THE NOTION OF CORPORATE RESPONSIBILITY OF THE MULTINATIONAL ENTERPRISES

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Abstract

Economic supremacy is the foremost feature of the current world and foreign direct investment (FDI) is a potent weapon of economic development, especially in the current global context. Economic development for the Least Developed Countries (LDC) is largely dependent on FDI, which remained negligible until 1993 but subsequently, FDI has experienced a high annual growth over the past years. The notion of corporate responsibility includes human rights issues in the LDCs, for examples – ignoring the exploitation of child and women labour, paying extremely low rates of wages to the local work force, ignoring health and safety standards at work, degrading the environment, meddling in other affairs of the host state. Indeed, there have been documented cases of MNEs, for example – paying wage rates close to the poverty line in countries such as Bangladesh and ignoring the ILO conventions. The systemic failure of government protection of human rights and lack of respect towards workers' right allows incident like Rana Plaza to continue to happen. Beyond the famously low wages, unsafe working conditions, restrictions, and repression of labour unions plague the industry. The state has a duty to protect its citizen against human rights abuses by the MNEs through regulation, policymaking, investigation and enforcement. However, policymakers are also part of this profit-making business and are strong protectors of corruption mechanisms. Today, there is nothing but false promises and dirty politics from all parties. When the state itself protects the oppressors and limits access to judicial, administrative, or legislative protection and corporate responsibility, prevention of any infringement of rights remains a dream for many of the victims of serious and systemic human rights violations. This article will discuss some of the issues associated with the notion of corporate responsibility with special reference to the issue of human rights, such as – explaining how the notion of corporate responsibility has evolved in the context of the regulation of foreign investment in international law and discuss the interrelationship between human rights and corporate responsibility.

Keywords: Corporate responsibility, multinational enterprises, human rights, foreign investment, ILO

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INTRODUCTION

The aim of the corporate social responsibility is to ensure that companies including multinational enterprises (MNEs) should conduct their business operations in an ethical way and must take into account their responsibilities towards economic, social and environmental impact in the host country, and greatly consider the human rights of the workers. There are many multinational enterprises, which tries to fulfil their social and environmental goals in the host countries by doing the followings:

- Putting pressure on the local partners in the host states to ensure human rights of the workers;
- Ensuring that investment does not have any negative impact on the society;
- Ensuring that the environment is protected in a sustainable way;
- Developing the relationship between the employer-employees, employer-customers and employees-customers;
- Increasing working partnership with different local communities.

The international community is concerned about multinational enterprises (MNEs) responsibility to abide by human rights principles in carrying out their business activities:

- Do MNEs have human rights obligations?
- Should they be held accountable for human rights violations where they operate?
- If so, should it be the relevant local subsidiary of the parent company or the parent company itself that is held responsible?
- If a parent company should be held accountable, then what is the legal basis for holding it accountable for human rights violations abroad?
- What legal mechanism should be used to ensure that MNEs are obliged to respect the human rights of foreign individuals affected by its activities abroad?

People are asking these questions as part of the debate on corporate social responsibility.[1]

Responsibilities of MNEs

The debate on the accountability of MNEs for human rights is at a crossroads. New developments in the human rights sector have rendered the traditional public-private distinction increasingly redundant. There are various strands of thought emerging, which

[1] See Trebilcock, M.J. and R. Howse, 'The regulation of international trade', (London: Routledge, 1999) second edition.

argue strongly in favour of making MNEs directly responsible for human rights violations.

Some attempts have been made to lift the corporate veil of MNEs and make them accountable for human rights violations. These are attempts, which pull together a range of legal doctrines, principles and nuances scattered across a whole range of legal regimes to offer some solution to the problems created by the absence of a cohesive body of law regulating the activities of MNEs. Consequently, attention has now turned once again to international regulation of MNEs.

Benefits for MNEs

It is argued that MNEs themselves would benefit from having a global charter of corporate responsibility, as business people also want legal certainty. Responsible MNEs governed by sensible directors realise that they stand to gain by having internationally agreed rules in the area of human rights and the environment:

- It would be much better for them to carry out their business worldwide if there was a harmonised international regulation in place;
- The legal and political certainty that such regulation would offer to the business community would outweigh the costs of complying with it, which would be relatively small anyway compared with other costs of production and distribution.

In the absence of international regulation, some MNEs have been forced to cobble together their own codes of conduct in the face of mounting public criticism of their trade practices. Those who argue for international regulation have advanced the idea of a charter of corporate responsibility, which would require MNEs to respect the human rights of individuals in the countries where they operate.

Allegations against MNEs

Many MNEs have been accused of violating the human rights– including the economic, social, cultural, environmental and employment rights – of local people where they operate. Alleged human rights violations by MNEs include:[2]

- Turning a blind eye to the exploitation of child and women labour by their subsidiaries abroad;
- Paying extremely low rates of wages to the local work force;

[2] Muchlinski, P., 'Multinational enterprises and the law', (Oxford: Blackwell, 1999).

- Ignoring health and safety standards at work;
- Meddling in other affairs of the host state.

Indeed, there have been documented cases of MNEs paying wage rates close to the poverty line in countries such as Bangladesh, China, Honduras, India and Mexico. For instance, Nike, which sells a pair of trainers in the retail market for $67, seems to pay $2 in wage costs. According to an Oxfam report,[3] in Bangladesh and Cambodia, women workers seem to earn less than $40 a month sewing clothes for fashion companies such as Gap. The situation seems equally unbalanced in the so-called 'export-processing zones' of countries such as China and Bangladesh. Workers are apparently subjected to extreme hardship to ensure bigger profit margins for large MNEs. It was reported that in Bangladesh workers had to leave their employment rights at the factory gate in order to work in these special economic zones.

Neither the local government nor any international organisation seems to be able to protect workers from such exploitative practices of MNEs. There is no global minimum wage set for these global companies. Workers across the developing world have been working:

- For poverty-level wages;
- In hazardous working conditions;
- With inadequate social-insurance rights;
- With obligatory overtime work.

Of course, various treaties under the auspices of the International Labour Organization (ILO) have provisions designed to protect workers' rights, but the implementation aspect of these treaties is weak. The core ILO conventions provide for basic rights for workers.[4] They include:

- the Constitution of the ILO 1946;
- the 1948 Convention Concerning Forced or Compulsory Labour;
- the 1949 Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively;
- the 1981 Convention Concerning Occupational Safety and Health and the Working Environment.

They include the following rights:

- The freedom to bargain collectively;
- The freedom of association;

[3] Oxfam International, Rigged rules and double standards: trade, globalisation, and the fight against poverty (Oxfam: Oxford, 2002), pp.191–193.

[4] Weiss, F., et al., (eds), 'Towards international economic law with a human face', (The Hague: Kluwer Law International, 1998).

- The elimination of discrimination in the workplace;
- The elimination of workplace abuse (*e.g.* forced labour and certain types of child labour);
- Adequate wages;
- Proper working conditions;
- Adequate social-insurance rights;
- No obligatory overtime work.

However, the provisions of these conventions have to be implemented through national laws. The ILO has not got much power to bring exploitative companies to justice. Yet, for the reasons stated earlier, many governments are either reluctant or unable to impose even minimum international standards on companies operating within their jurisdiction.

Those who have championed the idea of corporate responsibility have pointed out these weaknesses of the existing system and called for the adoption of a global charter outlining the responsibilities of MNEs. The Global Compact initiative of former UN Secretary-General Kofi Annan has helped to advance the debate on a global charter of corporate responsibility for MNEs.

However, the developed world does not seem to be enthusiastic about adopting a legally binding charter. Some business leaders have argued that, since they already have their own internal code of conduct, there is no need for a global one. Although these leaders have paid lip service to the Global Compact initiative, they are unlikely to accept an ambitious global charter.

The corporate lobby opposed the UN move to adopt a code of conduct for MNEs, and the UN Commission on Transnational Corporations (CTC) was eventually scrapped.[5] Much of the developed world and the corporate lobby is unlikely to accept a global instrument regulating the activities of the MNEs.

It is submitted that the activities of the MNEs must be regulated if society wishes them to conform to the values for which it stands, whether regulation is carried out by the WTO or the UN or by some other international organisation.

They must be regulated not only in the interests of their developing host countries and developed home countries, but to ensure:

- The sustainability of business;
- The sustainability of our lifestyle;
- The sustainable development of our natural resources;

[5] For a summary of the work done by the CTC and the proposed text of the draft Code of Conduct on Transnational Corporations, see UN Doc.E/1990/94 of 12 June 1990.

- The protection of the environment of our planet.

The old divide between developed and developing countries is becoming increasingly blurred as many developing countries are now the home states for many MNEs doing business in other developing countries. For instance, some of the MNEs investing heavily in the textile industry of Namibia are Malaysian.

In such a changing pattern of economic relations between states, they can be defined only in terms of host and home countries *vis-à-vis* the regulation of foreign investment. If the interests of both host and home countries were balanced properly in a new instrument on FDI regulation, it would make a positive contribution to the development of the law on foreign investment.

Indeed, the recognition in the Doha Declaration that any framework 'should reflect in a balanced manner the interests of home and host countries, and take due account of the development policies and objectives of host governments as well as their right to regulate in the public interest' was encouraging. It was unfortunate that the WTO decided to sidestep the issue by the time the journey of the Doha 'development round' reached the 'July package' of 2004.[6]

One of the main objectives of present-day international society is the promotion of human rights. As demonstrated earlier, the traditional perception that ethics and business do not go hand in hand is giving way to the adoption of ethical standards in business practice. This change in attitude has to be cultivated and translated into legally binding norms.

If the protection of human rights is a global responsibility, the regulation of MNEs in the interests of these values and principles should also be a matter of global responsibility, and thus discharged collectively. After all, human civilisation must be about equality, justice and fairness.

The law has already recognised MNEs as new duty-holders in a range of areas, including human rights. If there is the political will to grapple with the human rights deficit in this area, there are no doctrinal hurdles in the way.

Developments in international law (especially in the field of human rights, environment and criminal liability) have breached the traditional public-private debate and made it

[6] Macmillan, F., 'The World Trade Organization and the environment', (London: Sweet & Maxwell, 2000).

possible for international law to impose direct human rights obligations on MNEs.

By its very nature, international law is dynamic and it can (and should) hold MNEs accountable for human rights violations. For this, it would be better for the international community to adopt a comprehensive and legally binding code of conduct requiring MNEs to abide by internationally accepted norms of human rights in their business operations.

However, the reality is that the deficit that exists in the present system of human rights protection with regard to MNEs could be dealt with only by strengthening the existing system. Indeed, the revised OECD Guidelines of 2000 contain a great deal more encouraging provisions than their predecessor.[7]

This document enshrines the provisions contained in the core ILO instruments mentioned above. More significantly, it has also created a mechanism for monitoring corporate behaviour and investigating abuses. Unlike other initiatives, the new OECD Guidelines have the support of governments of countries in which the world's major MNEs are based.

No matter how much the world has changed since the adoption of the Universal Declaration of Human Rights in 1948, the fact remains that the primary responsibility for protecting the rights of individuals residing within a state rests with that state.

Accordingly, national governments should enact laws designed to enforce the provisions of the ILO conventions. This is perhaps the most desirable and most effective way of protecting the rights of workers and regulating the activities of MNEs. States should not relax the laws relating to workers' rights in so-called export-processing zones, and MNEs should be banned from exploitative practices in such zones.[8]

MNEs should be required to implement the OECD Guidelines with rigour, and home states should strengthen their national laws to ensure that the MNEs with their headquarters abroad comply with the requirements of the Guidelines worldwide.

Courts should be empowered and encouraged to pierce the corporate veil of MNEs if they are found to be engaged in

[7] After failing to adopt a legally binding MAI, the OECD adopted a set of revised guidelines for MNEs in 2000. See the OECD guidelines for multinational enterprises of 27 June 2000 in http://www.oecd.org/daf/investment/guidelines/mnetext.htm The old OECD guidelines can be found in The OECD guidelines for multinational enterprises (OECD: Paris, 1997).

[8] See Giovanoli, M., 'International monetary law: issues for the new millennium', (Oxford: Oxford University Press, 2000).

human rights violations. Although such litigation would be an expensive option for the weak victims of human rights abuses, the recognition of the power of courts to pierce the corporate veil should act as an antidote to systematic human rights violations by MNEs in the pursuit of profit.

Conclusions

The law in this area is quite inadequate and many MNEs continue to operate in a grey area. Most responsible companies themselves appear to be in favour of a comprehensive set of internationally agreed rules defining their obligations and rights so that they have some legal predictability when taking decisions to expand their business in new areas. In the absence of a global set of rules, aggrieved parties have been resorting to a number of extant and emerging rules of international law for a legal remedy against the excesses of MNEs and other foreign investors.