In a tradition that defies legal logic, private groups working to implement these socio-economic rights in peace and war are not normally referred to as human rights groups but as relief (or humanitarian) and development agencies. This semantical tradition may exist because many agencies were working for relief and development before the discourse on human rights became so salient.

Whatever the semantical traditions, there are complicated international systems for both relief and development, and neither would function without private agencies. At the same time, the private groups are frequently supported by state donations of one type or another, and frequently act in conjunction with inter-governmental organizations. As with advocacy groups, so with relief and development agencies, the resulting process is both private and public at the same time. In both relief and development, the United States and the states of the European Union provide most of the resources.[40] In both, UN agencies are heavily involved – UNICEF, the WHO, the World Food Program, the UN Development Program, etc. But in both, private grassroots action is, to a very great extent, essential to whether persons on the ground get the food, clothing, shelter, and medical care which international law guarantees on paper. It is the private groups that turn the law on the books into the law in action. It is the private groups that condition and sometimes transform the operation of state sovereignty.

[39] Legal obligations in this regard under the 1949 Geneva Conventions, and 1977 Additional Protocols, for victims of armed conflicts have been analyzed by numerous commentators, including Monika Sandvik-Nylund, *Caught in Conflicts: Civilian Victims, Humanitarian Assistance and International Law* (Oturku/Abo, Finland: Institute for Human Rights of Abo Akademi University, 1998).
[40] See further Alexander Natsios, *US Foreign Policy and the Four Horsemen of the Apocalypse: Humanitarian Relief in Complex Emergencies* (Westport: Praeger, 1997).

Relief

Because of international humanitarian law, the relief system in armed conflict and complex emergencies is somewhat different from that in peace time. The norms supposedly guiding action are different, and some of the actors are different. For reasons of space, only relief in wars and complex emergencies is covered here.[41]

In so-called "man-made" disasters, the private International Committee of the Red Cross usually plays a central role because of its long association with victims of war and international humanitarian law. It was ultimately, for example, the best-positioned relief actor in Somalia in the early 1990s, and remained so even after the arrival of tens of thousands of US military personnel. The ICRC does not monopolize relief in these situations, however. In Bosnia in the first half of the 1990s, it was the Office of the UN High Commissioner for Refugees that ran the largest civilian relief program, followed by the ICRC. In Cambodia in the late 1980s, UNHCR and the ICRC were essentially co-lead agencies for international relief. In the Sudan during the 1970s and 1980s, UNICEF and the ICRC carried out important roles. But in these and similar situations, numerous private agencies are active in relief: World Vision, Church World Service, Caritas, Oxfam, Save the Children, Doctors Without Borders, etc. It is not unusual to find several hundred private relief agencies active in a conflict situation like Rwanda and its environs in the mid-1990s.

Relief: process

One can summarize the challenges facing all these private relief agencies (aka socio-economic human rights groups).[42]

1. *They must negotiate access to those in need.* One may speak of guaranteed rights, even a right to assistance. And in the 1990s there was much discussion about a right to humanitarian intervention. But as a practical matter, one must reach agreement with those who have the guns on the ground in order to provide relief/assistance in armed conflict and complex emergencies. Even if there is some general agreement between public authorities (*de jure* and *de facto*)

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[41] Relief in natural disasters such as floods, earthquakes, typhoons, volcanic eruptions, etc. is analyzed in many sources, including by the late expert Frederick Cuny in *Disasters and Development* (New York: Oxford University Press, 1983).
[42] The following is drawn from David P. Forsythe, "The International Committee of the Red Cross and Humanitarian Assistance – A Policy Analysis," *International Review of the Red Cross*, 314 (September–October, 1997), 512–531.

and relief agencies on providing relief, specifics have to be agreed upon for particular times and places. Negotiating conditions of access can be a tricky business, as fighting parties may seek to divert relief for military and political objectives, even as relief agencies may insist on impartiality and neutrality. With numerous relief agencies vying for a piece of the action, machiavellian political actors may play one off against another. Some of the smaller, less-experienced agencies have proved themselves subject to political manipulation.

2. *Relief agencies must provide an accurate assessment of need.* Relief must be tailored to local conditions, and there should be control for redundant or unneeded goods and services. The use of systematic rape as a weapon of war, terror, and ethnic cleansing has meant the need for gynecological and psychiatric services for many women.

3. *The private groups must mobilize relief in a timely and effective way.* Here the ICRC has certain advantages, as it is well known and respected by most western states, and has links to national Red Cross or Red Crescent societies in over 120 states. But other private agencies have their own means of mobilization, being able to tap into well-established religious or secular networks.

4. *Of obvious importance is the ability of a private group to actually deliver the assistance in a timely and cost-effective way.* Here again the ICRC presents certain advantages, as it is smaller and less bureaucratic than some UN bodies, has regional, country and intra-country offices in many places around the world (in addition to the national Red Cross/Red Crescent societies), and since the 1970s has built up experience in the delivery of relief in ongoing conflicts and occupied territory. Its reputation for effectiveness on the ground was particularly outstanding in Somalia. But other agencies, particularly the UNHCR, have been accumulating experience as well. And often the sheer size of a relief problem can be too great for the ICRC. In Rwanda in 1994 and thereafter, where as many as two million persons fled genocidal ethnic conflict and civil war, the ICRC concentrated its activities inside Rwanda and left to other actors the matter of relief in neighboring countries.

5. *All relief agencies have to engage in evaluation of past action and planning for the future.* All of the major relief players do this, but some of the smaller, less-experienced, and more *ad hoc* groups do not.

The international system, movement, or coalition for relief in man-made disasters faces no shortage of pressing issues.

1. *Should there be more coordination?* There has been much talk about

more coordination, but none of the major players wants to be dominated by any other actor. Legally speaking, the ICRC is a Swiss private agency whose statutes give policy-making authority to an all-Swiss assembly that co-opts members from Swiss society only. It resists control by any United Nations body, any other Red Cross agency, or any state. Also, the UNHCR, UNICEF, the WHO, and the WFP all have independent budgets, executive heads, governing bodies, and mandates. Each resists control by any UN principal organ or by the UN Emergency Relief Coordinator (now the Under Secretary-General for Humanitarian Assistance) who reports to the Secretary-General. The latter UN office lacked the legal, political, and budgetary clout to bring the other actors under its control. Politically speaking, the major donors, the USA and the EU, have not insisted on more formal coordination. There are advantages to the present system. UNHCR may be best positioned in one conflict, UNICEF or the ICRC in another. And there was *de facto* cooperation among many of the relief actors much of the time, with processes for coordination both in New York and Geneva. More importantly, there was considerable cooperation among agencies in the field. Yet duplication and conflicts occurred with regularity; there was certainly room for improvement.

2. *Should one try to separate politics from humanitarian action?* Particularly the ICRC argued in favor of strict adherence to the principles of impartiality and neutrality, and preferred to keep its distance from "political" decisions which involved coercion or any official preference for one side over another in armed conflict and complex emergencies. But even the ICRC had to operate under military protection in Somalia to deliver relief effectively (and had to accept military protection for released prisoners on occasion in Bosnia). In Bosnia, much of the fighting was about civilians – their location and sustenance. The UNHCR's relief program became "politicized" in the sense of intertwined with carrots and sticks provided in relation to diplomacy and peacemaking. There was disagreement about the wisdom of this course of action. But it was clear that once the UN authorized use of force in places like Bosnia to coerce a change in Serbian policy, then UN civilian (and military) personnel on the ground became subject to hostage-taking by antagonized Serb combatants. It was clear that the idea of a neutral Red Cross or UN presence for relief purposes was not widely respected in almost all of the armed conflicts and complex emergencies after the Cold War. Relief workers from various organizations were killed in places like Chechnya, Bosnia, Rwanda, Burundi,

Liberia, Somalia, etc. Other relief workers were taken hostage for ransom. Sometimes armed relief, even "humanitarian war," seemed the only feasible option, but others disagreed.[43]

3. *Could one change the situation through new legislation and/or better dissemination of norms?* It was evident from the Soviet Union to communist Yugoslavia, to take just two clear examples, that former states had not taken fully seriously their obligation to teach international humanitarian law to military personnel, despite the strictures of especially the 1949 Geneva Conventions and additional 1977 Protocols for the protection of victims of war. After especially the French failed to have codified new laws on humanitarian intervention in the 1990s, action turned to international criminal justice and the creation of international tribunals to try those individuals accused of war crimes, genocide, and crimes against humanity. NGOs lobbied vigorously for these new norms and agencies to enforce them, as we have already noted. But much violence was carried out by private armies such as rebel or secessionist groups, clans and organized mobs. Relief workers more than once faced child soldiers on drugs armed with automatic weapons. How to make international norms, whether new or old, effective on such combatants was a tough nut to crack. It was said of Somalia, only in slight exaggeration, that no one with a weapon had ever heard of the Geneva Conventions.[44] At least many of the relief agencies agreed on a code of conduct for themselves, which approximated but did not exactly replicate the core principles of the Geneva Conventions.

Relief: influence?

There is no question but that private actors have considerable if amorphous influence or impact in the matter of international relief in "man-made" conflicts. The ICRC was a major player in Somalia 1991–1995, the UNHCR and its private partners were a major player in Bosnia 1992–1995. The UNHCR does not so much deliver relief itself

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[43] Adam Roberts, "Humanitarian War: Military Intervention and Human Rights," *International Affairs*, 69, 3 (July, 1993), 429f. See further Jonathan Moore, ed., *Hard Choices: Moral Dilemmas in Humanitarian Intervention* (Lanham: Rowman and Littlefield, 1998); and Thomas G. Weiss, "The Humanitarian Identity Crisis," in *Ethics & International Affairs*, 13 (1999), 1–22, with associated commentary.

[44] Jennifer Learning, "When the System Doesn't Work: Somalia, 1992," in Kevin M. Cahill, ed., *Framework for Survival: Health, Human Rights, and Humanitarian Assistance in Conflicts and Disasters* (New York: Basic Books, for the Council on Foreign Relations, 1993), 112.

as contract with private agencies for that task. UNHCR manages, supervises, and coordinates, but private actors like Doctors Without Borders do much of the grassroots relief. To use a negative example of influence, if several private groups disagree with a policy decision taken by the UNHCR and decide to operate differently, the UNHCR is constrained in what it can do. The same is even more true for the World Food Program, which has a very limited capacity to operate in the field by itself. The ICRC, as should be clear by now, is a private actor whose norms and accomplishments often affect the other players, directly or indirectly.

Having noted this NGO independent position, one must still recognize that states and inter-governmental organizations are the major sources for material resources directed to humanitarian assistance in wars and complex emergencies. Influence is a complex two-way street. Public authorities need the NGOs, which opens up possibilities for subtle influence on the part of the latter. But the NGOs need the support and cooperation of the public authorities. If NGOs pull out of a relief operation and develop the image of unreasonable non-cooperation, they will cut themselves out of operations that constitute their reason for being, get bad publicity, and make it more difficult to raise money. Once again, as with traditional advocacy for human rights, we find that the movement to provide relief is both private and public at the same time, and that influence among the disparate elements is difficult to pinpoint in general.

The challenge facing relief/humanitarian agencies is probably even greater than that facing more traditional human rights advocacy groups. The former are dealing with states and other primary protagonists that have resorted to violence in pursuit of their goals. The issues at stake have already been deemed worth fighting over. In this context of armed conflict or complex emergency, it is exceedingly difficult to get the protagonists to elevate assistance to civilians to a rank of the first order. Moreover, in all too many conflicts, especially after the Cold War, intentional attacks on civilians, and their brutal manipulation otherwise, became part of the grand strategy of one or more of the fighting parties. It was therefore difficult if not impossible to fully neutralize and humanize civilian relief.

Development: process

As in relief, the development process on an international scale presents a mixture of public and private actors. If we focus just on the PVOs based in the North Atlantic area we find they are exceedingly numerous –

perhaps now up to about 5,000 in number – and quite varied in their orientations.[45] While some of these PVOs or VOLAGs reject state funding to protect their independence, and consequently wind up frequently on the margins of the development process, most act otherwise and serve as conduits for public monies and public policies. PVOs themselves provide only about 10 per cent of development assistance in a typical year.

Private development agencies, like Oxfam, that cooperate with public authorities and operate consistently across international borders are a crucial part of the public-private development process. These development NGOs provide values and services often lacking in the public sector: "smallness, good contacts at the local level, freedom from political manipulation, a labor- rather than capital-intensive orientation, innovativeness, and flexibility in administration."[46]

The OECD states find "mainstream" NGOs useful in implementing their goals while reducing suspicions of neo-imperialism or other unwanted intrusions in the affairs of developing states. Other public authorities seem to be coming around to this same view. Major inter-governmental actors are the World Bank (officially the International Bank for Reconstruction and Development), other development banks on a regional basis, and the United Nations Development Program (UNDP). The International Monetary Fund (IMF) is not, strictly speaking, a development institution. It frequently functions, however, in conjunction with the World Bank in making loans (affording drawing rights) to stabilize currency transaction.

Increasingly the World Bank officially endorses the participation of NGOs and community-based organizations (CBOs) in establishing development programs.[47] Theory and practice are not always the same, and historically relations between the Bank and development NGOs have been less than perfectly smooth. Many development NGOs have criticized the Bank for being insensitive to the needs of especially the rural poor, and within that group especially indigenous peoples, who did not benefit so clearly from the past industrial schemes of the Bank, and who may have been forced out of their traditional homes by development projects funded by the Bank.

The UNDP also officially endorses the bringing together of NGOs

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[45] *Directory of Non-Governmental Organisations Active in Sustainable Development* (Paris: OECD, 1996).
[46] Brian H. Smith, *More than Altruism: The Politics of Private Foreign Aid* (Princeton: Princeton University Press, 1990), 6.
[47] See further David P. Forsythe, "The United Nations, Human Rights, and Development," *Human Rights Quarterly*, 19, 2 (May 1997), 334–349.

and CBOs to provide grassroots participation in development projects. If practiced seriously, this type of micro- or economic democracy would combine *de facto* attention to civil and political rights, as the rights of participation, with social and economic rights. Endorsement of NGO and CBO participation in the development process by the Bank, UNDP, and OECD states comprised part of the mantra of "sustainable human development" at the turn of the century. As theory, it was an improvement over the top-down massive infrastructure projects devised in Washington and New York in the 1960s and 1970s.

Development: influence?

Private development agencies faced no lack of problems in trying to help achieve sustainable human development in keeping with internationally recognized human rights. A new barrier in the 1990s was that the prevalence of ethnic conflict and other forms of internal armed conflict and political instability caused public authorities to channel vast amounts of resources into relief. Consequently, fewer funds and less attention went to development.

A historical problem was that PVOs and VOLAGs did not always think of development in relation to human rights,[48] although with time there was a shift toward focusing on empowerment – which was a synonym for participatory rights.[49] This shift was certainly welcomed by those development NGOs that had long expressed concern about authoritarian rather than democratic development.[50] We noted above how the theory of the World Bank, UNDP, and OECD states all accepted participation in decision making by NGOs and CBOs. There was also a considerable shift toward integrating women's rights with development strategies.[51] Much less pronounced was any shift toward emphasizing socio-economic rights in the development process. But since "southern" NGOs tended toward this emphasis, and since they had growing contacts with "northern" NGOs, it was possible that more practical and not just rhetorical attention would be given to these "second-generation" rights.

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[48] Theo Van Boven, "Human Rights and Development: The UN Experience," in David P. Forsythe, ed., *Human Rights and Development: International Views* (London: Macmillan, 1989), 121–135:

[49] Julie Fisher, *Non-Governments: NGOs and the Political Development of the Third World* (West Hartford: Kumarian Press, 1998).

[50] Smith, *More than Altruism*, 72.

[51] See, for example, Sue Ellen M. Charlton and Jana Everett, eds., *NGOs and Grassroots in Development Work in South India: Elizabeth Moen Mathiot* (Lanham: University Press of America, 1998).

Development NGOs, much like traditional advocacy NGOs for human rights, had trouble in precisely specifying their influence in the development process *vis-à-vis* other actors.[52] As with the advocacy groups, many leaders of development NGOs were active out of moral commitment and would continue with their ideas and objectives whether or not they were able to change public programs to their liking. As with advocacy groups, the real influence of development NGOs was to be found in their amorphous contribution to a wider movement, network, or coalition interested in sustainable *human* development. While true that public authorities provide most of the capital for development projects, some influence flows from the NGOs back toward public authorities – especially through the give and take over different approaches to development. Public authorities have no monopoly over ideas related to development, and some of the ideas that prove controlling over time originate with NGOs.

Conclusion

NGOs that advocate human rights ideas, that implement the right to humanitarian assistance for those in dire straits, and that contribute to the human rights inherent in sustainable human development have impacted both public authorities and private individuals in numerous ways. They have advanced some form of political liberalism in international relations through their emphasis on individuals and law, as compared with state interests and power. Advocacy groups provide much of the information that allows the rights agencies of international organizations to function, while challenging or validating the facts and policies put forward by states. It is difficult to believe the making and implementing of human rights standards would operate in the same way without these advocacy groups. The international relief system would simply not be able to get humanitarian assistance to those in need in most situations without the private relief agencies. The development process would be seriously hampered without the private development organizations to serve as intermediaries between the public authorities that provide most of the resources and the individuals and indigenous groups that implement, and benefit from, the development programs at the grassroots level.

States and their inter-governmental organizations are thus dependent on these NGOs. States share the stage of international relations with

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[52] Michael Edwards and David Hulme, eds., *Beyond the Magic Bullet: NGO Performance and Accountability in the Post-Cold War World* (West Hartford: Kumarian Press, in cooperation with Save the Children Fund, 1996).

these NGOs, which is to say that state sovereignty is at times restricted by the activity of these NGOs that work for civil and political, social and economic rights. A restricted sovereignty is a transformed sovereignty, no longer absolute.

As much as NGOs need states – to arrest war criminals, to provide food and tents and sometimes physical protection for relief, to provide capital and cooperation for development – states need NGOs for a variety of ideas and services. Thus the stage is set for the subtle interplay of influence between the two types of actors on behalf of human rights, relief, and sustainable *human* development.

Discussion questions

- Is it more helpful for understanding to focus on separate or distinct private human rights organizations, or to focus on networks or movements? Can one understand a movement without understanding the precise actors that make up that movement? Can public officials be part of a human rights or humanitarian movement?

- Are western-based private human rights organizations part of western cultural imperialism? To what extent does an organization like Amnesty International have broad support in the non-western world?

- Are the better-known private human rights organizations moralistic and legalistic, in that they fail to consistently understand and appreciate the political context within which governments take decisions that impact human rights? Do they unreasonably discount other values and policies that governments and their publics consider legitimate – such as peace, security, economic growth? Or are the private groups absolutely vital to shaking governments and mass public opinion out of their set ways regarding the death penalty, gay rights, the continuing prevalence of torture, excessive spending on the military compared with basic human needs, etc.?

- What practical steps can be taken to improve the delivery of food, clothing, shelter, and medical care to civilians in armed conflicts and complex emergencies? Do these steps involve private actors such as the International Committee of the Red Cross, Doctors Without Borders, etc.? Given that a number of fighting parties *intentionally* attack and abuse civilians, should humanitarian action be left to NATO or the US Department of Defense in place of private relief organizations? After all, national military establish-

ments (at least the major ones) have tremendous logistical capacity. Paradoxes aside, should humanitarian action be nationalized and militarized?

- Is the global pursuit of "development" sufficiently attentive to "sustainable *human* development" and human rights? How important is the role of private actors like Oxfam in this development process? Do public authorities like the World Bank, the UN Development Program and the US Agency for International Development approve of a large role for private organizations and human-oriented development? Is this orientation perhaps theory and not practice? How would practical policies change if human rights were genuinely incorporated into the "development" process?

Suggestions for further reading

Cahill, Kevin M., ed., *Framework for Survival: Health, Human Rights, and Humanitarian Assistance in Conflicts and Disasters* (New York: Basic Books for the Council on Foreign Relations, 1993). A good stock-taking of problems early in the post-Cold War period. Much attention to private actors.

Edwards, Michael, and David Hulme, eds., *Beyond the Magic Bullet: NGO Performance and Accountability in the Post-Cold War World* (West Hartford: Kumarian Press, in corporation with Save the Children Fund, 1996). Deals with the central question of how democratic, accountable and open NGOs really are, even though they claim to represent "the people."

Fisher, Julie, *Non-Governments: NGOs and the Political Development of the Third World* (West Hartford: Kumarian Press, 1998). A critical look at the impact of human rights and development NGOs in the global south.

Haas, Ernst, *When Knowledge is Power: Three Models of Change in International Organizations* (Berkeley: University of California Press, 1990). A complicated model of why international organizations develop the policies that they do, stressing the role of private scientific communities in that process. Considerable attention to human rights.

Keck, Margaret E., and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell Unniversity Press, 1998). An outstanding example of using the concept of "movement" to try to analyze essentially private action for human rights, although the authors conceive of certain public officials as part of a movement.

Korey, William, *NGOs and the Universal Declaration of Human Rights: "A Curious Grapevine,"* (New York: St. Martin's Press, 1998). A personalized and disjointed account, but containing much useful information for introductory purposes. Places great weight on NGO action, especially by Jewish groups, in the evolution of modern human rights.

Livezey, Lowell W., *Non Governmental Organizations and the Idea of Human*

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.

Smith, Brian H., *More than Altruism: The Politics of Private Foreign Aid* (Princeton: Princeton University Press, 1990). A sharp look at private development and relief organizations.

Smith, Jackie, and Ron Pagnucco, with George A. Lopez, "Globalizing Human Rights: The Work of Transnational Human Rights NGOs in the 1990s," *Human Rights Quarterly*, 20, 2 (May 1998), 379–412. An essential if largely descriptive overview.

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
Matsushita 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

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[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

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[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

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 Snell 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]

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[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.

[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

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[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

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[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

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[20] Inter press service, "Human Rights: Holding Transnationals in Check," Global Policy Forum, http://www.igc.apc.org/globalpolicy/socecon/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

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[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

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[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. Willaims, *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, Heinekin 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

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[30] For background see *Business and Human Rights* (Cambridge, MA: Human Right 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

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[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 Chretian government in Canada also began to address the issue of child labor abroad. The Clinton Administration

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[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 E. 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 Heinekin 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.

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[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.

Hymer, 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 philanthropist 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.