



Faculty of Law

Lund University

**Master of Law in International Human  
Rights (LLM)**

Dissertation By

**Diego Alfonso Quiroz Onate**

The Corporation in The XXI Century:  
Developing a human rights framework  
toward corporate responsibility

Supervisor

**Gudmundur Alfredsson**

Field

Business and Human Rights

October 2003

# Contents

<b>THE CORPORATION IN THE XXI CENTURY: DEVELOPING A HUMAN RIGHTS FRAMEWORK TOWARD CORPORATE RESPONSIBILITY</b>	<b>1</b>
<b>1 INTRODUCTION</b>	<b>3</b>
<b>2 CURRENT SOCIAL CHALLENGES AND BUSINESS: A GENERAL VIEW</b>	<b>6</b>
2.1 Alliviation of Poverty	6
2.2 Understanding Social Challenges	8
<b>3 THE CORPORATE ENTERPRISE</b>	<b>14</b>
3.1 Definition of Corporations	14
3.1.1 Legal Personality: subjects of international law	15
3.2 Moral Responsibility	17
3.2.1 Corporate Human Rights	19
<b>4 LEGAL OBLIGATIONS OF CORPORATIONS</b>	<b>22</b>
4.1 Do Human Rights Standards Apply to Corporations: international standards	22
4.1.1 Jus Cogens	22
4.1.2 The Universal Declaration of Human Rights and Other Basic Instruments	23
4.1.3 Regional Instruments	26
4.2 Direct Normative Obligations	27
4.2.1 The OECD Guidelines for Multinational Enterprises	28
4.2.2 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy	29
4.2.3 United Nations Organization	29
4.2.3.1 The Global Compact	31
4.2.3.2 The UN Sub-Commission on the Promotion and Protection of Human Rights	32
<b>5 DEVELOPMENT FOR CO-OPERATION</b>	<b>34</b>
5.1 Corporate Social Responsibility	34
5.1.1 Codes of Conduct and Sustainability Reporting	35

5.2	Partnerships	39
5.3	The Role of Shareholders and Stakeholders	42
<b>6</b>	<b>ENFORCING INTERNATIONAL HUMAN RIGHTS STANDARDS</b>	<b>45</b>
6.1	Problems of Enforcement	45
6.1.1	The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy	46
6.1.2	THE OECD Guidelines	47
6.1.3	The North American Free Trade Agreement	48
6.1.3.1	The North American Agreement on Environment Cooperation	49
6.1.3.2	The North American Agreement on Labour Cooperation	50
6.1.4	The WB Inspection Panel: international procurement policies	52
6.2	International Courts	54
6.3	National Courts	55
6.3.1	The Alien Tort Claims Act	56
<b>7</b>	<b>CONCLUSION</b>	<b>60</b>

To my family who provides me with love each day and gave me the opportunity of education, to Cecilia for her all-time support and to my cousin's memory, Daniel Andres, who left us too soon.

I would like to thank my supervisor, Professor Gudmundur Alfredsson, Radu Mares a PhD candidate at the RWI, my opponent Malin and to my friend and colleague Beth for her comments.

# Preface

The method applied during the research and writing of this paper is called system thinking. It has been developed over the last 50 years and is increasingly having more influence on science. System thinking involves holistic understanding. It is inter-disciplinary in character. Systematic thinking, then, becomes fundamental to analyse problems. It enables us to understand causes and effects of problem and how different aspects of society and the natural environment interrelate<sup>1</sup>. For the aim of this paper: how states, commerce and law currently interrelate to permit the corporation to operate and most importantly how it should operate.

The conventional education system is inclined towards a separation of different disciplines and not to synthesis. One of the most significant discoveries by those who have further developed this concept is the implication that all science is in principle non-linear<sup>2</sup>. As a consequence, in both the human environment and nature everything is connected to everything else in a complex web of interactions that creates m systems. Society is by itself one such system. This concept is not only limited to the natural sciences but also to socio-economic issues since these are closely integrated.

---

<sup>1</sup> Haraldsson, Hördur V. Introduction to System and Causal Loop Diagrams. LUMES, Lund University, 2003.

<sup>2</sup> Nobel Laureate in Chemistry 1977, Ilya Prigogine concluded that only non-linear equations are capable of describing systems far from equilibrium.

# 1 Introduction

The realization of economic, social and cultural rights is often seen far away from corporations. However, business deals with economic relations that have directly impact on society, influencing not only economic and social areas but also civil and political participation.

The corporation enables commerce and improves the standard of living of citizens. However, the sphere of influence of corporations is not always positive. The last decade has left a bitter flavour in the mouths of the citizens around the world. People have experienced accelerating social and environmental disintegration, increased armed conflict, unemployment, discrimination and poverty. Consequently, people have become less trusting of business.

A different economic approach is emerging; the cooperation of producers, distributors, consumers and communities has been essential to this change: However, what is more important is the fact that such feckless behaviour has posed a serious query to people: Is the current corporate model sustainable?

Beginning well before World War II and culminating in the 1960s and 1970s, the dominant approach ethics of business came to be known as corporate social responsibility (CSR). CSR allows companies to innovate and respond to socio-economic challenges. But, is CSR a philanthropic act? Is it based on international legislation, human rights practices or national laws?

The corporation as the most common form of business organization will be the core of this paper. I am also particularly interested in the corporate behaviour of multi-national or trans-national corporations. Company codes of conduct, partnerships and ethical investments are a good- first step in building responsible practices; however, voluntarism has not provided an adequate solution to social challenges.

The essential aim of this paper is to provide information on corporate behaviour in relation to human rights issues. To raise awareness of the situation of business and its relation with society: why business should take part in global social development, how can corporations participate in this project, what is the legal framework which constrains corporations to respect human rights and labour standards and if not which mechanisms can be put in functioning. These are some of the topic that will be discussed herein. The structure of this paper will be the follow:

a) Social challenges, converging on poverty issues will analyse the triangular co-relation between state, business and globalisation. Chapter II attempts to provide factual examples of corporate misbehaviour. This overview does not attempt to be an exhaustive discussion. The aim is to illustrate the dimension of poverty as the biggest social challenge of this century. Any economic globalisation that brings prosperity should go hand in hand with social legislation.

b) Large corporations are accumulating an enormous economic and political power without meeting similar obligations. Chapter III will focus on the legal nature of corporation, legal responsibility and its moral responsibility to society.

c) International human rights instruments were drafted primarily placing legal obligations on states. However, the application of international human rights standards involves non-state agents, including corporations. Chapter IV will identify some provisions that prevent corporations from abusing such rights. Control of corporate behaviour is twofold: 1) by states: international legal instruments such as conventions or treaties impose on states the obligation to regulate the behaviour of non-state actors and 2) by international organizations: explicit instruments envisage corporations as their main subjects. Additionally, an important sort of control is carried out by stakeholders, which will be studied in the following chapter.

d) CSR and partnerships are exploring innovative methods to find solutions to the socio-economic challenges of this century. The corporation can effectively have a social function simultaneously with its original purpose of providing goods or services. Of fundamental significance in chapter V is showing the various participative ways in which corporations can carry out a social function.

e) A vital aim of this paper is to identify the possible and effective mechanisms of law enforcement. International law enforcement is difficult. However, the UN and other international organizations have developed procedures that enable pressure against governments that do not comply with recognized human rights standards. Some of these procedures allow individual complaints against corporations, but basically rely on diplomatic pressure and public exposure. Chapter VI will explore this issue.

Please note that due to “recent” development of this area, the majority of the literature has been extracted from the Internet and the RWI/Lund University’s libraries. Primary material such as case law and United Nations (UN) reports and secondary material such as literary studies have been the source for this paper. I believe that the paper

shows that a socially responsible corporation is essential for human development.



## 2 Current Social Challenges and Business: a general view

Social challenges<sup>3</sup>, converging on poverty issues, in my understanding the biggest social challenge of this century, will be analysed in this section. To understand some social challenges is vital to explore the triangular co-relation between state, business and globalisation. Larger attention should be paid to business practices, redistribution of gains of corporations and international trade policy. Factual examples of wrong corporate behaviour without detailed information will be put forward in this chapter. Experience persuasively shows that economic growth is not the most effective avenue to alleviate poverty. The aim is to illustrate the social dimension of these problems and the corporations' contribution to incrementing them.

### 2.1 Alliviation of Poverty

A classic definition of poverty is “the inability to attain a minimal standard of living measured in terms of basic consumption needs or the income required for satisfying them”<sup>4</sup>. The inability to attain minimal standards of consumption to meet basic physiological criteria is often called absolute poverty. It is most directly expressed as not having enough to eat, which leads among other things to hunger and violence.

Poverty is characterised by the failure of individuals or communities to command sufficient resources to satisfy their basic needs. What is most important is to understand why poverty occurs.

The 2002 Human Development Report affirms: “To halve the share of people living on \$1 a day, optimistic estimates that 3.7% annual growth in per capita incomes is needed in developing countries. But over the past 10 years only 24 countries have grown this fast. Among them are China and India, the most populous developing countries. But 127 countries, with 34% of the world’s population, have not grown at this rate. Indeed, many have suffered negative growth in recent years, and the share of their people in poverty has almost certainly increased”<sup>5</sup>. The same Report is accompanied by some figures on poverty and development:

---

<sup>3</sup> Environmental catastrophes, severe violations of human rights, integration, increased unemployment and armed conflict, access to healthcare or professional labour shortage.

<sup>4</sup> World Bank definition, 1990. <http://www.worldbank.org>

<sup>5</sup> United Nation Development Program at <http://hdr.undp.org/hd/default.cfm>

Situation in developing countries:

*Income poverty*

1.2 billion people living on less than \$1 a day (1993 PPP US\$)  
2.8 billion on less than \$2 a day (1998)

*Health*

968 million people without access to improved water sources (1998)  
2.4 billion people without access to basic sanitation (1998)  
34 million people living with HIV/AIDS (end of 2000)  
2.2 million people dying annually from indoor air pollution (1996)

*Education*

854 million illiterate adults, 543 million of them women (2000)  
325 million children out of school at the primary and secondary levels  
183 million of them girls (2000)

*Children*

163 million underweight children under age five (1998)  
11 million children under five dying annually from preventable causes  
(1998)

Situation in OECD<sup>6</sup> countries

*Income poverty*

130 million people in income poverty (with less than 50% of median  
income) (1999)

*Health*

8 million undernourished people (1996 –98)  
1.5 million people living with HIV/AIDS (2000)

*Education*

15% of adults lacking functional literacy skills (1994 –98)

According to the 2002 UN Development Report<sup>7</sup> average economic growth in the 1990s was higher than in the 1970s and 1980s, often

---

<sup>6</sup> The organization for Economic Co-operation and Development or the so-called “rich man's club” is formed by 30 countries. Essentially membership is limited only by a country's commitment to a market economy and a pluralistic democracy. The 30 members produce two thirds of the world's goods and services. The core of original European and North American members has expanded to include Japan, Australia, New Zealand, Finland, Mexico, Korea and four former communist states in Europe: the Czech Republic, Hungary, Poland and the Slovak Republic. <http://www.oecd.org/>

fuelled by a rapid expansion in trade and financial flows, yet social progress has slowed down. What is the cause for the slowdown? The reasons are likely to be complex.

Based on the above data, it might be concluded that there is no solid empirical ground to argue that it exists a co-relation between average aggregate growth and the income of the poor. More growth does not necessarily mean less poverty.<sup>8</sup> Unequivocally, a certain level of economic output is needed to fulfil basic needs, however basic needs depends much more on allocation of money rather than on the Gross National Product (GNP)<sup>9</sup> of a country. To illustrate this assertion: Saudi Arabia has a literacy rate lower than Sri Lanka, despite the fact that its per capita income is fifteen times higher.<sup>10</sup>

Despite of the wealth of new economic opportunities and globalisation, 2.8 billion people still live on less than \$2 a day. The richest 1% of the world's people receives as much income each year as the poorest 57%.<sup>11</sup> It would be simplistic to assume that more growth will automatically translate into less social problems. An American research based on 123 countries for the period 1985 to 1994, suggested that there is no meaningful statistical correlation between increases in foreign direct investment and improvements in a country's human rights performance.<sup>12</sup>

## 2.2 Understanding Social Challenges

The last decades we have experienced accelerating social and environmental disintegration, which can easily be fact by the increase of poverty, armed conflict and unemployment, as well as discriminatory practices and environmental catastrophes. These problems are mainly due to the inequitable distribution of wealth and the exploitation of the

---

7 Human Development Report 2002: Deepening democracy in a fragmented world. <http://hdr.undp.org/reports/global/2002/en/>

<sup>8</sup> Vandermoortele, Jan. Are we really reducing poverty? UNDP, New York, 2002

<sup>9</sup> GNP is the total income that residents of a country earn within the year. It includes the wages and salaries of employees, the profits realized by entrepreneurs and stockholders, the rents received by landlords, and the indirect taxes (such as the Goods and Services Tax, the gasoline tax and the provincial retail sales taxes) collected by governments. It includes the dividends received from abroad, minus dividends paid by businesses operating in a country to foreigners.

<sup>10</sup> Korten, David. When Corporations Rule the World, Earthscan Publications Ltd, London 1995.

<sup>11</sup> UNDP, Human Development Report, 1991, New York: Oxford University Press, 1991

<sup>12</sup> Force, C. Profiting From Misfortune? The Role of Business Corporations in Promoting and Protecting International Human Rights, MA Thesis, Norman Paterson School of International Affairs, Carleton University, Ottawa (1997)

ecosystem beyond sustainability. The former concept will be estimated; the latter will be left aside for the environmentalists.

Socio-economic theories explain the rise in economic inequality over the last 20 years, as being associated with two concepts:

- (I) Long-term factors, such as the labour-saving effect of technical progress and the impact of trade liberalization and globalisation.
- (II) Policy-related factors, which include a high and rising inequality in the distribution of industrial and financial assets. This is due to the rise of multinational corporations and privatisation and the persistence of inequality in the distribution of land and human capital in most countries of the world.<sup>13</sup>

In this scenario, governments, corporations and trade play a key role. Through complicitous regulations, governments enable corporations to maintain their global monopoly. Poor developing countries cannot compete and penetrate major export markets in industrial countries. This is in part due to either national subsidies or to the walls of protection that remain in rich countries, such as those which protect their farm products, while developing countries are being asked to open up their agricultural sector.<sup>14</sup> This is a double standard that threatens to undermine developing countries' economies, limit economic participation and spread poverty.<sup>15</sup> Similarly, WTO provisions have been enacted in order to ensure efficiency of competitive markets, which benefits large corporations without limiting their ability to concentrate power and drive unfair competitors out of the market.

Intellectual property rights (IPR) also, consolidate the position of ownership to developed countries and reduce the opportunity for learning to developing countries. It can be considered that the truly beneficiaries of IPR are Trans-national corporations, which control research and development through IP laws. The TRIPS Agreement<sup>16</sup> has evidenced, as a primary effect, increases in prices to purchase technology and genetic materials; their distribution and quality have also been

---

<sup>13</sup> Vandermoortele, Jan. Are we really reducing poverty? UNDP, New York, 2002

<sup>14</sup> Subsidies in rich countries are hurting the poor in the developing countries. The farm industry in the US subsidizes 25. 000 cotton growers with \$ 2 billion, meanwhile in Africa poor cotton growers lose \$ 250 million in export each year. Chanda, Naya. What is Globalization? Yale Center for the Study of Globalization, 19 November 2002

<sup>15</sup> Reich, Robert, The work of Nations, New York: Alfred A Knopf, 1991, p.281

<sup>16</sup> The Agreement on Traded-Related Aspects of Intellectual Property Rights (TRIPS Agreement) entered into force on January 1, 1995, which is binding on all WTO members.

negatively affected by this Agreement.<sup>17</sup> Major tech-companies retain control of the terms by which technology is distributed in a geographic area, excluding large sectors of a population.

With such an economic model of expansion, solely the upper class of developing countries might access new-patented technology. Consequently, the gap between rich and poor may become larger. Additionally, developing countries rarely have access to knowledge producers, finding themselves left behind in their economic development.<sup>18</sup>

Because of the inappropriate regulations and trade policies many people living in developing countries have less access to essential medicines. Notably, the spread of diseases such as malaria, TB and HIV is growing in poor countries. In contrast, the 2001 Global Health Forum calculated that of the US\$ 70 billion spent all around the globe on health research, less than 10% is spent on diseases that compromise 90% of the world's health burden. Diseases that affect people in poorer countries, even when the numbers are very high, are considered to be bad investments and remain neglected in this field.<sup>19</sup>

Pharmaceutical corporations are arbitrarily benefiting from traditional and indigenous knowledge. In 1995, the income derived globally from indigenous knowledge was US\$ 43 billion, and at least 50% of the plant-derived prescription drugs in the US originate from the tropics. Of the 119 drugs developed from higher plants on the world market today, it is estimated that 74% were discovered from a pool of traditional herbal medicine. The total herbal trade, in 1995, was over US\$ 56 billion and the sole payment for indigenous knowledge was 0.001% of that sum<sup>20</sup>. However, companies such as Shaman Pharmaceuticals and the Body Shop have designed mechanisms and projects for returning benefits to traditional peoples.<sup>21</sup>

Notably, the World Bank estimated in 2001 that TRIPS led to rent transfers to the US, Germany, Japan, Switzerland, the UK, Australia, Netherlands, France and Ireland for US\$ 41 billion in 2000 dollars. These transfers are certainly the result of an unequal distribution of

---

<sup>17</sup> Intellectual Property Rights for indigenous peoples: A Sourcebook, Society for Applied Anthropology, 1994

<sup>18</sup> For a further discussion, see Korten, David. When Corporations Rule the World, Earthscan Publications Ltd, London 1995. Chapter 13.

<sup>19</sup> Chapman Audry, The Human Implications of Intellectual Property Protection. Journal of International Economic Law, 2002.

<sup>20</sup> Intellectual Property and Human Rights, WIPO & UNHCHR, Geneva, 1998.

<sup>21</sup> <http://www.thebodyshop.com/>

technology capacity that is causing serious damage to the economies of poor countries.<sup>22</sup>

Reducing poverty depends as much on whether poor people have political power as on their opportunities for economic progress. The realization of civil and political rights can be hindered by a number of circumstances, among them social exclusion and social stability.

The concept of social exclusion constructed on relational notions of poverty has long been studied in industrialized countries. The concept has both economic and socio-political dimensions. For the scope of this paper, it is deducible that social exclusion can originate from corporate behaviour. Business is a concomitant of today's commerce. Corporate libertarians argue that opening national markets introduces greater competition and leads to reduction of poverty, however, in reality, the effects differs. When markets are global, the forces of monopoly transcend national borders to consolidate at a global level, which exclude peoples, limit market opportunities and generate social problems such as unemployment.<sup>23</sup>

The corporation currently concentrates massive economic and, consequentially, political power in the hands of a few. However, the problem per se is not business, but the deficiency of corporate accountability and unfair trade regulatory system. It is clear for corporations that in order to survive in a voracious system, either a) merge to gain a better market position or b) move to places where they can get cheaper labour forces and tax benefits, therefore a gaining competitiveness.

The global market is considered highly monopolistic. In consumer durables, for instance, the top five firms control 70% of the entire world market. In the automobile, airline, aerospace, electronic, pharmaceutical and steel sectors the top five firms control more than 50% of the global market. In the oil, computer and media industries the top five firms control more than 40% of sales.<sup>24</sup> This shows the creation of corporate monopoly around the globe.<sup>25</sup>

---

<sup>22</sup> Making Global Trade Work for People. UNDP, Hienrich Böll Foundation, Rockefeller Foundation and Wallace Global Fund, 2003

<sup>23</sup> Korten, David. When Corporations Rule the World, Earthscan Publications Ltd, London 1995. Chapter 5.

<sup>24</sup> A Survey of Multinationals: Everybody's Favourite Monster, The Economist, March 27, 1993 in Korten, David. When Corporations Rule the World, Earthscan Publications Ltd, London 1995. p. 223

<sup>25</sup> However, this is not new. Monopolistic corporate behaviour has been considered as an instrument for suppressing the competitive forces of the market since the XVIII century. Adam Smith, the intellectual who set up the framework of free trade and market economics which still holds true today wrote: "It is to prevent this reduction of price, and consequently of wages and profit, by restraining that free competition which would most certainly occasion it,

A study done by the OECD in 1996, found no convincing causal connection between trade liberalization and respect for freedom of association rights. In fact, the OECD study found that a country's desire to increase trade and direct foreign investment could lead to the deterioration rather than an improvement in human rights.<sup>26</sup> Global trade means, in this context, that corporations are exposed to violate rights of workers and peoples, harming the environment, undermining governmental functions and eliminating competitors through unfair practices

Being excluded implies that someone's opportunity to earn an income by participating in the labour market, and hence in social life, is substantially curtailed. Social exclusion, thus, denotes the weakening of social ties that bind individuals to their communities.<sup>27</sup> People can also be excluded from political participation.

Trans-national companies repeatedly use poor countries' economic vulnerability and people's needs for their economic gain. It is not a secret that business has co-operated with inhumane dictatorships around the globe, from Chile yesterday to Burma today. This is so notwithstanding the fact that a responsible corporation is expected to abhor being part of abusive working conditions or other human rights violations anywhere. Nevertheless, large corporations find easy administrative procedures guaranteeing indiscriminate access to natural resources, low taxes, limited trade union activity and cheap labour in those countries.

Trans-national corporations' private armies largely are likely contributing to increasing corruption, armed conflict, ethnic cleansing and genocide in developing countries. On November 8, 2001 a complaint was filed in the US courts against Canadian Talisman Energy Inc. for complicity in genocide in Sudan.<sup>28</sup> Human rights cases all over the world, especially in the US have challenged corporate practices, including: technology (IBM), mining and petroleum (Royal Dutch Shell), financial services (Price Waterhouse), consumer products (Coca-Cola), pharmaceuticals (Pfizer),

---

that all corporations and the greater part of corporation laws, have been established". Adam Smith, *An enquiry into the nature and Causes of the Wealth of Nation*, 1776, New York: Modern Library, 1937, p.123

<sup>26</sup> OECD, *Trade, Employment and Labour Standards*, COM/DEELSA/TD(96)8/FINAL (1996), p. 42.

<sup>27</sup> The richest 5% of the world's people have incomes 114 times those of the poorest 5%. During the 1990s the number of people in extreme poverty in sub-Saharan Africa rose from 242 million to 300 million. 20 countries in sub-Saharan Africa, with more than half of the region's population, are poorer now than in 1990 and 23 are poorer than in 1975. UNDP, *Human development Report 2002* available on internet at <http://hdr.undp.org/reports/global/2002>

<sup>28</sup> On May 13, 2002, Talisman filed a motion to dismiss, which was denied on March 19, 2003. Talisman is currently seeking an interlocutory appeal. <http://www.usaengage.org>

and agricultural products (Del Monte).<sup>29</sup> It seems that corporations not only benefit unfairly from economic chains but also are constantly breaching human rights standards and international customary law.

## **Conclusion**

No divorce of politics and economics is possible; the reduction of social problems is as much a matter of democratic participation as of redistribution of the wealth. As has been shown, corporations play an important role in this process. They benefit largely from developing communities without returning decent profits to those peoples. On the contrary, large corporations are impeding the equitable realization of sustainable human development.

Certainly, the aim of alleviation of poverty requires much more than a pure economic approach. The participation of all sectors of society is vital, including of course one of the engines of economy, the corporation.

The role of the private sector is to increment accountability and responsibility based on the rule of international law, fair competition and morality, so, all dimensions of globalisation would have a more positive effect on the majority affected by it, which it does not occur at the moment. It will, surely, lay the foundation for a sustainable corporate model.

---

<sup>29</sup> See more at <http://www.usaengage.org/legislative/2003/alientort/alientorttpcases.html>



# 3 The Corporate Enterprise

*“Global business entails global responsibility”*

The trans-national activities of companies are not new nor are a consequence of globalisation, as it is understood today. On the contrary that phenomenon has a large history, since the XVII century companies operated on a trans-national scale, such as the Dutch and British East Indian Companies or the Hudson’s Bay Company, shipping raw material from the colonies to be manufactured in the “North” and sometimes returned back for selling. In 1858 investors from France, Belgium, the US, Italy and Russia formed the Universal Company of the Maritime Suez Canal for the construction of the Suez Canal.<sup>30</sup> Companies have from a historical perspective, helped to build the world colonial empires, today trans-national corporations maintain the economies of industrial developed countries.

In 1999 the top 100 corporations, ranked by their assets, had sales amounting to \$ 4 trillion dollars. 90 percent of them were based in the United States, Japan and the European Union (EU), with only three corporations from developing countries. 51 percent of these companies were owned by global corporations and only 49 percent by states. And their trade volume may be greater than the gross national product of a rich developed country: the Royal Dutch Shell’s income is more than Norway’s GNP.<sup>31</sup>

Nowadays, corporations have reached similar constitutional rights to those of a natural person. The problem with that is that these legal fictions are competing not only with people’s rights but also with the state’s functions, gaining major political participation in society, without meeting similar obligations. It should be noted that with greater power should come greater responsibility. Attention must also be paid to the fact that the corporation is merely a legal creation, which has been created in order to serve public needs.

## 3.1 Definition of Corporations

A legal person is a fiction created by the law, which permits it to act in the legal and commercial world, since certain rights and duties are ascribed to it. Natural persons are commonly described as individuals.

---

<sup>30</sup> The Economist, June 14th 2003, volume 367, number 8328

<sup>31</sup> UNCTAD. World Investment Report, United Nations 2001

Legal persons are used to refer to corporations, public associations or other entities. Businesses and corporations are social entities, created in the context of larger interdependent cultural, political, and sociological systems. Legal persons are susceptible to penal and civil liability. At the end, a corporation as a legal person is nothing but a fiction conformed by real people who take collective decisions, has rights and liabilities separate from those of the individuals involved

Legally a corporation has as many rights and responsibilities as a natural person, but not all alike. It may buy, pay taxes, sell and own property, enter into contracts and bring lawsuits. It can be prosecuted and punished. But it differs from natural persons in its existence and liability.<sup>32</sup>

I am particularly interested in the corporate behaviour of multi-national or trans-national corporations. These sorts of corporations, considering their range of operation, are set, usually, outside of effective domestic or international accountability. A multi-national corporation is a legal entity that engages in international production, distribution, or services and that bases its management decisions on regional or global alternatives, while a trans-national corporation involves the integration of a firm's global operation around vertically integrated supplier networks.<sup>33</sup>

Indistinguishable names are used in describing these entities such as trans-national enterprise and multi-national enterprise. In this paper trans- or multi-national terms will be used interchangeably meaning a legal entity or corporation that engages in a mercantile global operation.

### **3.1.1 Legal Personality: subjects of international law**

A great deal for the applicability of public international law to a multi-national corporation is determining its legal international personality. According to the International Court of Justice (ICJ) in the reparation case,<sup>34</sup> international persons can be an organization,<sup>35</sup> though its capacities may be different from and less in number and substance than those of states.

Traditionally international law does not recognize corporations as legal subjects but merely as object of public international law. States have shown reluctance to recognize them as subjects of public international law and to engage with them into international agreements. Such power

---

<sup>32</sup> <http://www.investorwords.com/>

<sup>33</sup> Hadari, Yitzahak. (1973.) "The Structure of the Multinational Enterprise." Michigan Law Review, 71, March. Michigan.

<sup>34</sup> Reparations for Injuries Suffered in the Service of the United Nations case, ICJ. Rep 1949

<sup>35</sup> An organization can be a company, business, firm, or association.

would locate large corporations at the same level of nations. However, intergovernmental initiatives have already transformed trans-national corporations from lobbyist's agents to legitimate global agents.<sup>36</sup> Nonetheless, corporations are still dependant on states to exercise certain rights, for instance the right to diplomatic protection.<sup>37</sup> Yet, debatable its legal personality, corporations are certainly the object of international law. They are capable of possessing certain rights, duties and bringing claims before international courts and organs of international organizations.<sup>38</sup>

In order to elucidate this legal dilemma, it serves of precedent to analyse the current legal situation of trans-national corporations two elements are constitutive for arguing international legal personality: a) material rights and b) legal responsibility.

a) Corporations are subjects of material rights at different level.<sup>39</sup> Correspondingly, corporations are object of material duties in the fields of environmental protection, human rights, and labour laws.

b) Corporations can lodge a legal complaint, correspondingly having the possibility of claim and make enforceable certain fundamental rights.<sup>40</sup> Procedural standing rights at international level<sup>41</sup> are recognized under various regional human rights instruments.

Besides, it is arguable that corporations can also acquire rights under international law by making agreements with a state or an international organization, the so-called "internationalised contracts".<sup>42</sup> In practice it has occurred, especially, in the field of oil. In brief, corporations may

---

<sup>36</sup> The UN or the European Union and the NAFTA grant some rights at international level to international organizations.

<sup>37</sup> Barcelona Traction, Light and Power Company, Limited case, 1970 I.C.J.

<sup>38</sup> Hillier Tim, Source Book on Public International Law, Cavendish Publishing Limited, London, 1998 p. 199.

<sup>39</sup> Art. 1 "Protection of property: Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." Protocol I, ECHR, Paris 20 march 1952.

<sup>40</sup> Art. 44 American Convention of Human Rights: "any person or group of persons, or any non-governmental entity legally recognized in one or more member States of the organization may lodge petitions with the commission containing denunciations or complaints of violation of this convention by a Sate party."

In addition, Art. 34 European Convention of Human Rights: "The court may receive applications from any person, non-governmental organization or group of individuals claiming to be a victim of a violation by one of the high contracting parities of the rights set forth in the Convention or the protocols thereto. The high contracting parties undertake no hinder in any way the effective exercise of this right."

<sup>41</sup> Under the World Bank, North America Free Trade Agreement and the Permanent Court of Arbitration (PCA) corporations have access to a panel for dispute settlement

<sup>42</sup> In the *Texaco v. Libya*, Arbitral Award of 19 January 1977. The applicable Law was international law. See more, Encyclopedia of International Law: Transnational Enterprises. Amsterdam, 1985 p. 518

have some degree of international legal personality, and the traditional concept of legal personality, as a prerogative of states, must be broken into pieces in order to understand the corporate power.

It should be noted that complaints can only be brought against a state party. Again, states have the primary obligation to comply with the obligation arising from those conventions. The classical position that corporations are not subject of international law is no longer tenable. They, thus, are obliged to comply with the overall provisions that encompass public international law.

### **3.2 Moral Responsibility**

As stated very well by Asbjorn Eide in his 1987 Final Report on the Right to Food: “It should be kept in mind, however, that all members of society share a responsibility for the realization of human rights, so the realization of a right in this globalised and changing world may require more than the classical State to respect, protect and fulfil human rights”.<sup>43</sup> This assertion is based on the UDHR and also on ancient philosophies. They proclaim that every individual and every organ of society is responsible for the realization and respect of fundamental rights and freedoms. To secure the universal and effective recognition entails that a business as an organ of society, comports itself under certain moral premises.

It is submitted that there is no need to convince people that repressive governments, arbitrary arrest or detention, torture, extra-judicial executions, ban of free trade union activity, inhuman and degrading working conditions, are illegal acts and hideous actions. To co-participate in such activities constitutes an immoral behaviour by any entity. Furthermore, the above examples have already been prohibited internationally as a matter of customary law and their compliance is binding for all members of society.

The prevention of such violations requires a double task: a) corporations should make sure that their activities are harmless; and b) applicability of positive discrimination in favour of these groups in order to rectify a historical misbehaviour. Such mechanisms have successfully been put into practice at global level and are enshrined by international instrument such as the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>44</sup>

---

<sup>43</sup> Report on the Right to Food before the Economic and Social Council of the United Nations, 1987.

<sup>44</sup> Art. 4 (1) "Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in

Throughout human history law has tried to set minimal behavioural standards for humans and their legal creations. But, law suffers from the defect of not covering all cases adequately. Therefore, morality has become a supplement and source of law. Moral constrains, in consequence, ought to lead the commercial acts of businessman or manager, as much as the commission of securing economic profitability.

Legal positivism, different from natural law, insists on a radical separation of law from morality. However, legal positivism confuses distinction with separation. Morality has a close connection to law; much of the legal system is based on moral teaching.<sup>45</sup> Obeying law is by itself a moral option. Society works because people have morals. If people kept their word only when it was set down in a legally enforceable contract or if they only told the truth when they were under oath in court, society would collapse. The same would occur in business issues. Commerce takes place because there are certain moral standards, honesty and non-violence for instance, though minimal, are unavoidable.<sup>46</sup> Private economic commissions cannot override all social and legal obligations.

The moral dimension of business came to be known as CSR. Ethics<sup>47</sup> and economic interest seems to conflict in a neo-liberal perspective where profits are the most and only function of business. Opportunely, a new business ethics is emerging. The CSR requires a business founded on ethical values and respect for employees, communities and environment. This corporation is designed to be socially sustainable and profitable for its shareholders. Such a new model will be explored in chapter 5 of this paper.

The meaning of business inside a business culture is economic growth. It should not be forgotten that the entire occident is dedicated to the pursuit of growing consumption without being aware of posterior consequences. Its economic model is based on economic growth, which poses a number of dilemmas to businessmen. Rationalization of either economic growth or people's consumption can be an answer to a sustainable development.

---

the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved".

<sup>45</sup> It would be outside the scope of this work to develop such arguments; however, there exist an extensive literature on it. Recommended authors; Immanuel Kant or Hugo Grotius.

<sup>46</sup> Griffiths, M.R & Lucas, J.R, Ethical Economics. Macmillan Press LTD, London, 1996. Chapter 4.

<sup>47</sup> Ethics: The science of morals; the department of study concerned with the principles of human duty. Oxford Dictionary at <http://www.oed.com/>

In such aggressive economic environment it is particularly important for the business industry, as a first step, to develop its own set of principles and guidelines in order to ensure an ethical behaviour globally. However, these codes of conduct must be based on international standards. It is also in the interest of business to see human rights protected. A company marked by human rights violations can see its reputation destroyed, analogously its profitability. In a healthy environment, law protects investment by assuring political stability and democratic participation, which certainly increases a moral economic productivity

A holistic view would enable us to see that the acts taken by a multinational corporation at its headquarters, far away from its operative habitat, might directly affect the people inside a developing country. Paradoxically, the current discipline of business ethics has not provided much concrete help in avoiding such dilemmas. This might be because business ethics is a new concept or because its political agenda has not been correctly promoted to the business industry.

### **3.2.1 Corporate Human Rights**

Private companies link consumers and producers through the food, housing and health chain. However, their activities can also cause ill health and environmental hazards associated with their production and distribution process.<sup>48</sup> That interrelation exposes, in practice, that every aspect of business has a moral and legal dimension. Each commercial sector creates its own hazards. The massive consumption of energy, for instance, and goods by industrialized countries is contributing to a destructive demand and a worldwide crisis. This model accelerates the exploitations of non-renewable natural resources.<sup>49</sup>

Nevertheless, this circular process affects corporations as much as people. Corruption, poverty, poor public services and infrastructure and governmental instability make it difficult for businesses to operate. Supporting international human rights standards, thus, benefits both the company and the country of operation. The social responsibility of a corporation depends on how it runs its core operations, interacts with partners, subcontractors and the community. It also depends on how it manages its investments. Indubitably, such responsibility demands a corporate reinvention of business with stricter accountability and binding legislation. What I would call corporate human rights idea.

---

<sup>48</sup> Beyond Voluntarism: Human Rights and the developing international legal obligations of companies. International Council on Human Rights Policy, February 2002 Chap. III

<sup>49</sup> In 1999, the World Resources Institute estimated that 80 per cent of Natural resources were consumed by the 16 per cent of the world's population, who live in the US, Europe and Japan. See more at <http://earthtrends.wri.org/>

Corporate Human Rights (CHR) is not a matter of multinational corporations. In business practice, small and medium sized companies are being ranked highly when it comes to social responsibility. An estimated of 95% of all Norwegian small and medium sized companies - between 50-249 employees- are involved in such social activities.<sup>50</sup> Information is a substantial key in the CSR process. Detailed information about the social and ethical aspects of a product's production line is complementary to the product's quality. It gives added value to the business.

Commitment to corporate responsibility can be rewarded in different ways. Amnesty International has put such benefits in economic and social terms, as follows:<sup>51</sup>

Economic benefits: Enhanced corporate reputation and brand image, more secure license to operate, improved shareholder and partners relations, reduced security risks and associated costs such as material losses, lower insurance premiums and boycotts, improved investment climate, and competitive advantage towards companies not yet adopting human rights standards.

Social benefits: Strengthening the rule of law through application of international human rights, labour and environmental law, strengthening capacity of civil society organizations through dialogue and partnership, opportunity for fair competence encouraging other companies to follow it, corporate leadership, fair social representation and greater socio-economic development. Corporate reputation is a great asset for a company, not exclusively to attract or maintain their clients but to retain qualified employees.

Respect for human rights standards -CHR- by businesses has already taken various directions. a) Social labelling of products that informs consumers which sort of standards the company uses is steadily growing. b) Partnerships with other companies or the local community offer an outstanding opportunity to improve human rights in the area of operation. c) Empowerment of people, thereby enhancing shareholder value. Whatever form it takes, it is contributing to a new usage of the business model as a co-operative instrument in solving socio-economic problems.

---

<sup>50</sup> It Simply Works Better, Campaign Report on European CSR Excellence 2002-2003, The Copenhagen Centre, p.80-83

<sup>51</sup> Amnesty International. Human Rights a Corporate Responsibility? Kristianstad, SNS Förlag 2001 p. 16

## **Conclusion**

States have shown reluctance to recognize them as subjects of public international law and to engage with them into international agreements. Such power would locate large corporations at the same level of nations. However, intergovernmental initiatives have already transformed trans-national corporations from lobbyist's agents to legitimate global agents.

The subject of international legal personality is relevant for reason of jurisdiction, nevertheless is already clear that corporations are subject of material rights at international level. They can also lodge legal complaints, correspondingly, having the possibility of claim and make enforceable fundamental rights. It can be asserted that corporations have a limited international legal personality.

The corporation allows economic well-being through commercial interactions assuring better standards for peoples' lives. However, as I have tried to illustrate in the above chapters, trans-national corporations may also contribute directly to create social problems. Large corporations may influence governmental policies and legislation such as land expropriation, subsidies, agriculture and employment for their own interest. Or simply, they co-participate in violation of human rights supporting indirectly illegitimate governments. That interrelation exposes, in practice, that every aspect of business has a moral and legal dimension.



# 4 Legal Obligations of Corporations

Even though international instruments were drafted primarily placing legal obligation on states, the following conclusion has been reached at the international level: the application of international human rights involves non-state agents, including corporations. This chapter will identify the provisions that deal with the corporation.

Corporate behaviour is legally twofold controlled 1) by states: international legal instruments such as conventions or treaties impose on states the obligation to regulate the behaviour of non-state actors and 2) by international organizations: explicit instruments envisage corporations as their main subjects.

## 4.1 Do Human Rights Standards Apply to Corporations: international standards

The quintessential of human rights is to protect human dignity regardless of the nature of the perpetrator. Persons can also be responsible for such violations.<sup>52</sup> International instruments refer comparably to companies. Though such norms do not always have legal implications, they may have a political and a normative force.

### 4.1.1 Jus Cogens

The concept of *jus cogens* was officially adopted in 1966.<sup>53</sup> It consists of a handful of overriding rules accepted world wide, which forms a whole on international law. These rules have become a non-controversial set of principles of the international legal system. Certainly, these norms cannot be put aside by a treaty agreement or any international legislation.<sup>54</sup> *Jus cogens* norms include a wide range of subjects such as the law of genocide, slavery, torture, war crimes, crimes against humanity<sup>55</sup>,

---

<sup>52</sup> Rome Statute of the International Criminal Court Art. 1: "An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute." Also see the UN Convention on the Prevention of Genocide 1948, Art 6.

<sup>53</sup>Art. 50 Incorporated on Vienna Convention on the Law of the Treaties of in 1966.

<sup>54</sup> Art. 53 of the Vienna Convention on the Law of Treaties provides: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of international law."

<sup>55</sup> Art. 6-8 of The Rome statute of the International Criminal Court.

the act of aggression, the principles of non-discrimination and the principle of self-determination.<sup>56</sup>

*Jus cogens* norms are often called peremptory norms of international law. The existence of such norms has been clearly adverted in international law. The Barcelona Traction case of 1970 brought into practice the substantial legal concepts of *jus cogens* norms. It also pointed out the character of *erga omnes* obligations as correlative responsibilities of the former concept.<sup>57</sup>

Fitzmaurice<sup>58</sup> claims that *jus cogens* norms require an absolute obligation. Not just referring to state compliance but also to individuals. According to him, “rules of this particular character are intended not so much for the benefit of states, as directly for the benefit of the individual concerned as human beings.” In the same line of ideas, if the exhortation of those norms is that all organs of the society have a duty to respect them. It can be concluded that, of course, it includes corporations and at the very least businesses.

#### **4.1.2 The Universal Declaration of Human Rights and Other Basic Instruments**

The Universal Declaration of Human Rights (UDHR) includes civil and political rights as well as economic, social, and cultural rights. Civil and political rights are referred to as the first generation of rights. Examples of these rights are freedom of association, freedom from slavery, and freedom from discrimination. Economic, cultural, and social rights are referred to as the second generation. Such rights include the right to just and favourable conditions of work, the right to participate in cultural life and the right to education.

A third area of rights has emerged, sometimes termed as the third generation of rights. It concerns issues requiring international cooperation. These rights include, for example, environmental protection and the right to development. The legal nature of this generation of norms is based on collective rights, which can open an interesting door for their application to corporations.

It can be claimed that all human rights instruments are based on the UDHR. Its preamble<sup>59</sup> exhorts to every individual and organ of the

---

<sup>56</sup> Art 1. UN Charter 1945.

<sup>57</sup> Barcelona Traction, Light and Power Company, Limited case, 1970 I.C.J. Par. 32

<sup>58</sup> Fitzmaurice. *The General Principles of International Law: Considered from the Standpoint of the Rule of Law*. 1957 II edition p. 152

<sup>59</sup> Preamble UDHR: “The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by

society to promote and respect human rights. Preambles from a legal approach have a particular importance in understanding and interpreting the rest of a document.

Additionally, Article 30 of the UDHR provides “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.” The UDHR, thus, contains an explicit language-obligation for every member of society, including corporations to participate in the realization of its rights. The same can be concluded deemed to the possible violations of any of the rights described therein. The UDHR has become legally binding and it is considered part of customary international law.<sup>60</sup>

At the UN level, the CEDAW,<sup>61</sup> The UN Convention on the Elimination of All Forms of Racial Discrimination (CERD),<sup>62</sup> The UN Convention on the Right of the Child (CRC)<sup>63</sup> and the UN Declaration on the Right to Development (UNDRD) involve persons, organizations and enterprises as responsible for the realization of the rights enshrined on those human rights instruments. The UNDRD states: “All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development...”<sup>64</sup>

A direct provision concerning the prohibition to discrimination can be found in the Rio Declaration on Environment and Development adopted on 13 June 1992 in Brazil.<sup>65</sup> In better terms, the Copenhagen Declaration on Social Development and Programme of Action adopted

---

progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”

<sup>60</sup> The UN Office of Legal Affairs (OLA) refers to the UNDH as an instrument not originally intended to have binding force, but which its provisions may have reflected customary international law or may have gained binding character as customary law at a later stage. See more at <http://untreaty.un.org/ola-internet/Assistance/Guide.htm#treaties>

<sup>61</sup> Art. 2 (e) “Requires states to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”

<sup>62</sup> Art. 2 (1) “ (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations”.

<sup>63</sup> Art. 32 Obliges States Parties to protect children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education.

<sup>64</sup> Art. 2

<sup>65</sup> Article 12 of the Rio Declaration, June 1992.

at the World Summit for Social Development of 12 March 1995, states “Particular efforts by the public and private sectors are required in all spheres of employment policy to ensure gender equality, equal opportunity and non-discrimination on the basis of race, religion, age, health and disability, and with full respect for applicable international instruments”.<sup>66</sup> These declarations, though not legally binding, can be used by states and corporations as general principles of international business regulation and public policy.

In this process of normative interpretation, the adoption of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms<sup>67</sup> is of significant relevance. The Declaration affirms the development of horizontal obligations in the application of human rights. Article 18 provides “Everyone has duties towards and within the community, in which alone the free and full development of his/her personality is possible”. It continues, “Individual groups, institutions, and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions, and processes.”

The ILO was created in 1919 and from the beginning it was concerned primarily with the problem of labour conditions. The incorporation of the Declaration of Philadelphia into its constitution in 1944 brought social policy, human and civil rights matters to its agenda. Representatives of governments, workers and employers agreed about international labour standards under a very democratic principle in the ILO.

The ILO conventions cover, for example, forced labour (Convention No.29, 1930), freedom of association and protection to the right to organize (No.87, 1948), right of collective bargaining (No. 98,1949), the abolition of forced labour (No.105, 1957), discrimination (No.111, 1958), child labour (No.138, 1973), and indigenous and tribal peoples (No.169). The majority of these norms have been adopted as basic labour protection rules in most of the countries of the world, which implies a general practice accepted as law. This is an essential element of international custom as a source of law.<sup>68</sup> It could imply its direct application to corporation. However, it is considered as an indirect one. The ILO has a regular system for supervising how states are

---

<sup>66</sup> Paragraph 45 of this Declaration

<sup>67</sup> UN doc. A/RES/53/144, adopted by General Assembly on 8 March 1998

<sup>68</sup> Art. 38 of the Statute of ICJ.

implementing the above obligations: a) reporting from member states and b) provides a contentious proceeding.<sup>69</sup>

### 4.1.3 Regional Instruments

Following adoption of the UDHR, several regional human rights agreements, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the American Convention on Human Rights of 1969 and the African Charter on Human and Peoples' Rights of 1981 were signed having in mind not just states but also persons and organizations. Countries, of course, have also expressed commitments to human rights standards in their own constitutions and domestic legislation, not just at a vertical level but also at a horizontal. It brings off an immediate compliance of these conventions by individuals and organizations. These instruments are legally binding on all state members.

A superlative legal approach has been carried out by regional organizations. Regional courts are using the principle of due diligence to make non-state actors liable for human right violations. Lawfully, a state has the due diligence to prevent wrong acts and in the worst of the cases to respond properly to violations. A state's responses may take various forms such as administrative sanctions or criminal penalties. If a state does not fully perform the duties acquired, by its prerogative to be bound to certain international human rights standards, it definitely generates a state responsibility. Accordingly, an illegal act that violates a human right, not directly imputable to the State, and committed by private persons, can lead to international responsibility of such State.<sup>70</sup>

We can therefore conclude that it is clear from the instrument referred to above, that it is possible to establish human rights obligations to trans-national corporations: *jus cogens* norms and the UDHR are clearly examples of it. Individuals, managers and businessmen are legally bound by these norms<sup>71</sup> to refrain from grave human rights breaches.

---

<sup>69</sup> Any State party, employers' organization, or workers' union can lodge a formal complaint against a State party.

<sup>70</sup> See the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* case, decided by the Inter-American Court of Human Rights on August 31, 2001. The Court held that "the international human right to enjoy the benefits of property, particularly as affirmed in the American Convention on Human Rights, includes the right of indigenous peoples to the protection of their customary land and resource tenure." The Court held that the State of Nicaragua violated the property rights of the Awas Tingni Community by granting to a foreign company a concession to log within the Community's traditional lands and by failing to otherwise provide adequate recognition and protection of the Community's customary tenure. *The Arizona Journal of International and Comparative Law Online* - 2002 - Volume 19 Number 1.

<sup>71</sup> International crimes and crimes against humanity.

Legal instruments such as conventions or treaties impose on states the obligation to regulate the behaviour of non-state actors. Such a task is performed through respecting, fulfilling and preventing their violations. Prosecuting any public or private agent in the case of abuses is a classical example of it. Therefore, if a government fail to ensure such tripartite obligation, it may correspond to a violation of its international legal obligations.<sup>72</sup>

The rights contained in the UDHR were further detailed in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966. This could imply a similar legal approach: states have the obligation to implement internationally signed instruments, therefore the corporation is constrained by them.

Relevant for the enforcement of human rights instruments developed in the UN is that they are complemented by treaty bodies.<sup>73</sup> Such UN treaty bodies monitor the compliance of treaties that have been ratified by a state. Individuals may complain of violations of the rights under the treaties and even an inquiry procedure has been established, which provides for missions to states parties in the context of concerns about systematic or grave violations of treaty rights.<sup>74</sup> Likewise, in the case of the ILO conventions any state party, employers' organizations or workers' union can lodge a formal complaint against a state that is violating a convention. It could be used to investigate what states are doing to enforce ILO standards in relation to companies.

## 4.2 Direct Normative Obligations

International agreements such as those signed at ILO, the Organization for Economic Co-operation and Development (OECD) and the Global Compact have been drafted deliberately for corporations, in this case for multinational enterprises. The principles agreed in those documents are adopted as a product of consensus among state parties, and even workers' unions and employers' organizations have participated. These set of norms impose obligations on multinational corporations to respect labour, environmental and human rights standards. The second section of this chapter will examine briefly these agreements and the previous work accomplished by the UN before putting in functioning the Global

---

<sup>72</sup> International Council on Human Rights Policy. *Beyond Voluntarism*, 2002. Chapter IV.

<sup>73</sup> The Committee on the Elimination of Racial Discrimination (CERD), the Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee Against Torture (CAT), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Discrimination Against Women (CEDAW)

<sup>74</sup> In the case of CEDAW and CAT

Compact. A closest assessment will be made during chapter VI concerning enforcement.

#### **4.2.1 The OECD Guidelines for Multinational Enterprises**

The OECD or the so-called rich man's club; the state members are the source of most of the world's direct investment flows and home of the most multinational enterprises all over the world. It is important to remember that the OECD members produce 2/3 of the world's goods and services. The OECD "legislative" process produces internationally agreed instruments, recommendations and decisions in areas of economic and social issues. Its scope ranges from macroeconomics to science and innovation.<sup>75</sup>

In 1976 the state members of the OECD, with exception of Turkey, adopted a Declaration on International Investment and Multinational Enterprises designed to protect investors. As an integral part of such declaration the Guidelines for Multinational Enterprises were endorsed.

Initially in the 70's such guidelines were aimed to facilitate international trade among the states parties. But, in the year 2000 a clause was introduced to extend some responsibility to enterprises on human rights issues.<sup>76</sup> This revision added a recommendation on elimination of child employment and forced labour. Exceptional emphasis was made on disclosure of information when it affects public interest. This new trend follows the need to avoid environmental damages.

The incumbent OECD Guidelines for Multinational Enterprises are non-binding recommendations to enterprises, made by the 30 OECD member countries, and seven non-Member countries as to know, Argentina, Brazil, Chile, Estonia, Israel, Lithuania and Slovenia. They agree to promote their implementation by enterprises operating in or from their territory.

The aim of these guidelines is to help multi-national enterprises to operate in harmony with government policies and societal expectations. They provide voluntary principles and standards for responsible business conduct in a variety of areas including employment and industrial

---

<sup>75</sup> OECD Members: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxemburg, Mexico, The Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Slovak Republic, Sweden, Switzerland, Turkey, United Kingdom and USA.

<sup>76</sup> Paragraph II of the OECD: "Enterprises should respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments."

relations, human rights, environment, information disclosure, competition, taxation, and science and technology.<sup>77</sup>

#### **4.2.2 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy**

In June 1976, the ILO's tripartite World Employment Conference initiated a discussion on multinational enterprises. In 1977 a Tripartite Declaration on non-discrimination, security of employment, health and freedom of association was concluded. They agreed on the usefulness of a tripartite declaration of principles that would be of a voluntary character.

Apart from its political context, the Declaration encourages multinational enterprises to have a positive contribution to economic and social progress in the society where they function and to minimize and resolve the difficulties to which their various operations may give rise. The MNE Declaration is the only set of global guidelines agreed on by governments, employers, and workers for investment-related policy and practice.<sup>78</sup>

The Tripartite Declaration of Principle Concerning Multinational Enterprises and Social Policies (MNE Declaration), though not mandatory, it creates a political and moral obligation for states parties. It is important to recall that it was adopted by a high inter-ministerial governmental body in 1977, which implies an *opinio juris*. Paradoxically, such provisions are accompanied by a detail supervisory procedure that is binding on member states. In practice, a complaint can be lodged against a private corporation.<sup>79</sup>

#### **4.2.3 United Nations Organization**

Within the core of the UN, the theme of corporations has also been followed since the 70s. In 1972, the first calls for international codes of conduct for trans-national corporations were made at the UN Conference on Trade and Development held in Santiago de Chile<sup>80</sup>.

---

<sup>77</sup> The Guidelines can be found at [http:// www.oecd.org](http://www.oecd.org)

<sup>78</sup> The Guidelines can be found at [http:// www.ilo.org](http://www.ilo.org).

<sup>79</sup> Disclose of information of multinational corporations. Request for Interpretation from the International Federation of Chemical, Energy and General Workers' Union, 6 March 1995. Supervisory mechanism. ILO Doc. GB.264/MNE/2. See Jägers, Nicola. Corporate Human Rights Obligations: In Search of Accountability. School of Human Rights Research Series, volume 17. Intersentia, 2002. p. 112

<sup>80</sup> Recalling the UN Conference on Trade and Development of May 18, 1972, it was adopted the Charter of Economic Rights and Duties of States affirming the urgency of establishing generally accepted norms to govern international economic relations systematically and recognized that it is not feasible to establish a just order and a stable world as long as a charter



Subsequently, the aggressive marketing of substitute of breast-feeding products in developing countries causing malnutrition, impules the UN to set a UN Commission on Transnational Corporations. In 1976, the Commission made a UN Code of Conduct on Transnational Corporations its main goal,<sup>81</sup> but never materialized due to the political interest at the time of drafting.<sup>82</sup>

In the 1980s the idea of regulation was questioned. In accordance to neo-liberal ideas international trade and investment generally need to be market-driven to maximise welfare. Therefore any interventionist policies in trade and investment would reduce the global welfare.<sup>83</sup> However a few international codes and guidelines envisioned were adopted. In 1981 the International Code of Marketing of Breast-milk Substitutes, in 1985 the UN Guidelines for Consumer Protection and the FAO International Code of Conduct on the Distribution and Use of Pesticides in 1988 the WHO Ethical Criteria for Medicinal Drug Promotion

Recently, the UN Committee on Economic, Social and Cultural Rights has acknowledged everyone's responsibility in the realization of these rights. Respect to the right to health<sup>84</sup> and food the Committee has sustained: "While only states are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society-individual families, local communities, non-governmental organizations, as well as the private business sector have a responsibility in the realization of the right to adequate food."<sup>85</sup> The issue of corporation seems to have gained attention during the last decade with a human rights approach, in part due to an initiative of the UN Secretary General:<sup>86</sup> The Global Compact.

---

to protect the right of all countries, and in particular the developing countries, is not formulated. UN Doc. A/Res/3281 (XXIX), 12 December 1974

<sup>81</sup> The UN Economic and Social Council adopted resolution 1721 that requested the Secretary-General to establish a group to study the impact of corporations on development and international relations.

<sup>82</sup> Jägers, Nicola. Corporate Human Rights Obligations: In Search of Accountability. School of Human Rights Research Series, volume 17. Intersentia, 2002. See chapter V, pp. 119-131

<sup>83</sup> A critique of neo-liberal theories at the Seminar Services of General Interest and Globalization. Paris, 11 March 2000.

<sup>84</sup> See UN Committee on Economic, Social and Cultural Rights, General Comment 14. "The right to the highest attainable standard of health" 4 July 2000, para. 42

<sup>85</sup> See UN Committee on Economic, Social and Cultural Rights, General Comment 12. The right to adequate food" 12 May 1999, para. 20

<sup>86</sup> Kofi Annan of Ghana is the seventh Secretary-General of the United Nations. The first Secretary-General to be elected from the ranks of United Nations staff, he began his first term on 1 January 1997.

### 4.2.3.1 The Global Compact

The failure to adopt a UN code of conduct that regulates corporations in a general and binding form ended up with a creation of a voluntary initiative. The Global Compact is not a code of conduct, but a value-based platform designed to promote institutional learning so that businesses can take part in the solution of the globalisation's challenges. It utilizes transparency and dialogue to disseminate good practices and encouraging new initiatives and partnerships with civil society and other organizations.<sup>87</sup> This platform has basically two objectives: a) mainstream the nine principles, which conform the core of the program, in business activities around the world and b) catalyse actions in support of UN goals.

The Global Compact was labelled in June 1999 at the Davos gathering of the World Economic Forum. However, it was officially launched on July 2000 in New York, as a purely voluntary initiative designed to promote innovation in relation to good corporate citizenship. Additionally, complementing other voluntary initiatives and regulatory approaches by helping to establish the business case for human rights, labour standards and environmental stewardship.<sup>88</sup>

The nine principle of the Global Compact are based on the UDHR, the ILO's basic Declarations and the Rio Declaration on Environment and Development, as follows:<sup>89</sup>

In human rights: businesses should support and respect the protection of internationally proclaimed human rights within their sphere of influence and make sure that they are not complicit in human rights abuses.

In labour standards: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced and compulsory labour, endorse the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation.

Finally, on environmental issues: businesses should support a precautionary approach to environmental challenges, undertake initiatives to promote greater environmental responsibility and encourage the development and diffusion of environmentally friendly technologies.

---

<sup>87</sup> See more at <http://www.unglobalcompact.org/>

<sup>88</sup> A Global Compact: Business, Oil and Human Rights. R.P.P. Le Monde Diplomatique, 2000 at <http://www.mondediplo.com>

<sup>89</sup> See more at <http://www.unglobalcompact.org/Portal/>

The commendable initiative has been criticized because of its vagueness, excessive voluntarism, lack of monitoring, enforcement mechanism and accountability process. NGOs<sup>90</sup> affirm that the programme legitimises corporations with poor human rights and environmental (so called blue-wash abuses). Furthermore, the absence of substantive commitments by participating companies and the inclusion of staff that have a negative ethical record prejudice the programme.

#### **4.2.3.2 The UN Sub-Commission on the Promotion and Protection of Human Rights**

In 1998 the Sub-Commission on the Promotion and Protection of Human Rights established a working group to examine activities of trans-national corporations. A first draft of human rights guidelines for companies was the outcome of such work. It was first discussed at the meeting of the Sub-Commission in 2000. However, to date, no formal adoption was agreed. Meanwhile, I was writing this paper a encouraging news come to my knowledge, the U.N. Sub-Commission adopted the "U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights",<sup>91</sup> in this way putting together into one document the key international human rights laws, standards, and best practices applying to all businesses.<sup>92</sup>

These U.N. Norms are thus complementary to the U.N. Global Compact. However, the adoption of such document is just a step in the process of being legally binding. The new U.N. Human Rights Norms, and the accompanying interpretive Commentary, constitute an authoritative interpretation of the UDHR.<sup>93</sup> In addition to the UDHR and the principal human rights treaties, the U.N. Human Rights Norms and Commentary rely upon and restate the relevant principles from a wide range of labour, environmental, consumer protection and anti-corruption treaties.<sup>94</sup>

### **Conclusion**

The most important conclusion of this chapter is that there exist legal instruments in public international law for extending international legal obligations to trans-national corporations. Certain legal international

---

<sup>90</sup> See criticism by Corpwatch at <http://www.corpwatch.org/search/PSR.jsp> and by Human Rights Watch concerning implementation at <http://hrw.org/advocacy/corporations/index.htm>

<sup>91</sup> August 2003.

<sup>92</sup> The Norms are included in supplement A of this paper

<sup>93</sup> The Universal Declaration of Human Rights applies not only to states and individuals, but also to "organs of society", including businesses.

<sup>94</sup> See more at <http://www.corporate-accountability.org/>

instruments can be applied directly or indirectly to corporations. Legal judgements, though few, confirm such practices: States are coerced by international obligations to refrain from abusing such rights but also to prevent such abuses by private actors.

The problem of the applicability of international human rights instruments, such as the UDHR is their enforcement. However, one should not confuse substantial rights with procedural rights. Enforcement of law is a general problem of international law.

Guidelines and Declarations developed by international organizations can nevertheless have certain legal relevance. They create a political and moral obligation for states parties.<sup>95</sup> They are commonly referred to as “soft law”, this term operates in a grey zone between politics and law. It may shape international conduct as well as contribute to the formation of customary norms. A distinct example is The Helsinki Accord of 1975, which, although not a binding instrument, its influence on human rights standards in Central and Eastern Europe is incalculable.<sup>96</sup>

The Global Compact has to find ways to complement its voluntary nature with measures to ensure accountability The Global Compact Office neither regulates nor monitors a company's submissions or initiatives. Without accountability, in a world of economic globalisation, the UN initiative is futile. Nevertheless, the new U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights will provide a better path to understand corporate responsibility. The success of the Global Compact and other initiatives depends on involving stakeholders and implementing control mechanisms to the programmes, in order to make them operational.

Special emphasis on regulation is to be made as a conclusion. A clear legal framework is needed, in which corporations are envisaged as the legislative subject. It requires not just substantive rights, but also the possibility to enforce them. Voluntary standards are not a substitute for binding international agreements. The whole concept of human rights may be undermined by this altruistic practice. The notion that institutions can proactively construe and promote their own set of human rights may spawn legal uncertainty and confusion.

---

<sup>95</sup> To see more, Jägers, Nicola. *Corporate Human Rights Obligations: In Search of Accountability*. School of Human Rights Research Series, volume 17. Intersentia, 2002. pp. 132-136

<sup>96</sup> Even, the ICJ in Nicaragua Case has cited it. ICJ Reports, 1986, pp. 3 100; 76 ILR, pp. 349,434 in Shawn Malcom, *International Law, Grotius 2001*, p.93.

# 5 Development for Co-operation

CSR practices and cross-sector partnerships have explored innovative strategies in the last years trying to find solutions to the socio-economic challenges of the XX Century. Commercial organizations can have an effective social function simultaneously with their original purpose of providing goods and services.

Corporations have an immense influence on the global political economy that affects the societies where they operate. They benefit from local communities. Therefore, everyone should benefit from them as a democratic and legitimate form of participation.

## 5.1 Corporate Social Responsibility

Social challenges such as climate change, severe violations of human rights, integration, unemployment, access to healthcare or professional labour shortage, cannot be solely tackled by governments. Chapters I and II have exhibited the contribution that corporations have made to the development of these socio-economic problems. For businesses, there is a need to visualize and respond effectively to these global challenges.

Socially responsible investors have been pressuring companies on their social, economic, and environmental performance for the last 30 years; CSR is now more and more part of the mainstream scene. CSR has proliferated in the last decades in various shapes and directions, from the proliferation of codes, guidelines, indicators, transparency and reporting, growing government interest, investor pressure to increased stakeholder activism.

Different terms are used to define CSR: business ethics, corporate citizenship, or sustainability. In general terms, it can be said that CSR is about addressing the legal and ethical socio-economic expectations that society has for businesses. CSR embraces a comprehensive set of policies and practices that are integrated into business operations from production to investment wherever the company does business. Obviously, it includes responsibility for past actions as well as future impacts. It strives to balance economic, social and environmental inequities.

CSR activities should be constructed in such a way as to assist socio-economic needs of all. Basic action includes:<sup>97</sup>

1. The recruitment process should reflect the diversity of the community
2. Transparency and communication of performance with its personnel, shareholders and the community.
3. The establishment of appropriate corporate policies according to the locations and expectations of the business.
4. Ensuring the implementation and control of corporate policies.
5. Establishing links with minorities-owned suppliers to boost and reflect community workforce and business.
6. Co-operation with local governments to improve physically and socially the area of operation.
7. Carrying out dialogue with stakeholder groups and NGOs
8. Using brands to communicate social issues

Corporate transparency prevents the misuse of power and is an appropriate response in case of corporate peril. Openness is a key word for transparency. The corporation should always open to scrutiny. Transparency enhances accountability and control. Trans-national corporations generally avoid openness for strategic reasons. Nevertheless, when issues concerning the greater public interest are at stake, such disclosures are ethically and legally an obligation.

Openness is a key instrument for CSR. To communicate, the activities in which the company is involved brings confidence and security to shareholders and community. By providing information about products and operations, companies increase the buyer's knowledge.

The significance of each issue mentioned above will vary depending on the location of the business, cultural habits and the type of commercial sector. The global economy requires the acknowledgement of new cultures and their accompanying risks. CSR demands companies face such conditions at both the national and the international level.<sup>98</sup> On the contrary, poor conduct carried out by trans-national corporations can cause lawsuits, boycotts, negative press coverage and therefore increased extra costs for the business.

### **5.1.1 Codes of Conduct and Sustainability Reporting**

Corporations are becoming more conscious of their social responsibility. This is reflected in the adoption of codes of conduct. Despite the fact

---

<sup>97</sup> Grayson David & Hodges Adrian, *Everybody's Business*, London. DK, 2001.

<sup>98</sup> Governance and Corporate Social Responsibility, see more at <http://www.conferenceboard.ca/GCSR/networks/cem.asp>

that these are not legally binding; they set ethical standards and aspirational values. Normally these codes do not refer to human rights directly but to specific rights concerning issues such as labour rights and environment.

A code of conduct is a formal statement of the values and business practices of a corporation. A code may be a short mission statement, or it may be a sophisticated document that requires compliance with articulated standards and have a complicated enforcement mechanism.<sup>99</sup> Most codes use broad language and values to express their commitment. Codes can be drafted by individual corporations,<sup>100</sup> by groups of corporations<sup>101</sup> by governments<sup>102</sup> or by NGOs.<sup>103</sup> They are designed to guide these corporations as they function in different countries.

The problem with these codes as mentioned before is the lack of clarity. It brings uncertainty regarding to the application of standards and a result corporations do not approach human rights compliance in a uniform manner. CSR is not a standardized process. This is one of the biggest inconveniences of the CSR model. Corporations, as the ILO has shown,<sup>104</sup> tend to apply their own concept of what and which are human rights, without any serious accountability system -standards, revision, external control and accreditation-.

Different from governmental initiatives, comprehensive social and environmental guidelines have been developed and are accompanied by accountability systems. Standard and verification systems such as SA8000<sup>105</sup> are credible and efficient tools for assuring humane workplaces. The SA8000 is a way for retailers, brand companies, suppliers and other organizations to maintain just and decent working conditions throughout the supply chain. SA8000 is based on international workplace norms in the ILO conventions, the Universal Declaration of Human Rights and the UN Convention on Rights of the

---

<sup>99</sup> What is a code of conduct? At <http://www.codesofconduct.org/>

<sup>100</sup> Royal/Dutch Shell Group of Companies. General Business Principles, first published in 1967, at <http://www2.shell.com/home/media-en/downloads/sGBP.pdf>

<sup>101</sup> The International Federation of Building and Wood Workers Code of Conduct Regarding the Right of Worker at [http://homepages.iprolink.ch/~fitbb/INFO\\_PUBS\\_SOLIDAR/](http://homepages.iprolink.ch/~fitbb/INFO_PUBS_SOLIDAR/)

<sup>102</sup> Swedish Partnership for Global Responsibility. The initiative was introduced by the Swedish government in March 200 with the purpose of promoting human rights, decent economic and social conditions and a good environment at [http://www.utrikes.regeringen.se/inenglish/global\\_responsibility/index.htm](http://www.utrikes.regeringen.se/inenglish/global_responsibility/index.htm).

<sup>103</sup> Amnesty International UK Business Network. Draft Norms of Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights, at [http://www.amnesty.org.uk/images/ul/U/UN\\_norms\\_Business\\_final\\_aw.pdf](http://www.amnesty.org.uk/images/ul/U/UN_norms_Business_final_aw.pdf)

<sup>104</sup> ILO report GB.273/WP/SDL/1 Overview of Global Developments, 1998. Para. 50

<sup>105</sup> Since the SA8000 system became fully operational in 1998, there are certified facilities in 30 countries on five continents and across 22 industries.

Child. The system includes verification, participation of stakeholders and reporting.<sup>106</sup>

Sustainability reporting guidelines have also matured. The Global Reporting Initiative (GRI) is a multi-stakeholder process carried out by an independent institution whose mission is to develop and disseminate globally applicable sustainability reporting guidelines. These guidelines are for voluntary use by organisations for reporting on the economic, environmental and social dimensions of their activities, products, and services. GRI was set up in 1997 by the Coalition for Environmentally Responsible Economies (CERES), but became independent in 2002. Currently, the GRI is a collaborator at the centre of the United Nations Environment Programme (UNEP) and the UN Global Compact programme.<sup>107</sup>

Sustainability reporting is covering the “triple bottom line” of economic, environmental and social performance of an organisation. It has evolved swiftly from an ambitious concept to a widely adopted practice. To date, more than 3,000 corporate environmental, social or sustainability reports have been published voluntarily.<sup>108</sup>

Reporting should at least contain the list of activities in which stakeholders are involved, the social added value created and the way in which those activities have been put into practice. Reporting can represent an advantage for corporations, if used as a tool of competitiveness. But it also can be used as corporate compromise to sustainable development.

Responsible business practices are discussed at the core of the European business strategy.<sup>109</sup> Concomitant to corporate behaviour is financial investment. State members of the EU such as Sweden, France, Finland, the UK and Denmark have endorsed legal mechanisms that enable ethical and environmental reporting.

In June 2002 the Swedish government passed a law requiring the National Pension Funds to take into consideration ethical concerns when making investment decisions without influencing the overall

---

<sup>106</sup> This standard was created by the Social Accountability International Group (SAI), which is a human rights organization that works to improve workplaces and communities around the world by developing and implementing socially responsible standards. See more at <http://www.cepaa.org/>

<sup>107</sup> See more at <http://www.globalreporting.org/index.asp>

<sup>108</sup> About GRI: A Closer Look. <http://www.globalreporting.org/about/overview.asp>

<sup>109</sup> In October 2002, the European Commission launched “The Multi Stakeholder Forum” to raise the level of understanding of CSR and promote dialogue between the business community, trade unions, and civil society organizations.



objective of a high return.<sup>110</sup> The problem is that alcohol, tobacco and weapons production are considered legally ethical activities in most countries, including Sweden.

In the UK socially responsible investment has moved to a central place. In July 2002 the government's Pension Act Amendment forced all pension funds to disclose whether they took ethical, environmental and social considerations in their investment policy. UK's pension managers have an estimated of 20% of the total investment market in the UK. A study released as a consequence of that Amendment has shown that there is no conflict between ethical investment and satisfactory investment returns.<sup>111</sup>

In Germany, another study<sup>112</sup> reached the conclusion in June 2002 that enterprises have an important role to play in civil society, the commission affirms that: "companies too are facing new challenges to help fashion civil society and promote civic activities". The study goes further, saying that the link between companies and communities is not based on donation of sympathy, but rather on social responsibility and common good. The commission certainly pointed out that "enterprises depend on intact communities and well trained employees, and by engaging in civic activity they can contribute to this".

In order to help corporations to set ethically their investment a complex system of social and environmental screened market instruments has been launched; the Dow Jones Sustainability Indexes, FTSE4Good launched in 2001 in the UK and the KLD/Russell/Mellon products, as well as screened investment offerings from Morgan Stanley, Citigroup, Credit Lyonnais and Vanguard.

Financial and sustainability reporting are complementary. Sustainability reporting provides information to help assess the quality and quantity of a corporation's intangible assets: its reputation, capacity to innovate, quality of management and human capital are some examples.<sup>113</sup>

---

<sup>110</sup> Overview of Social Corporate Responsibility, Business for Social Responsibility at <http://www.bsr.org>

<sup>111</sup> A 2003 Study by the Just Pension Agency in the UK. It Simply Works Better, Campaign Report on European CSR Excellence 2002-2003, The Copenhagen Centre. p, 88

<sup>112</sup> Released by the Commission on the Future of Civic Activities to Re-think the Role of the State, Business and Civil Society in Working for the Common Good. It Simply Works Better, Campaign Report on European CSR Excellence 2002-2003, The Copenhagen Centre. p. 36-61.

<sup>113</sup> About GRI: A Closer Look. <http://www.globalreporting.org/about/overview.asp>

## 5.2 Partnerships

Corporations must not stand apart from society. They must be integrated with it and its local communities. This particularly applies for the multi-national corporation. In legal terms, a partnership is an association whose identity depends on the partners, so partnerships can take simple or complex forms.<sup>114</sup> The partnership referred to in this section is a new form of understanding local problems; catalyse changes, combining diverse disciplines to produce social enhancements. This new idea is about learning, contributing and sharing responsibilities. In this context, such collective agreements fight financial exclusion by providing micro-credits and increasing employment opportunities.

The Copenhagen Centre (TCC)<sup>115</sup> defines New Social Partnerships as “People and organisations from some combination of public, business and civil constituencies who engage in voluntary, mutually beneficial, innovative relationships to address common societal aims through combining their resources and competencies.” TCC definition of new social partnerships is based on six key principles:<sup>116</sup>

1. Societal aims: individuals and groups, who are economically and therefore often socially and politically disadvantaged are the major concern because they are excluded from fully participating in and contributing to society.
2. Innovation: new approaches to addressing social and economic problems create new ways of interaction between the actors.
3. Multi-constituency: partnerships may be constituted by the public and/or the private sector entities, ranging from individual companies to business associations, and civil society ranging from local community initiatives to trade unions, academic institutions and national and international non-governmental organisations.
4. Voluntary: reasons of risk management, conflict avoidance or peer pressure can prompt the participation. This is based on proactive decision of each partner to be engaged, rather than the imperative of statutory compliance.
5. Mutual benefit and shared investment: financial, human, political

---

<sup>114</sup> <http://www.orosha.org/consult/definitions.htm>

<sup>115</sup> The Copenhagen Centre is an international, autonomous institution established by the Danish Government, following the 1995 UN World Summit for Social Development and the 1997 Copenhagen Conference “New Partnership for Social Cohesion”, which recognizes the need for governments to create a framework encouraging public/private partnerships to emerge, develop and work. TCC focuses on social cohesion.

<sup>116</sup> <http://www.copenhagencentre.org/>

and/or social associated benefits and costs should be the concern of all partners.

6. Alchemical effect: the key components of the partnership are interdependent and interrelated. It creates a leverage and synergy.

Partnerships are considered as the cornerstone of government's modernization programmes. The Cambridge University, the International Business Leaders Forum and TCC define cross-sector partnerships as the development approach for the XXI century. International agencies and corporations see partnerships as the approach most likely to bring about truly sustainable development. Partnership is regarded as the most effective route to social cohesion, environmental stability and equitable economic growth.<sup>117</sup>

The World 2002 Summit for Sustainable Development in Johannesburg marked a coming age for partnerships. The conference sought the legitimacy of corporate social responsibility idea and potential contribution that the business community could play, working in partnership with public bodies and civil society organizations.<sup>118</sup>

Setting partnerships require expertise. Socio-economic context, purposes, participants and organisations influence the partnership's formation. As first steps the exercise has to clarify aims and objectives and identify the participants and stakeholders in the community.

Cross-sector partnership is not easy to form. It requires some radical re-thinking and changes from all partners involved. The nature of partnerships must be dynamic and flexible in order to accommodate it to the local challenges originated by the different socio-cultural backgrounds where companies operate.<sup>119</sup> A diverse variety of guidelines have been fashioned when creating partnerships and participation including efforts to:<sup>120</sup>

- Map local organisations
- Understand local priorities
- Build confidence through early projects
- Develop an action plan with local communities
- Involve communities in partnerships

---

<sup>117</sup> University of Cambridge: In the Postgraduate Certificate in Cross-Sector Partnership (PCCP). <http://www.cpi.cam.ac.uk>.

<sup>118</sup> Partnerships for sustainable development are not new but have been brought to the fore within the Johannesburg Summit process. They require an enabling environment of good governance and adequate financing mechanisms. <http://www.earthsummit2002.org/>

<sup>119</sup> <http://www.socialaudit.org>

<sup>120</sup> The Joseph Rowntree Foundation at the request of the UK Government's Department for Transport and the Regions developed these guidelines in 1999.

Make resources available for community groups  
Arrange training for both community activists and professionals  
Consider possible models for successor organisations including development trusts, neighbourhood management organisations and credit unions  
Develop an infrastructure to build and sustain community organisations  
Accept that community organisations need long-term support  
Contribute to the better co-ordination of training and support services  
Monitor progress  
Establish a framework for evaluating the process  
Ensure appropriate monitoring of progress, both by the partnership and by Government Offices

Formal education on partnership is flourishing.<sup>121</sup> The Cambridge University has designed a programme to deepen understanding of all partnership issues and to develop the practical skills necessary to address them successfully.

Access to credit is one of the key elements in empowering people and in enabling them to participate in market opportunities and in this way improving their living conditions. Formal credit institutions rarely lend to poor people, therefore especial arrangements in the bank sector may become necessary to extend credit to those who are financially excluded. Such partnerships exercises have been put into practice, for example:

In the 1987 the Irish government established a plan for the national recovery of its economy.<sup>122</sup> The plan included a partnership, which brought successfully stakeholders together to promote economic growth and fight social exclusion.

A partnership formed in Milan, by UniCredito Italiano and Banca Popolare di Milano, which were later joined by Deutsche Bank, has been providing seed-funding for needy entrepreneurs since 1999.<sup>123</sup>

---

<sup>121</sup> A Postgraduate Certificate in Cross-Sector Partnership (PCCP) was launched in March 2002. The course is believed to be the first university-accredited programme in cross sector partnerships and is itself the result of an international partnership between three established and influential institutions – The University of Cambridge, The Prince of Wales International Business Leaders Forum, and The Copenhagen Centre. The mission of the course is to provide intellectual challenge and practical training for those who are leading their organizations, policy makers or communities, strategically or operationally, in the development of cross-sector partnerships. See more at <http://www.cpi.cam.ac.uk/pccp/>

<sup>122</sup> The partnership was labeled Programme for National Recovery.

<sup>123</sup> The outcome of such enterprise is the creation of 50 micro-enterprises in the mentioned area. It Simply Works Better, Campaign Report on European CSR Excellence 2002-2003, The Copenhagen Centre, p.62-67

In the same order of success, the Madrid Local Social Capital Partnerships, of 1999, led by Fundación Empresa y Sociedad with the financial support of the EU and local authorities brought new economic opportunities and more than 940 jobs to the Villaverde and Usera districts of Madrid. This area has negatively been recognized by the high rate of unemployment and delinquency. The partnerships strengthened social support structures.<sup>124</sup>

Similar initiatives have been developed in Africa and Latin America. The Organization of American States (OAS), for example, in 1997 established a foundation named “Trust for the Americas” to foster partnerships among corporations, foundations, governmental bodies and academic institutions operating in the region. The Trust’s mission reflects the goals of the OAS, mobilising resources to confront extreme poverty and to promote democracy through actions that are environmentally, economically, and socially sustainable.<sup>125</sup>

### **5.3 The Role of Shareholders and Stakeholders**

Classically, the corporation has an image of impenetrability and shareholder-centred. Today, however such image is becoming less clear-cut because corporations are more permeable to influence of social legislation and consumer behaviour.

Shareholders are most than simply owners of a piece of the company. They have the right to speak out and vote in questions concerning corporate policy. Shareholders can definitively control managers. Business management drives the enterprise forward without undue restraints. However, freedom of management is to be exercised within a framework of effective accountability. The board of directors, thus, is accountable to the shareholders, and managers are in their turn accountable to the board of directors. Effective shareholder monitoring can benefit equally the corporation as well as the community where it functions.<sup>126</sup>

To define stakeholder is slightly more complicated than defining shareholder. In Freeman’s words, stakeholders include “all affecters and affectees of corporate policies and activities”.<sup>127</sup> This definition is

---

<sup>124</sup> The partnership, for instance is currently providing rehabilitating drug users with labour training. It Simply Works Better, Campaign Report on European CSR Excellence 2002-2003, The Copenhagen Centre, p.56

<sup>125</sup> See more at <http://www.trustfortheamericas.org>

<sup>126</sup> See Chapter 3 Corporate Human Rights

<sup>127</sup> Freeman, R. E. Strategic management: A stakeholder approach., 1984, Boston, Pitman

generous and widely applied. Consequently, any institution, organisation or group that has some interest in a particular sector is a stakeholder. Communities, unions and trade associations are aggregations of stakeholders for the corporation, they live in and know the environment, without them CSR initiatives are fruitless.

Since large corporations employ most of the societal resources, governance processes should ensure that these corporations are managed in a manner that meets stakeholders' expectations. In this respect, public pressure is an engine of initiative for ethical behaviour, too. Initiatives, which involve stakeholders to look further into the role of the business commitment overseas, are particularly interesting for this paper. In Norway, the Ministry for Foreign Affairs has constituted a stakeholder body in 1998 for such aim.<sup>128</sup>

NGO's have taken an important role to promote CSR initiatives and to scrutinize corporate behaviour. NGOs activities in this field range from denouncing human rights' violation to pressuring social reporting.

## **Conclusion**

CSR is definitely not based on donation of sympathy, but rather on social responsibility and common good. The principles contained in corporate codes and guidelines are broadly defined with aspirational rather than real ends. Therefore, those codes need greater precision in their language. Codes of conduct, policy directives and legislation must be tied to the larger framework of human rights in order to ensure a real contribution to human development. As the Committee on Economic Social and Cultural rights has noted: "tying legal obligations to human rights imbues these laws with the necessary sense that rights and obligations derive from human dignity, and not generosity or whim".<sup>129</sup>

The expectation of CSR is to demonstrate that company value and societal obligations can be achieved together. It requires re-thinking by the corporate sector. In Finland, one of the world's most successful economies, a strong sense of social responsibility has developed. The business sector has widened considerably the concept of responsibility; now providing an entire network of social services to employees, ranging from food shops to therapeutic telephone lines, where employees can call and seek advice or simply conversation.<sup>130</sup> The corporate initiative in

---

<sup>128</sup> See more in Norway, It Simply Works Better, Campaign Report on European CSR Excellence 2002-2003, The Copenhagen Centre.

<sup>129</sup> Globalisation and Economic, Social and Cultural Rights: Statement by the Committee on Economic, Social and Cultural Rights," May 1998.

<sup>130</sup> It Simply Works Better, Campaign Report on European CSR Excellence 2002-2003, The Copenhagen Centre, p.27

Finland represents an innovative and interesting response to socio-economic challenges.

Partnerships are a complementary way of tackling social challenges in poor countries. These forms of participation do not necessarily derive from CSR initiatives. Partnerships help to generate economic development in general, fighting financial exclusion by providing micro-credits or increasing employment opportunities. The New Social Partnership model is currently being used to prevent social exclusion and to boost initiatives to seek out a new potential workforce among marginalized citizens.

A disadvantage of these forms of corporate participation is economic recession. Naturally, in times of depression companies chose to focus much more on short-term profits and cost cutting of extra programmes. Conversely, in hard times corporations may use social responsible tools as mechanism of competition.

The Corporation is undeniably a successful partner in sustainable development. However, it needs to take a more active role in the community. Corporations and business in general should make use of this challenging opportunity to review their practices aiming to improve efficiency and long-term profitability for all. Inaction is legally and morally inexcusable.

# 6 Enforcing International Human Rights Standards

Having an idea about why and in which models the corporation can co-participate in the solution of social problems, for this paper particularly on alleviation poverty. This chapter will focus on legal and other parallel mechanisms of enforcing international human rights law, labour and environmental standards for corporations.

The assumption is that international law cannot be enforced. How can international law be enforced if there is not a strong political support for doing so? However, a potentially effective enforcement mechanism is available at the International Monetary Found<sup>131</sup> or at the WB but because this remedy usually makes it more difficult for the member to fulfil its obligations and it is applied unevenly, it is used rarely. Other effective enforcement mechanisms are placed at the UN, international organizations and exceptionally on national courts.

As noted in the introduction of this dissertation, the broad-spectrum aim is providing a multi-disciplinary approach to business. Thus, enforcing mechanisms is an obligatory area to explore. This will be carried out in order to make possible for the reader to identify some organizations where is plausible to lodge a complaint against large corporations. Simultaneously, their procedural deficiencies will be pointed out. Legislation and case law will complement this chapter.

## 6.1 Problems of Enforcement

The only lawful enforcement mechanism at global level is being found at the UN Security Council, acting under Chapter VII, titled Actions with Respect to Threats to Peace, Breaches of the Peace and Acts of Aggression, and Chapter XIV, of the UN Charter titled the International Court of Justice. Those enforcing mechanisms give us little help in this area of study.<sup>132</sup>

However, the UN has developed procedures that enable pressure against governments that do not comply with recognized international human

---

<sup>131</sup> To see IMF procedures visit <http://www.imf.org/external/index.htm>

<sup>132</sup> The sanctions may be economic such as a trade embargo against a country threatening the peace, diplomatic such as severance of diplomatic relations or military the use of armed force to maintain or restore international peace and security.



rights instruments.<sup>133</sup> Such instruments largely rely on diplomatic pressure and public exposure -“mobilization of shame”-. Political and quasi-judicial organs of international organizations can receive individual complaints and study State reports on the compliance of treaty obligations. These procedures give the monitoring bodies opportunities to follow up actions and make recommendations.

Enforcement has a direct connection to access to fair and effective judicial procedures. It gives real reparation to victims. Four enforcement procedures that were designed to control corporate behaviour will be described in this section: the ILO Tripartite Declaration, the OECD Guidelines, the Labour, and Environmental Side Agreements to the North American Free Trade Agreement (NAFTA) and the WB Inspection Panel. This Panel was not designed to deal with corporate behaviour but the decisions taken by it, based on procurement policies may influence corporate participation in a project financed by the WB.

### **6.1.1 The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy**

In June 1976 the ILO's tripartite World Employment Conference initiated a discussion on multinational enterprises. The Workers' Group recommended a convention on multinational enterprises to be adopted. However, the Employers Group did not share this view but agreed on the usefulness of a tripartite declaration of principles that would be of a voluntary character. The MNE Declaration is the only set of global guidelines agreed on by governments, employers and workers for investment-related policy and practice.<sup>134</sup>

The MNE Declaration is a voluntary instrument, which provides a complaint mechanism, instituted in 1981. The mechanism works according to submission of requests for interpretation in cases of dispute on the meaning or eventually application of its provisions. In the event of disagreement over the application of the Declaration, the parties<sup>135</sup> may submit a request to the Subcommittee on Multinational Enterprises for an interpretation of the meaning of its provisions.

---

<sup>133</sup> The treaty bodies of these instruments are: The Committee on the Elimination of Racial Discrimination (CERD), the Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee Against Torture (CAT), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Discrimination Against Women (CEDAW).

<sup>134</sup> The Declaration, as well as other information and research publications on MNEs and social policy, is available through

<http://www.ilo.org/public/english/standards/norm/sources/mne.htm>

<sup>135</sup> Governments, workers' union or employers' organizations.

Periodic surveys are conducted to monitor the effect given to the Declaration by MNEs governments, employers' organizations and workers' unions. A summary and an analysis of the surveys' replies are submitted to the ILO Governing Body for discussion and comments.<sup>136</sup>

The problem with this mechanism is that it merely interprets and does not judge nor provides reparations. It is also carried out with secrecy and is not expeditious. To date, only five cases have been the subjects of decisions by the Governing Body, two were submitted by a government, and three by international organizations of workers on behalf of their representative national affiliates.<sup>137</sup>

### **6.1.2 THE OECD Guidelines**

The incumbent OECD Guidelines for Multinational Enterprises are non-binding recommendations to enterprises, to be applied on 30 OECD member countries, and seven non-Member countries, as to know: Argentina, Brazil, Chile, Estonia, Israel, Lithuania and Slovenia. They agree to promote their implementation by enterprises operating in or from their territory. Their aim is helping multi-national enterprises to operate in harmony with government policies and with societal expectations.

The recommendations contained in the Guidelines are supported by implementation procedures. The Guidelines are complemented by commentaries that provide explanation of the Guidelines' text. The implementation procedure is conformed by three main organs: the National Contact Points which is responsible for encouraging observance of the Guidelines in a national context, the Committee on International Investment and Multinational Enterprises which interprets and implements the Declaration and the Advisory Committees of Business and Labour Federations and NGOs.

When member States, companies, employee organizations or NGO's believe that the guidelines have been breach by a multinational corporation, they can either ask for consultation or lodge a complaint. The implementation procedure provides additionally for an annual meeting to share experiences and to report to the Committee on International Investment and Multinational Enterprises.<sup>138</sup>

---

<sup>136</sup>The MNEs Seventh Survey focused on the years 1996, 1997, 1998 and 1999. Replies were obtained from 100 countries as compared to 52 countries for the First Survey (1980); Replies were received in consolidated tripartite responses from respondents in ten countries and separately from governments in 65 countries, employers' organizations in 29 countries, and workers' organizations in 45 countries.

<sup>137</sup> Jägers, Nicola. Corporate Human Rights Obligations: In Search of Accountability. School of Human Rights Research Series, volume 17. Intersentia, 2002. Section III

<sup>138</sup> See more at <http://www.oecd.org/maindepartment>

Unfortunately there is no public scrutiny during the procedure of consultations, not regulated sanctions are put forward and the name of the companies involved in the complaint is kept confidential.<sup>139</sup>

### **6.1.3 The North American Free Trade Agreement**

NAFTA is an international commercial agreement between the U.S., Mexico, and Canada that came into force in 1994. NAFTA includes expansive rules on investment designed to grant special legal protections and new rights to corporations from one NAFTA country that invest in another NAFTA country.

The NAFTA includes an array of new corporate investment rights and protections that are unprecedented in law. NAFTA allows corporations to sue the national government of a NAFTA country if they feel that a regulation or government decision affects their investment in conflict with the NAFTA rights. The principle dispute settlement mechanisms of the NAFTA are found in Chapters 11, 14, 19 and 20 of the Agreement.<sup>140</sup>

An investor who alleges that a host government has breached its investment obligations under Chapter 11 may, at its option, have recourse to one of the following arbitral mechanisms: a) the World Bank's International Centre for the Settlement of Investment Disputes (ICSID) or to b) the UN Commission for International Trade Law (UNCITRAL). Alternatively, the investor may choose the remedies available in the host country's domestic courts. An important feature of the Chapter 11 is the enforceability in domestic courts of final awards by arbitration tribunals.

There is an effective dispute settlement mechanism according to which corporations can bring a case against one of the State members for a regulation that violates the investor protection provisions under the NAFTA. However, the rights granted to corporations under NAFTA have been used to detract public health and undercut a strong, domestic public interest protection.<sup>141</sup> Additionally, a number of corporations,

---

<sup>139</sup> OECD Guidelines for Multinational Enterprises. Annual Report 2001 <http://www1.oecd.org/publications/>

<sup>140</sup> Disputes relating to the investment provisions of Chapter 11 may be referred to dispute settlement under the Agreement. Chapter 19 provides for bi-national panel review of anti-dumping, countervailing duty and injury final determinations. As well, under Chapter 19, panels may review amendments made by Canada, the US or Mexico to their anti-dumping or countervailing duty law

<sup>141</sup> Bankrupting Democracy. Lessons for Fast Track and the Free Trade Area of the Americas. Friends of the Earth, 2001. In the Toxic Waste case, the decision of a Mexican municipality to demand a construction permit for a U.S. company facility was successfully challenged as NAFTA-illegal. In the same case, a later decision by the Governor of the state to create an

abusing of such rights, are not even attempting to claim protection but rather using such provisions to improve their strategic position in the marketplace.<sup>142</sup>

In order to balance, the corporate power given to the business sector, two additive complaint mechanisms were created under the NAFTA Agreement: The North American Agreement on Environment Cooperation (NAAEC) and North American Agreement on Labour Cooperation (NAALC).

### **6.1.3.1 The North American Agreement on Environment Cooperation**

The NAAEC was created acknowledging the growing economic and social links between trade and environment<sup>143</sup>. The Agreement promotes environmental protection and seeks appropriate sanctions or remedies for violations of its regulations through judicial, quasi-judicial or administrative proceedings.

A Commission for Environmental Cooperation (CEC) is established under the NAAEC. It undertakes an administrative procedure. It comprises a Council, a Secretariat and a Joint Public Advisory Committee (JPAC).<sup>144</sup> These organs operate as follows:

The Council<sup>145</sup> on request of any consulting Party and by a two-thirds vote convene an arbitral panel to consider an alleged persistent pattern of failure by a Party to effectively enforce its environmental obligations. Due to the nature of the NAFTA the complaint always relates to situations involving workplaces, firms, companies or sectors that produce goods or provide services.

The Secretariat may consider a submission from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law. The Secretariat shall prepare a factual record if the Council has not resolved the matter within 60 days.

---

ecological reserve was deemed a NAFTA violation. The Mexican government has been ordered to pay \$15.6 million in damages. See more at <http://www.citizen.org/documents/>

<sup>142</sup> NAFTA Chapter 11: Investor-to-State Cases. An example of this strategic maneuvering is the UPS case against the Canadian postal service: UPS v. Canadian Postal Service, April 19, 1999. This case is currently pending for decision.

<sup>143</sup> The Stockholm Declaration on the Human Environment of 1972 and the Rio Declaration on Environment and Development of 1992 is mention in the preamble of the Agreement.

<sup>144</sup> The JPAC is comprised of 15 citizens, 5 from each country, representing a broad range of interests.

<sup>145</sup> The Council is comprised of Environment Ministers from each of the parties and is the governing body of the CEC.

The JPAC creates a bridge for public participation in the activities of the CEC through public sessions held in each of the countries. The JPAC also provides advice to the Council on any matter within the scope of the NAAEC.

The panel presents to the disputing Parties a final report, including any separate opinions on matters not unanimously agreed. The final report of the panel is published if the panel determines that there has been a persistent pattern of failure to effectively enforce environmental law. The disputing Parties may agree on a mutually satisfactory action plan, which normally shall conform to the determinations and recommendations of the panel. The disputing Parties shall promptly notify the Secretariat and the Council of any agreed resolution of the dispute.

A Party that fails to pay a monetary enforcement assessment after it is imposed by the Panel, may be suspend of NAFTA benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment.<sup>146</sup>

However, criticism has been heard. The Dallas Morning News, on July 13 of this year published, “The reports do not met out any fines or other penalties. Instead, they simply lay out the facts of a situation, hoping to draw attention to a particular problem and giving concerned individuals information to act upon.” In the same article Gustavo Alanis-Ortega, president of the Mexico Environmental Law Centre and chair of the commission’s Joint Public Advisory Committee, which advises the Council of Ministers says “It can take more than three years to get a finished report and citizens are never asked their opinions after they have submitted petitions even though a government's take on an issue is actively solicited”.<sup>147</sup>

The commission has completed just eight reports in nearly a decade and it has rejected more than half of the 40 petitions for reports that it has received.

### **6.1.3.2 The North American Agreement on Labour Cooperation**

The objectives of this Agreement are basically two: improving working conditions and living standards in each Party's territory trough promotion of labour principles and co-operation, which creates productivity and quality<sup>148</sup>. The NAALC pretends only to enforce the existing labour principles, which are described in the Annex 1 to the

---

<sup>146</sup> [http://www.naaec.gc.ca/eng/agreement/agreement\\_e.htm](http://www.naaec.gc.ca/eng/agreement/agreement_e.htm)

<sup>147</sup> Yung, Katherine. NAFTA Litigation. July 13, 2003 at <http://www.dallasnews.com/>

<sup>148</sup> Article 1 of the NAALC

Agreement.<sup>149</sup> The Accord does not impose new labour values nor pretend to establish common minimum standards for the member States.

The NAALC sets a Commission that comprises: the Ministerial Council,<sup>150</sup> a Secretariat and a National Administrative Office (NAO), which assists the Commission. These organs operate as follows:

The Council oversees the implementation of the NAALC and supervises the activities of the Secretariat. The Council also promotes tri-national cooperative activities on a broad range of issues such as labour standards, labour relations, and labour markets.

The Secretariat serves as the general administrative arm of the Commission. It provides support to the Council, as well as to the Evaluation Committees of Experts (ECE) and the Arbitral Panels established by the Council.

The NAOs serve as points of contact and sources of information among themselves, other government agencies and the public. Each NAOs receives and respond to public communications regarding labour law issues, which may arise in another NAFTA country. Consequently, each NAO establishes its own domestic procedures for reviewing public communications.<sup>151</sup>

It could be said that there are four stages to redress labour rights and it depends on the rights involved: 1) NAOs Consultation, 2) Ministerial consultations, 3) Evaluations by experts and 4) Arbitration. A NAO may request consultations to another NAO in relation to: labour law, administrative system and labour market conditions. Additionally, any Party may request in writing consultations with another Party at the ministerial level regarding any matter within the scope of the NAALC. The requesting Party should provide specific and sufficient information as to allow the requested Party to respond.

If a matter has not been resolved after ministerial consultations, any consulting Party may request the establishment of an ECE. Within 180 days after it is established, the ECE must present a report for

---

<sup>149</sup> Freedom of association and protection of the right to organize, the right to bargain collectively, the right to strike, prohibition of forced labour, labour protections for children and young persons, minimum employment standards, elimination of employment discrimination, equal pay for women and men, prevention of occupational injuries and illnesses, compensation in cases of occupational injuries and illnesses and protection of migrant workers.

<sup>150</sup> The Council is composed of the Secretary or Minister of Labour of the three NAFTA countries.

<sup>151</sup> <http://www.naalc.org/spanish/infocentre/Whatis/WhatIs6.htm>

consideration by the Council. The final report only can address certain subjects: occupational safety and health, child labour or minimum wage technical labour standards. Normally the report is published within 30 days after its presentation to the Council. From this point onwards the rules of procedure are similar to those of the NAAEC.

If after consideration of a final ECE report a country believes that there is still a persistent pattern of failure by another country, it may request further consultation and eventually the establishment of an independent Arbitral Panel. After considering the matter, the Arbitral Panel may issue a ruling on which the parties may agree on an action plan. If the action plan is not implemented, the Panel may impose a monetary enforcement assessment.<sup>152</sup>

The possibility to enter into negotiations before the body in charge redacts a sanction, the lack of willingness to set minimum common standards, the enforcement that ultimately is devote to States and not to corporations are considered the weaknesses in the procedure. Nevertheless, the reports and factual record might have an immense legal value in domestic courts against a corporation. The labour accord is considered weaker than the environmental due to its bureaucratic scheme and restrictive approach in the application of limited labour rights.<sup>153</sup>

#### **6.1.4 The WB Inspection Panel: international procurement policies**

The Inspection Panel is a three-member body created in 1993 to provide an independent forum to private citizens who believe that they interests have been or could be directly harmed by a project financed by the World Bank (WB), the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA).<sup>154</sup>

Although, the Inspection Panel (the Panel) is not created to deal with corporate misbehaviour, in practice the WB, the IBRD, and the IDA, provides credit financing to corporations,<sup>155</sup> which is used to perform

---

<sup>152</sup> NAALC Agreement at <http://training.itcilo.it>

<sup>153</sup> Isa, John P. Testing the NAALC's Dispute Resolution System. *Journal of Gender, Social Policy & The Law*. Vol. 7. <http://www.wcl.american.edu/journal/genderlaw/07/7-1isa.pdf>

<sup>154</sup> The Panel consists of three Inspectors of different nationalities from Bank member countries. The President, after consultation with the Executive Directors, shall nominate the members of the Panel to be appointed by the Executive Directors.

<sup>155</sup> See for instance: Chad-Cameroon Petroleum Development and Pipeline Project (Loan No.4558-CD) This Project, which is expected to cost about US\$3.7 billion, is being funded by private sponsors, who have formed a consortium (Exxon-Mobil and Chevron of the United States and Petronas of Malaysia), the Governments of Chad and Cameroon, and the Bank Group. The Inspection Panel Annual Report August 2001- June 2002.

public projects. Thereby, the Panels' decision may influence the continuity or the direction of a project.

Subject to Board approval, the Panel is empowered to investigate problems that are alleged to have arisen as a result of the Bank not having complied with its own operating policies and procedures. Those policies range from poverty reduction and environmental assessment to protection of indigenous peoples and cultural property. Obviously, those areas include human rights standards without a direct mention to them.

Any group of two or more people may be an organization, association, society or other grouping of individuals, in the country where the Bank-financed project is located can file a request for investigation.

The Panel receives a request and decides whether the request is within its mandate. The Panel is not authorized to deal with requests to actions which are the responsibility of other parties, such as the borrower, or potential borrowers, and which do not involve any action or omission on the part of the Bank. Nor the Panel is authorized to deal with requests filed after the closing date of the loan/credit financing the project with respect to which the request is filed or when 95% or more of the credit have been disbursed. As a result, it limits considerably the Panel's effectiveness to redress an actual or potential harm.<sup>156</sup>

The procedure formally starts when the Panel sends the request to Bank Management, who prepares a response to the allegations and submits it back to the Panel. Then, the Panel makes a preliminary review of the request, conducts an independent assessment of the merits of Bank Management's response. A recommendation is made to the WB Board whether the claims should be investigated. If the Panel proceeds with the investigation the Bank Management has six weeks to submit recommendations to the Board on which actions the Bank should take in response to the Panel's findings. On the basis of the Panel's findings and Management's recommendations, the WB Executive Directors considers the actions, if any, to be taken by the Bank.

Twenty-seven formal requests have been received since the Panel operations began in September 1994: nine from Latin America, eight from Africa, seven from South Asia, and three from East Asia and the Pacific. The Panel has recommended investigations in a total of twelve cases. The texts of Panel reports are publicly available.<sup>157</sup>

---

<sup>156</sup> The Inspection Panel of the World Bank: A Different Complaint Procedure. Edited by Gudmundur Alfredsson and Rolf Ring. The Raoul Wallenberg Institute Human Rights Library. Volume 5, 2201

<sup>157</sup> World Bank - Inspection Panel. <http://www.worldbank.org/>



As a matter of *lege lata*, the procedure has permitted complaints about the negative impact of a bank's project, in which corporations have been involved.<sup>158</sup> The panel does not provide reparations to the requesters. Nevertheless, it has ascendancy over the project's culmination and supplies public exposure of corporate behaviour.

## 6.2 International Courts

As human rights followers probably understand, an ideal international court should enforce human rights standards regardless of the perpetrator's nature or nationality. The obligation to provide reparation for human rights abuses has a better possibility at the regional human rights courts. Especially, when it concerns gross violations of human rights. Law courts have generally broader mandate and range of rights to be applied on their legal decisions.

One argument might be that the ILC Draft on State Responsibility<sup>159</sup> opens a door for holding accountable corporate acts that violate human rights standards. The Draft is considered a compilation of international customary law. Indeed, the state is not responsible for acts of private entities but for the failure to prevent a violation to occur under the rules of attribution. According to the ILC Draft it may be possible to demonstrate that private acts may involve state responsibility. In consequence, corporate activities may breach international human rights law or even international criminal law.<sup>160</sup> Such enforcement of law is scarcely put into practice by international courts.

Similarly, the Inter-American Court of Human Rights based on the principle of due diligence has stated that "The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim compensation."<sup>161</sup>

---

<sup>158</sup> See more Inspection Panel at <http://wbln0018.worldbank.org/ipn/ipnweb.nsf>

<sup>159</sup> In August 2001, the International Law Commission (ILC) adopted its "Draft Articles on the Responsibility of States for Internationally Wrongful Acts."

<sup>160</sup> In here, the conduct of non-State entities may be attributed to the State, for example: Death squads or special security forces created by governments in order to protect oil installations and multinational corporations staff can generate criminal responsibility.

<sup>161</sup> Judgment, Ser.C, No.4, July 24, 1988 para 174. Velásquez Rodríguez Case. Inter-American Court of Human Rights. <http://www.corteidh.or.cr/>

The principle of due diligence<sup>162</sup> as mentioned in chapter IV, was first applied in terms of human rights law by the 1988 Inter- American Court of Human Rights in the Velásquez case.<sup>163</sup> This is a landmark decision on this field. The duty of a state, thus, is threefold abstain from violating, prevent violations and prosecuting human rights infringements. The absence of one of these three duties by an obliged state generates responsibility under international law. The obligation to protect civil, political rights as well as economic, social, and cultural rights require governmental regulation of corporations and its effective enforcement.<sup>164</sup> Corporate abuses are often systematic and not sanctioned by states, thus, a failure to exercise due diligence implies a direct state liability.

Recently the Inter-American Court has even gone further toward affirming that a state can violate the American Convention on Human Rights by granting concessions to a foreign company, therefore failing to provide otherwise adequate recognition and protection of the rights enshrined in that instrument.<sup>165</sup>

### 6.3 National Courts

States have the primary responsibility for human rights protection. They have a duty to respect international human rights standards, which includes enforcing compliance by private persons, including corporations. In order to make corporations accountable, essentially, states can activate laws concerning environmental and consumer protection as well as labour rights and provide an easy access to effective judicial remedies. Problems usually emerge when the corporation is of a multinational character. In this case, victims are situated in another country and the jurisdiction is not clearly defined, generating corporate impunity.

---

<sup>162</sup> The principle of due diligence in connection to state responsibility under public international law was referred to by the ICJ in the US v Iran case: Concerning US Diplomatic and Consular Staff in Teheran, December 1979.

<sup>163</sup> According to this Court, a state, violate human rights when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the ACHR. Judgment, Ser.C, No.4, July 24, 1988 Para. 166.

<sup>164</sup> “If a State violates a rule of customary international law or ignores an obligation of a treaty it has concluded, it commits a breach of international law and thereby a so-called international wrongful act. The law of state responsibility is concerned with the determination of whether there is a wrongful act for which the wrong doing state is to be held responsible, what the legal consequences are, and how such international responsibility may be implemented” Malanczuk Peter, Akehurt’s Modern Introduction to International Law, 1997 Routledge p. 255.

<sup>165</sup> The Mayagna (Sumo) Awas Tingni Community v. Nicaragua case, decided by the Inter-American Court of Human Rights on August 31, 2001 The Arizona Journal of International and Comparative Law Online - 2002 - Volume 19 Number 1.

The classical approach of state responsibility links it with territorial jurisdiction rather than with jurisdictional control. However, state responsibility may arise from acts committed by states organs abroad.<sup>166</sup> Jurisdictional control implies a broader legal spectrum than that of jurisdiction, especially when it is related only to territory.<sup>167</sup> It would be irrational and immoral to permit an entity belonging to a state to perpetrate a violation of human rights on a territory of another state, which violation could not be perpetrated on its own territory. States are indeed, obliged to adopt legislation to regulate extraterritorial activities of its entities.<sup>168</sup>

Domestic courts should recognized a direct liability of the parent for the acts of the its subsidiary, and even award compensations for grave human rights violations which are not committed for nationals where the case is brought, in order to make a real application of *erga omnes* obligations.

Resorting to domestic courts may be more difficult for individuals than for corporations. Hindrances such as costs, delay in court cases, secrecy of documents and absence of *actio popularis* make an unfair balance into the judicial process. Political interference and corruption impede also the usefulness of seeking remedies.

### 6.3.1 The Alien Tort Claims Act

The US courts exercise jurisdiction over actions committed outside its territory for persons claiming to be victims of human rights abuses. Originally the ATCA was enacted in 1789 to allow a forum in the US for bringing pirates of the high seas to justice. The ATCA allows federal courts to hear complaints by foreigners about violations of the “law of nation” or treaties signed by the US.

---

<sup>166</sup>Military and Paramilitary Activities in and against Nicaragua, ICJ Rep 14, 1986 par. 105-115. <http://www.icj-cij.org/icjwww/icasas/>

<sup>167</sup> For instance the 1972 Stockholm Declaration on the Human Environment provides responsibility incumbent on states with their jurisdiction or control see more at <http://www.unep.org/Documents/>

<sup>168</sup> See Article 8 of the Inter-American Convention against Corruption (ICAC) Trans-national Bribery: “Subject to its Constitution and the fundamental principles of its legal system, each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions. Among those States Parties that have established transnational bribery as an offence, such offence shall be considered an act of corruption for the purposes of this Convention. Any State Party that has not established trans-national bribery as an offence shall, insofar as its laws permit, provide assistance and cooperation with respect to this offence as provided in this Convention”. See more on the website of the OAS or at <http://www.anticorruption.gov.ar>

In 1980 it was first used in a human rights case.<sup>169</sup> A Paraguayan citizen sued the Inspector General de la Policia de Asuncion, who, then was living in the US, for kidnapping and torturing to death his son, Joelito Filartiga. The US Court of Appeals for the Second Circuit upheld the jurisdiction of the US District Court for the Eastern District of New York under the ATCA, even though both the plaintiff and the defendant were Paraguayan and the events took place in Paraguay.

To establish jurisdiction under the ATCA, three basic conditions are needed: (1) an alien sues (2) for a tort (3) committed in violation of the law of nations or US signed treaty. The court must not only be able to hear the claim presented, but the defendant must have a sufficient relationship with the jurisdiction for the court to proceed. However, a number of legal exceptions can impede litigants proceeding under the ATCA, such as the Foreign Sovereign Immunities Act of 1976 or the Act of State Doctrine. The doctrine of forum non-conveniens also limits its jurisdiction.<sup>170</sup>

Plaintiffs have recently relied upon the ATCA as a mean of remedying violations of human rights perpetrated by trans-national corporations all around the world. In *Doe v. Unocal* the federal appeals court panel held that the plaintiffs provided evidence that Unocal aided and abetted abuses the Burmese military committed for the benefit of Unocal's project. In a similar case, Nigerian plaintiffs are suing Chevron-Texaco for assisting the brutal Nigerian military's regime on the shooting of peaceful protesters at Chevron-Texaco's installations, and of the destruction of two villages. In another ATCA case, Plaintiffs used the law to accuse Coca-Cola Company and Drummon Company, Inc. for collaborating with Colombia's right-wing paramilitaries to kill and intimidate workers' union leaders.<sup>171</sup>

Only 25 ATCA cases have been filed since 1980, and no corporation has ever been convicted of violating the Act, yet. The legal fiasco is based on either failure to adequately allege a violation of international law or the courts believe in the existence of a better legal forum in the nation where the abuses occurred.<sup>172</sup>

The ATCA is one of the few mechanisms available to use directly international human rights law against multinational corporations. The ATCA could become a powerful tool to increase corporate

---

<sup>169</sup> *Filartiga v. Pena-Irala*, ATCA 1980.

<sup>170</sup> The Alien Tort Provision: Correcting the Abuse of an Early Federalist Statute. <http://www.usaengage.org/>

<sup>171</sup> ATP. <http://www.usaengage.org/legislative/2003/alientort/>

<sup>172</sup> Bruno Kenny, De-Globalizing Justice, The Corporate Campaign to Strip Foreign Victims of Corporate-Induced Human Rights Violations of the Right to Sue in U.S. March, 2003

accountability and enforcement of law. It has revealed a concrete possibility to sue large corporations regardless of their “nationality” for their corporate misbehaviour abroad.

The principle of universal jurisdiction concerning violations of human rights is not restricted to the US. Other countries such as Canada, United Kingdom, Belgium, Denmark, France, and Germany have implemented it. It is hoped that this principle be extended to include corporate behaviour, as well.

The ATCA lawsuits prompted the US National Foreign Trade Council, the US Chamber of Commerce and USA Engage<sup>173</sup> to launch a campaign to prevent its use of holding multinational corporations responsible for violations of human rights. In the same way, the Bush’s administration filed a brief on May 8, 2003 for the Unocal case, arguing that the lawsuit interfere with foreign policy and that “the law has been commandeered to allow cases being heard that had no-connection whatsoever with the United States”.<sup>174</sup>

## **Conclusion**

The above mechanisms are relevant in giving a social dimension to trade and corporate behaviour. The procedures allow individual complaints against corporations. However, all of them have narrow mandate with problems of availability and suitability for victims. The complaint mechanisms are not financially assisted and frequently work slowly. The enforcement mechanisms under international law for corporations are thus imperfect.

Especial attention is paid to the NAFTA since the agreement is seriously linking trade with social issues.<sup>175</sup> The NAFTA includes an array of new corporate investment rights and protections that are unprecedented in law, which gives to corporations an enormous legal power. In contrast, the NAAEC and the NAALC are restrictive; nevertheless, the reports and factual record might have an immense legal value in domestic courts against a corporation.

The WB inspection Panel is not authorized directly to refer to corporations. However, in practice the Panels’ decision may influence the continuity or direction of a project carried out by a corporation. The

---

<sup>173</sup> USA Engage is a corporate lobby organization.

<sup>174</sup> Dauenhauer Katrin, Human Rights Experts Defend Law from Business Attack, International Press Service, July 29, 2003

<sup>175</sup> The NAFTA labor provisions (NAALC) are the most ambitious link between trade and labor rights ever implemented, Human Rights Watch said in April 16, 2000. <http://www.corpwatch.org/bulletins/PBD.jsp?articleid=451>

ATCA is one of the few mechanisms available under domestic law to stop human rights violations committed by multinational corporations abroad. These mechanisms allow public exposure of corporate behaviour.

In sum, enforcing mechanisms that enable availability, transparency, suitability, financial assistance, consultation and reparations are the most effective starting point for advocacy of good corporate citizenship. They truly bring affected populations into the process of defining and ensuring socio-economic rights.

## 7 Conclusion

Alleviation of social problems, in particular poverty reduction requires an overall international strategy on many fronts. CSR is one element of the solution in conjunction to innovative tools such as partnerships. It involves radical changes and re-thinking in the long-standing premises for social and economic issues because of the prevailing inequities in power structures. Equity is an important factor for meeting social challenges in this century. Equity concerns are also about social and environmental commitments of corporations.

A problem with human rights and business is that it still is not very much developed as a theory. There are now a number of theory bits and a few very promising streams as are shown in this paper. Preferably, I would not argue for a single solution for alleviating socio-economic problems but rather for a multi-discipline theory, which could enable us to redefine the corporation in an ethic manner.

International human rights obligations are not obligations exclusively confined to states; respecting such standards requires everyone's participation. Respect is a concept that means more than refraining from violation; it also means protection and promotion. Human rights conventions recognize the need for an international order that ensures that these rights are secured, and establishes counterpart obligations for governments and other actors.

Corporations are subject of material rights at international level. They can also lodge legal complaints, correspondingly, having the possibility of claim and make enforceable their fundamental rights. It can be asserted, then, that corporations have a limited international legal personality.

Legal instruments exist in international law for extending international legal obligations to trans-national corporations. Individuals, managers and businessmen are legally bound by these norms not to commit grave human rights abuses. Legal decisions, though few, confirm such a practice when states are coerced to prevent private actors from abusing rights.

However, a better legal framework is needed, especially concerning multinational corporations. The absence of an appropriate regulatory framework is bringing economic deprivation and socio-economic exclusion for many members of society. The lack of legal accountability renders the current system profitless and controversial.

Voluntary standards, though valuable, are not a substitute for binding international agreements. A starting point might be the Norms on Responsibilities of Trans-national Corporations and Other Business Enterprises with Regard to Human Rights that has just been adopted. Clearer international standards will help to ensure that corporations are part of the solution to today's social challenges and not their cause.

A global citizen network is fundamental for the creation of human consciousness pressuring constantly for sustainable policies. Likewise, NGOs activities in this field, as watchdogs of corporations and promoters of human rights standards, are certainly helping to build a better cooperative agenda. But all over, citizens of the world and those of us who are businessmen should think about what can be done to make this place better.

Enforcing mechanisms such as those provided for the OECD guidelines, the ILO Tripartite Declaration, the NAFTA and the WB inspection panel are relevant in giving a social dimension to trade and corporate behaviour. These procedures allow for individual complaints against corporations. However, all of them have a narrow mandate with problems of availability and suitability for victims. They are not financially assisted, do not provide reparations for the requesters and frequently work slowly. In sum, the enforcement mechanisms under international law for corporations are thus imperfect.

The ATCA is one of the few mechanisms available under domestic law to stop human rights violations committed by multinational corporations abroad. In practice, it constitutes a concrete possibility to sue large corporations regardless of their "nationality" for their corporate misbehaviour.

Responsible business practices are one of the most dynamic and challenging subjects that corporate leaders face today. Companies operating in a globalising market are increasingly required to balance the social, economic, and environmental elements of their business, while building shareholder value. CSR, thus, is more than a nice image for business operation. CSR is definitely not based on donation of sympathy, but rather on social responsibility and common good. CSR must be seen, as a necessary element of a company's business strategy, if a company is to succeed on the global market.



Codes of corporate conduct need a greater precision in their language. The principles contained are broadly defined with aspirational rather than real ends. Codes of conduct, policy directives and legislation must be tied together in order to ensure a real contribution to human development. Whether corporations can contribute to human development in the near future will depend on whether they expand from their initial function of production to ethical responsibility, adapting them to CSR practices.

My final thought is for a more holistic understanding of our society. Only the law cannot solve social problems. It requires a multi-disciplinary approach. Such a proposal requires us to re-define traditional analyses of production, corporation, investment and commerce in general, in order to meet the challenges of the century that has begun. In system thinking analysis, it is an axiom that everyone shares responsibility for problems generated by a system. In this case, the corporation cannot be exempted.

# Supplement A

---

## Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights

### Preamble

*Bearing in mind* the principles and obligations under the Charter of the United Nations, in particular the preamble and Articles 1, 2, 55 and 56, inter alia to promote universal respect for, and observance of, human rights and fundamental freedoms,

*Recalling* that the Universal Declaration of Human Rights proclaims a common standard of achievement for all peoples and all nations, to the end that Governments, other organs of society and individuals shall strive, by teaching and education to promote respect for human rights and freedoms, and, by progressive measures, to secure universal and effective recognition and observance, including of equal rights of women and men and the promotion of social progress and better standards of life in larger freedom,

*Recognizing* that even though States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights, transnational corporations and other business enterprises, as organs of society, are also responsible for promoting and securing the human rights set forth in the Universal Declaration of Human Rights,

*Realizing* that transnational corporations and other business enterprises, their officers and persons working for them are also obligated to respect generally recognized responsibilities and norms contained in United Nations treaties and other international instruments such as the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the four Geneva Conventions of 12 August 1949 and two Additional Protocols thereto for the protection of victims of war; the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; the Rome Statute of the International Criminal Court; the United Nations Convention against Transnational Organized Crime; the Convention on Biological Diversity; the International Convention on Civil Liability for Oil Pollution Damage; the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment; the Declaration on the Right to Development; the Rio Declaration on the Environment and Development; the Plan of Implementation of the World Summit on Sustainable Development; the United Nations Millennium Declaration; the Universal Declaration on the Human Genome and Human Rights; the International Code of Marketing of Breast milk Substitutes adopted by the World Health Assembly; the Ethical Criteria for Medical Drug Promotion and the “Health for All in the Twenty-First Century” policy of the World Health Organization; the Convention against Discrimination in Education of the United Nations Education, Scientific, and Cultural Organization; conventions and recommendations of the International Labour Organization; the Convention and Protocol relating to the Status of Refugees; the African Charter on Human and Peoples’ Rights; the American Convention on Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms; the Charter of Fundamental Rights of the European Union; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development; and other instruments,

*Taking into account* the standards set forth in the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the Declaration on Fundamental Principles and Rights at Work of the International Labour Organization,

*Aware of* the Guidelines for Multinational Enterprises and the Committee on International Investment and Multinational Enterprises of the Organization for Economic Cooperation and Development,

*Aware also* of the United Nations Global Compact initiative which challenges business leaders to “embrace and enact” nine basic principles with respect to human rights, including labour rights and the environment,

*Conscious of* the fact that the Governing Body Subcommittee on Multinational Enterprises and Social Policy, the Committee of Experts on the Application of Standards, as well as the Committee on Freedom of Association of the International Labour Organization, which have named business enterprises implicated in States’ failure to comply with Conventions No. 87 concerning the Freedom of Association and Protection of the Right to Organize and No. 98 concerning the Application of the Principles of the Right to Organize and Bargain Collectively, and seeking to supplement and assist their efforts to encourage transnational corporations and other business enterprises to protect human rights,

*Conscious also of* the Commentary on the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, and finding it a useful interpretation and elaboration of the standards contained in the Norms,

*Taking note of* global trends which have increased the influence of transnational corporations and other business enterprises on the economies of most countries and in international economic relations, and of the growing number of other business enterprises which operate across national boundaries in a variety of arrangements resulting in economic activities beyond the actual capacities of any one national system,

*Noting* that transnational corporations and other business enterprises have the capacity to foster economic well-being, development, technological improvement and wealth as well as the capacity to cause harmful impacts on the human rights and lives of individuals through their core business practices and operations, including employment practices, environmental policies, relationships with suppliers and consumers, interactions with Governments and other activities,

*Noting also* that new international human rights issues and concerns are continually emerging and that transnational corporations and other business enterprises often are involved in these issues and concerns, such that further standard-setting and implementation are required at this time and in the future,

*Acknowledging* the universality, indivisibility, interdependence and interrelatedness of human rights, including the right to development, which entitles every human person and all peoples to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized,

*Reaffirming* that transnational corporations and other business enterprises, their officers – including managers, members of corporate boards or directors and other executives - and persons working for them have, inter alia, human rights obligations and responsibilities and that these human rights norms will contribute to the making and development of international law as to those responsibilities and obligations,

*Solemnly proclaims* these Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights and urges that every effort be made so that they become generally known and respected.

### **A. General obligations**

1. States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including ensuring that transnational corporations and other business enterprises respect human rights. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.

### **B. Right to equal opportunity and non-discriminatory treatment**

2. Transnational corporations and other business enterprises shall ensure equality of opportunity and treatment, as provided in the relevant international instruments and national legislation as well as international human rights law, for the purpose of eliminating discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age - except for children, who may be given greater protection - or other status of the individual unrelated to the inherent requirements to perform the job, or of complying with special measures designed to overcome past discrimination against certain groups.

### **C. Right to security of persons**

3. Transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law.

4. Security arrangements for transnational corporations and other business enterprises shall observe international human rights norms as well as the laws and professional standards of the country or countries in which they operate.

### **D. Rights of workers**

5. Transnational corporations and other business enterprises shall not use forced or compulsory labour as forbidden by the relevant international instruments and national legislation as well as international human rights and humanitarian law.

6. Transnational corporations and other business enterprises shall respect the rights of children to be protected from economic exploitation as forbidden by the relevant international instruments and national legislation as well as international human rights and humanitarian law.

7. Transnational corporations and other business enterprises shall provide a safe and healthy working environment as set forth in relevant international instruments and national legislation as well as international human rights and humanitarian law.

8. Transnational corporations and other business enterprises shall provide workers with remuneration that ensures an adequate standard of living for them and their families. Such remuneration shall take due account of their needs for adequate living conditions with a view towards progressive improvement.

9. Transnational corporations and other business enterprises shall ensure freedom of association and effective recognition of the right to collective bargaining by protecting the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without distinction, previous authorization, or interference, for the protection of their employment interests and for other collective bargaining purposes as provided in national legislation and the relevant conventions of the International Labour Organization.

#### **E. Respect for national sovereignty and human rights**

10. Transnational corporations and other business enterprises shall recognize and respect applicable norms of international law, national laws and regulations, as well as administrative practices, the rule of law, the public interest, development objectives, social, economic and cultural policies including transparency, accountability and prohibition of corruption, and authority of the countries in which the enterprises operate.

11. Transnational corporations and other business enterprises shall not offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other improper advantage, nor shall they be solicited or expected to give a bribe or other improper advantage to any Government, public official, candidate for elective post, any member of the armed forces or security forces, or any other individual or organization. Transnational corporations and other business enterprises shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights. They shall further seek to ensure that the goods and services they provide will not be used to abuse human rights.

12. Transnational corporations and other business enterprises shall respect economic, social and cultural rights as well as civil and political rights and contribute to their realization, in particular the rights to development, adequate food and drinking water, the highest attainable standard of physical and mental health, adequate housing, privacy, education, freedom of thought, conscience, and religion and freedom of opinion and expression, and shall refrain from actions which obstruct or impede the realization of those rights.

#### **F. Obligations with regard to consumer protection**

13. Transnational corporations and other business enterprises shall act in accordance with fair business, marketing and advertising practices and shall take all necessary steps to ensure the safety and quality of the goods and services they provide, including observance of the precautionary principle. Nor shall they produce, distribute, market, or advertise harmful or potentially harmful products for use by consumers.

#### **G. Obligations with regard to environmental protection**

14. Transnational corporations and other business enterprises shall carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate, as well as in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights, public health and safety, bioethics and the precautionary principle, and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.

#### **H. General provisions of implementation**

15. As an initial step towards implementing these Norms, each transnational corporation or other business enterprise shall adopt, disseminate and implement internal rules of operation in compliance with the Norms. Further, they shall periodically report on and take other measures fully to implement the Norms and to provide at least for the prompt implementation of the protections set forth in the Norms. Each transnational corporation or other business enterprise shall apply and incorporate these Norms in their contracts or other arrangements and dealings with contractors, subcontractors, suppliers, licensees, distributors, or natural or other legal persons that enter into any agreement with the transnational corporation or business enterprise in order to ensure respect for and implementation of the Norms.

16. Transnational corporations and other businesses enterprises shall be subject to periodic monitoring and verification by United Nations, other international and national mechanisms already in existence or yet to be created, regarding application of the Norms. This monitoring shall be transparent and independent and take into account input from stakeholders (including non governmental organizations) and as a result of complaints of violations of these Norms. Further, transnational corporations and other businesses enterprises shall conduct periodic evaluations concerning the impact of their own activities on human rights under these Norms.

17. States should establish and reinforce the necessary legal and administrative framework for ensuring that the Norms and other relevant national and international laws are implemented by transnational corporations and other business enterprises.

18. Transnational corporations and other business enterprises shall provide prompt, effective and adequate reparation to those persons, entities and communities that have been adversely affected by failures to comply with these Norms through, inter alia, reparations, restitution, compensation and rehabilitation for any damage done or property taken. In connection with determining damages in regard to criminal sanctions, and in all other respects, these Norms shall be applied by national courts and/or international tribunals, pursuant to national and international law.

19. Nothing in these Norms shall be construed as diminishing, restricting, or adversely affecting the human rights obligations of States under national and international law, nor shall they be construed as diminishing, restricting, or adversely affecting more protective human rights norms, nor shall they be construed as diminishing, restricting, or adversely affecting other obligations or responsibilities of transnational corporations and other business enterprises in fields other than human rights.

## **I. Definitions**

20. The term “transnational corporation” refers to an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries - whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.

21. The phrase “other business enterprise” includes any business entity, regardless of the international or domestic nature of its activities, including a transnational corporation, contractor, subcontractor, supplier, licensee or distributor; the corporate, partnership, or other legal form used to establish the business entity; and the nature of the ownership of the entity. These Norms shall be presumed to apply, as a matter of practice, if the business enterprise has any relation with a transnational corporation, the impact of its activities is not entirely local, or the activities involve violations of the right to security as indicated in paragraphs 3 and 4.

22. The term “stakeholder” includes stockholders, other owners, workers and their representatives, as well as any other individual or group that is affected by the activities of transnational corporations or other business enterprises. The term “stakeholder” shall be interpreted functionally in the light of the objectives of these Norms and include indirect stakeholders when their interests are or will be substantially affected by the activities of the transnational corporation or business enterprise. In addition to parties directly affected by the activities of business enterprises, stakeholders can include parties which are indirectly affected by the activities of transnational corporations or other business enterprises such as consumer groups, customers, Governments, neighbouring communities, indigenous peoples and communities, non governmental organizations, public and private lending institutions, suppliers, trade associations, and others.

23. The phrases “human rights” and “international human rights” include civil, cultural, economic, political and social rights, as set forth in the International Bill of Human Rights and other human rights treaties, as well as the right to development and rights recognized by international humanitarian law, international refugee law, international labour law, and other relevant instruments adopted within the United Nations system.

---

\* Approved August 13, 2003 by the U.N./ Doc. E/CN.4/Sub.2/2003/L.11 at 52 (2003).

# Bibliography

## Articles and Books

- Amnesty International-SNS Förlag, Human Rights a Corporate Responsibility? Kristianstad, 2001.
- A critique of neo-liberal theories at the Seminar Services of General Interest and Globalisation. Paris, 11 March 2000.
- A Global Compact: Business, Oil and Human Rights. R.P.P. Le Monde Diplomatique, 2000.
- Bankrupting Democracy. Lessons for Fast Track and the Free Trade Area of the Americas. Friends of the Earth, 2001.
- Beyond Voluntarism: Human Rights and the developing international legal obligations of companies. International Council on Human Rights Policy, February 2002 Chap. III.
- Bruno Kenny, De-Globalizing Justice, The Corporate Campaign to Strip Foreign Victims of Corporate-Induced Human Rights Violations of the Right to Sue in U.S. March, 2003.
- Chapman Audry, The Human Implications of Intellectual Property Protection. Journal of International Economic Law, 2002.
- Dauenhauer Katrin, Human Rights Experts Defend Law from Business Attack, International Press Service, July 29, 2003.
- Encyclopedia of International Law: Transnational Enterprises. Amsterdam, 1985 p 518.
- Faúndez Ledesma. Héctor. El Sistema Interamericano De Protección De Los Derechos Humanos. IIDH, Segunda edición 1999.
- Fitzmaurice. The General Principles of International Law: Considered from the Standpoint of the Rule of Law. 1957 II edition.
- Forcese, C. Profiting From Misfortune? The Role of Business Corporations in Promoting and Protecting International Human Rights, MA Thesis, Norman Paterson School of International Affairs, Carleton University, Ottawa 1997.
- Freeman, R. E. Strategic management: A stakeholder approach. 1984, Boston, Pitman
- Globalisation and Economic, Social and Cultural Rights: Statement by the Committee on Economic, Social and Cultural Rights,” May 1998.
- Gudmundur Alfredsson and Rolf Ring Editors of The Inspection Panel of the World Bank: A Different Complaint Procedure. The Raoul Wallenberg Institute Human Rights Library. Volume 5, 2201.
- Grayson David & Hodges Adrian, Evrybody’s Business, London. DK, 2001.
- Griffiths, M.R & Lucas, J.R, Ethical Economics Macmillan Press LTD, London, 1996.
- Haraldsson, Hörður V. Introduction to system and Causal Loop Diagrams. LUMES, Lund University, 2003.
- Hadari, Yitzhak. (1973.) “The Structure of the Multinational Enterprise.” Michigan Law Review, 71, March. Michigan.

Hillier Tim, Source Book on Public International Law, Cavendish Publishing Limited, London, 1998 p. 199 Griffiths, M.R & Lucas, J.R, Ethical Economics, Macmillan Press LTD, London, 1996. Chapter 4.

Intellectual Property Rights for Indigenous Peoples: A Sourcebook, Society for Applied Anthropology, 1994.

Intellectual Property and Human Rights, WIPO & UNHCHR, Geneva, 1998.

Isa, John P. Testing the NAALC's Dispute Resolution System. Journal of Gender, Social Policy & The Law. Vol. 7.

It Simply Works Better, Campaign Report on European CSR Excellence 2002-2003, The Copenhagen Centre.

Jägers, Nicola. Corporate Human Rights Obligations: In Search of Accountability. School of Human Rights Research Series, volume 17. Intersentia, 2002.

Korten, David. When Corporations Rule the World, Earthscan Publications Ltd, London 1995.

UNDP, Human Development Report, 1991, New York: Oxford University Press, 1991.

Making Global Trade Work for People. UNDP, Hienrich Böll Foundation, Rockefeller Foundation and Wallace Global Fund, 2003 OECD, Trade, Employment and Labour Standards, COM/DEELSA/TD(96)8/FINAL (1996).

Malanczuk Peter, Akehurt's Modern Introduction to International Law, 1997 Routledge p. 255.

The Economist, June 14th 2003, volume 367, number 8328.

The Arizona Journal of International and Comparative Law Online - 2002 - Volume 19 Number 1.

The Mayagna (Sumo) Awas Tingni Community v. Nicaragua case, decided by the Inter-American Court of Human Rights on August 31, 2001.

Shawn Malcom, International Law, Grotious 2001.

Vandermoortele, Jan. Are we really reducing poverty? UNDP, New York, 2002.

## **Conventions**

The International Bill of Human Rights

The UN Charter 1945

The UN Convention on the Elimination of All Forms of Discrimination Against Women

The Rio Declaration on Environment and Development adopted on 13 June 1992 in Brazil

The UN Convention on the Elimination of All Forms of Racial Discrimination

The UN Convention on the Right of the Child

The UN Declaration on the Right to Development

The Stockholm Declaration on the Human Environment of 1972



The Vienna Convention on the Law of the Treaties of in 1966

The Rome Statute of the International Criminal Court

## UN Reports

UNCTAD. World Investment Report, United Nations 2001

UN Doc. A/Res/3281 (XXIX), 12 December 1974

UN Committee on Economic, Social and Cultural Rights, General Comment 14. "The right to the highest attainable standard of health" 4 July 2000, para. 42

UN Committee on Economic, Social and Cultural Rights, General Comment 12. The right to adequate food" 12 May 1999, para. 20

UNDP, Human development Report 2002 available on <http://hdr.undp.org>

UN Doc. A/Res/3281 (XXIX), ILO Doc. GB.264/MNE/2.

Overview of Global Developments, ILO report GB.273/WP/SDL/1

The Inspection Panel Annual Report August 2001- June 2002 World Bank - Inspection Panel.

## Cases

Reparations for Injuries Suffered in the Service of the United Nations case, 1949 I.C.J.

Barcelona Traction, Light and Power Company, Limited case, 1970 I.C.J.

Judgment, Ser.C, No.4, July 24, 1988 para 174. Velásquez Rodríguez Case. Inter-American Court of Human Rights.

Military and Paramilitary Activities in and against Nicaragua case, ICJ Rep 14, 1986

The US v Iran case: Concerning US Diplomatic and Consular Staff in Teheran, ICJ December 1979

Filartiga v. Pena-Irala, ATCA 1980

**Internet sources:** All the Internet sources were consulted during July 1 to September 24 of 2003

<http://www.amnesty.org.uk>

[http:// www.anticorruption.gov.ar](http://www.anticorruption.gov.ar)

<http://earthtrends.wri.org>

English Oxford Dictionary at <http://www.oed.com>

<http://www.cepaa.org>

<http://www.citizen.org>

<http://www.cpi.cam.ac.uk>

<http://www.conferenceboard.ca>  
<http://www.corporate-accountability.org>  
<http://www.corpwatch.org>  
<http://www.corteidh.or.cr>  
<http://www.copenhagencentre.org>  
<http://www.codesofconduct.org>  
<http://www.imf.org>  
<http://www.investorwords.com>  
<http://www.icj-cij.org>  
<http://www.ilo.org>  
<http://homepages.iprolink.ch>  
<http://www.globalreporting.org>  
<http://www.moneddiplo.com>  
<http://www.naaec.gc.ca>  
<http://www.naalc.org>  
<http://www.oecd.org>  
<http://www.orosha.org>  
<http://www.socialaudit.org>  
<http://www.trustfortheamericas.org>  
<http://www.thebodyshop.com>  
<http://training.itcilo.it>  
<http://www2.shell.com>  
<http://untreaty.un.org/ola-internet/Assistance/Guide.htm#treaties>  
<http://hdr.undp.org>  
<http://www1.umn.edu>  
<http://www.unep.org>  
<http://www.unglobalcompact.org>  
<http://www.usaengage.org>  
<http://untreaty.un.org>  
<http://www.utrikes.regeringen.se>

<http://www.wcl.american.edu>

<http://www.worldbank.org>