

MAKING TRANSNATIONAL CORPORATIONS MORE RESPONSIBLE: A HUMAN RIGHTS APPROACH

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Abstract

The unique blend of international human rights norms and the Corporate Social Responsibility (CSR) amused some people but for some it has always remained a topic of critique. Various norms have been proposed over the past two decades to regulate the actions of the transnational corporations (TNC's). These norms however have failed to impress several international actors; the human rights council has been working on drafting norms to get a unanimous approval. In this regard the UN human rights council - in June 2011 - finally approved guiding principles on business and human rights. The guiding principles provide a platform to a complex issue of corporate regulation through international law. More efforts are needed in order to formulate a practical approach towards the regulation of TNC's through international law. The article is focused on the importance of CSR and analyzes the efforts to regulate TNC's through international law. A practical approach is made to gauge the liability of TNCs under international law for any human rights violation.

Keywords: Trans National Corporations, Human Rights, Corporate Social responsibility.

Introduction

The protests against capitalist economy and mainly corporatism have already engulfed over 900 cities in more than 80 countries around the world.¹ This might well be indicating towards taking more stringent efforts to regulate corporations internationally. The ultimate result will be to make corporations responsible for their indulgence in human rights abuses. The unique blend of international human rights norms and the Corporate Social Responsibility (CSR) amused some people but for

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some it has always remained a topic of critique. Various *norms* have been proposed over the past two decades to regulate the actions of the trans-national corporations (TNC's). These *norms* however have failed to impress several international actors; the human rights council has been working on drafting norms to get a unanimous approval. In this regard the UN human rights council - in June 2011 - finally approved guiding principles on business and human rights. The guiding principles provide a platform to a complex issue of corporate regulation through international law. However the norms are far away from addressing the challenges faced in this age of "Globalisation". More efforts are needed in order to formulate a practical approach towards the regulation of TNC's through international law.

The article is focused on the importance of CSR and analyzes the efforts to regulate TNCs through international law. The article does not highlight the responsibilities of corporations; however we will analyse the steps taken to make corporations responsible for the violation of human rights already accepted in different human rights treaties, especially the international bill of rights. The term CSR indicates the social responsibilities of corporations which may not be enforceable under any domestic or international law. It only indicates the measures taken by corporations for the wellbeing of the people who play a positive role as consumers in the profit making of the corporations. Some of the CSR norms are however positive in nature, thus the violations of such norms incur liabilities. In case of domestic violations states are responsible for corporate regulation and keeping a check on any violations by the corporations. However the violations by a corporation outside the jurisdiction of its home state are unchecked; especially when the corporation is involved in such activities with the help of or on the directions of the host state's government.

Understanding Corporate Social Responsibility (CSR)

CSR involve the responsibility of a company for its actions and to encourage a positive impact through its activities on the environment, consumers, employees, communities, stakeholders and all other members of the public sphere. The base for Corporate Social Responsibility was laid down in 1953 decision by the New Jersey State Supreme Court which removed legal restrictions on corporate generosity. A shareholder in Standard Oil Company objected to the company's donation to Princeton University, he brought a lawsuit

against the company. The court ruled in favour of the company, the court accepted the argument that its donations to Princeton's Engineering Department were intended to benefit Standard Oil by helping to educate future potential employees. This decision paved the way for other companies in the United States to engage in corporate giving.² The role of corporations in decision making is gaining importance around the globe as many states are dependent upon the revenues generated by corporations. In many developing countries the impact of the decisions of corporations is equal to or greater than the decisions of the government.³ Thereby the impact of business in this globalised world is evident on every single field related to human dwelling. Thus, there are a few internationally recognised Human Rights norms which have no relationship with business.⁴

The consumer demands are on a high for a 'responsibly made products'.⁵ For instance the sale of fair trade products -whereby the producers are paid an above world-market price for their produce- increased in Britain by 51% in 2003-2004.⁶ The consumers have shown their willingness to pay attention to the standards and practices used by business that observes human rights and may even boycott products that are that are produced in violation of human rights standards.⁷ The investors have also showed keen interest in buying shares of a socially responsible company.⁸ It is also believed that socially responsible companies get a more dedicated staff as compared to the others.⁹ The danger to reputation by the NGOs also drives the corporations towards CSR; sometimes pressure from socially responsible investors through public interest proxy resolutions.¹⁰ Some argue that the privileges attached to corporations are only legitimate if the corporation serves the community from which it derives a large portion of its wealth.¹¹ To achieve this goal the constituencies of the corporations must be broadened, as well as broadening of the nature of corporate responsibility to these constituencies in terms of disclosure obligations.¹² For some corporate responsibility is considered as an active obligation¹³; an obligation to positively work for the betterment of the Environment;¹⁴ an obligation to increase the wealth of the inhabitants where the corporations work;¹⁵ and an obligation to pressurise other actors to change their regulatory practises.¹⁶ According to Human Rights Council the corporate obligations extend to development,¹⁷ labour relations,¹⁸ environmental protection,¹⁹ human rights,²⁰ and technology transfers.²¹

Transnational Corporations

The term “Transnational Corporation” refers to a corporation with affiliated business operations in more than one country.²² Unlike the domestic corporations, Transnational Corporations (TNCs) are intertwined in such business transactions which are far beyond the control of any single state.²³ Thus the perception exists that states lack an effective power to control and enforce the Corporate Responsibility.²⁴ Thus the TNCs along with states have power and resources to escape responsibility for human rights abuses.²⁵ This emerging system of economic transactions grafted by “globalisation” tends to favour foreign owners while allocating all risks domestically.²⁶ The socio-economic development and technological advances of the states and the political liberalism have served in the advancement of “globalisation”.²⁷ This economic independence of TNCs led to suggestions that TNCs shall serve a social, political and cultural role as well as economic.²⁸ MNC’s tend to shift their business to states which promise opportunities for maximum profits; thus they shift their business to states that minimise tax burdens and the cost of producing goods.²⁹ For attracting more MNC’s the developing states are inclined to soften the regulation in competition with other states. Many Multinationals have been found guilty of breaking the law and showing unethical behaviour, especially in areas where the state is weak or non-existing.³⁰ Corporations such as De Beers,³¹ Exxon Mobil,³² and Wal-Mart³³ have been accused of abuses in civil wars, Corruption and child labour and slave labour respectively. Thus Richard Meeran argues that “If a proper balance is to be achieved, the law must continue to develop to reflect the reality of TNC operations and adapt to counter TNC methods of avoiding legal responsibility”.³⁴ Thus in advancement of this objective the TNC’s shall be vested with responsibilities traditionally assigned only to states.³⁵ Since 1970’s the MNC’s were urged to adopt voluntary codes of conduct by the international and supra-national organisations.³⁶

Corporate Governance and CSR

The field of Corporate Social Responsibility is affiliated with Corporate Governance in its real sense.³⁷ Discourse outside the parameters of the corporation is deemed as less authoritative; especially when the discourse is leading to disturb the traditional spheres of corporate governance.³⁸ According to Greenfield, “Corporate law is primarily about the relationships among shareholders, board of directors,

managers, and occasionally, bondholders and other creditors; questions surrounding the role of corporations in society arise only at the periphery of the dominant narratives of corporate law, if at all”.³⁹ Traditional domestic laws deal with economics and merely politics, rather than speaking the language of Human Rights. However when we come out of the domestic sphere into the international arena the outcome is a bit different; corporate responsibility internationally has been linked to social and political obligations.⁴⁰ Globalisation has broadened the scope of CSR and challenged the traditional scope of corporate regulation.⁴¹ The globalisation movement is transnational; thus the liberalization and privatisation of trade has to be accepted by states through liberal legislative policies.⁴² The questions of liability are addressed by the private law or the law of conflicts; thus local regulations in economic globalisation are accepted when they do not deviate from the globalisations’ core norms.⁴³ The corporations allegedly are involved in international market in such a way that it is not possible for states to provide effective remedies to its citizens accordingly.⁴⁴ It is also argued that MNC’s use national borders to effectively partition their enterprise assets, passing risk unfairly onto third parties (customers, employees, trade creditors etc.), who are unlikely to be able to protect themselves in the new global private market economy.⁴⁵ Thus, the perception grew that states were losing the power to shape the character of CSR to their own liking,⁴⁶ and that the institutionalization of systems of economic transactions produced by globalization tended to favour only foreign owners while allocating all risk domestically, with little effective prospect of redress.⁴⁷ These facts opened a debate about the best way to regulate corporations internationally. This debate on CSR broadened its context from the sphere of corporate governance, involving international human rights law.⁴⁸ This meant the involvement of human rights actors in international corporate regulation. Pressure of regulation came from different states but their respective motivations were different.⁴⁹ The involvement of international human rights machinery into corporate governance was not abrupt; TNC’s were frequently found violating human rights norms in different constituencies. A working document produced by the Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities declared that TNCs “are frequently, if not always, behind massive human rights violations; in the same spirit, the States that benefit from their activities pass legislation in their favour, protecting them to the detriment of the

people and their rights. . . . Moreover, certain [TNCs] encourage States to violate their people's rights".⁵⁰ Thus the involvement of international human rights forum in this issue was inevitable. The fact is highly acknowledged that TNCs can affect the level of enjoyment of the economic, social, and political rights of people across states, but states cannot effectively regulate them. Some regulation at the international level is necessary to control the possibility of abuse by TNCs of their dominant position and to ensure that TNCs contribute to the development of less developed states and to the protection of individuals' social, political, and economic rights.⁵¹ The behaviour of TNC's only to indulge in profit-maximizing also affects the distribution of high and low skill work on a global basis in a way that penalizes developing states. As a consequence, "[t]he activities and methods of work of TNCs have implications for the effective enjoyment of a number of human rights."⁵² The leading question here is that how far can an international human rights body go in the regulation of economic actors?

The following example will lead us to the conclusion that TNC's need to be regulated in order to get uniformity of conduct. Human Rights Watch suggests that firms such as google have concluded that CSR can place them at a competitive disadvantage by cutting them off from certain competitive markets.⁵³ If Google did not comply with the Chinese government's censorship policies, they could not operate in China, keeping them from doing business in the largest emerging market for e-commerce and Internet use. As a result, large organizations' CSR initiatives increasingly include lobbying for legally enforceable corporate standards that apply to all firms.⁵⁴ Thus the corporations are unlikely to take their own CSR initiatives unless they have the surety of other corporations not taking advantage of their CSR initiatives. Similarly, if one corporation refuses to indulge into a practise which is against the CSR initiatives, other corporations will be ready to take the advantage of the CSR initiatives.

Human Rights and CSR

Several attempts by different international organisations have been made to formulate principles regarding CSR. For instance, United Nations drafted the international code of conduct for businesses in 1970's and 1980's.⁵⁵ The Organisation of Economic Cooperation and Development (OECD) also established the first guidelines for Multinational Enterprises to promote responsible business conduct with applicable

laws.⁵⁶ In 1977 the ILO also adopted the Tripartite Declaration of Principles Concerning Multinational Enterprises⁵⁷, calling upon businesses to follow the relevant ILO conventions and recommendations. In January 1999, “Global Compact” of shared values and principles at the World Economic Forum was proposed by the then Secretary General of the United Nations Mr. Kofi Anan.⁵⁸ The Global Compact asked the businesses to adopt ten core principles voluntarily, including Human Rights obligations and Environmental protection.⁵⁹ Global Compact is not an enforcement mechanism but ‘it’s a learning dialogue and a platform for action’.⁶⁰ It is alleged that the Global Compact is a ‘venue for opportunistic companies to make grandiose statements of corporate citizenship without worrying about being called to account for their actions’.⁶¹ Apart from the aforementioned non-binding documents there are numerous guiding principles and voluntary codes of conducts approved by different authorities. To name a few, Fair Labour Association’s Workplace Code of Conduct,⁶² Social Accountability 8000,⁶³ the Ethical Trading Initiative,⁶⁴ The Global Reporting Initiative,⁶⁵ Voluntary Principles on Security and Human Rights,⁶⁶ and the Business Principles for Countering Bribery.⁶⁷

The early human rights commission reports were very affirmative and strict towards the adoption of frameworks for regulation (if not controlling) of TNC’s internationally. The early Human Rights Commission Report advocated for abandoning the shareholder supremacy in MNC’s in favour of the stakeholders in a state where the corporation operates.⁶⁸ The report illustrated that the economic and political power of the TNC’s was an obstacle in the realisation to the right to development; thereby international rules are necessary to combat the abuses of the economic concentration and restrictive trade practises.⁶⁹ The second sub-commission report suggested that the international frameworks are necessary to control TNC’s across border.⁷⁰ According to the 1998 report, corporations play an important part in everyday life; moreover they are in an affirmative position to block any moves towards the protection of Human Rights.⁷¹ The report does acknowledge the fact that TNC’s are organisations whose objective is to make profits.⁷² The profit making shall be in accordance with the universal democratic principles and international standards.⁷³ Thus the report recommended harmonization of international domestic criminal

laws targeting transnational criminal activities, calling for cooperation in monitoring of TNC's.⁷⁴

Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to human rights were approved in August 2003.⁷⁵ The norms were not binding on the member states; however they are important for a few reasons. These norms point towards the evolutionary changes in the thinking towards the duties of corporations.⁷⁶ Furthermore the continued support for the norms by the civil society and international law establishment illustrates the development of the all the legal systems competing for the regulatory authority.⁷⁷ The norms were not initiated to be voluntary principles adopted by the business entities. The Sub-Commissions Resolution 2003/16 called for the creation of mechanism for NGO's and others to submit information about businesses that are not meeting the minimum standards of the norms. The Norms however did not constitute a treaty either. The norms starts off by stating that TNC's have the "obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognised in international as well as national laws".⁷⁸ Although the norms were not binding the language used in the norms was that of a binding international treaty. The norms derived the legal authority from the human rights rules initiated in most of the human rights treaties and customary international law, as a restatement of principles applicable to corporations.⁷⁹ Moreover the norms called upon all the business entities to adopt the norms as the minimum standard of the companies' own codes of conduct and to adopt mechanisms for creating accountability within the company.⁸⁰ However the norms met with heavy criticism from business circles, including the ICC, who condemned the "legalistic approach" of the norms.⁸¹ Several influential business organisations staunchly opposed the norms and the appointment of special representative for business and human rights.⁸² This was done in order to avoid the regulatory initiatives on the pretext that the relationship between business entities and the UN might be threatened.⁸³

Prof. John Ruggie was appointed as Special Representative of the Secretary General (SRSG) on issue of Human Rights, Transnational Corporations and other Business Enterprises in July, 2005.⁸⁴ He was given the task of creating new principles or guidelines which shall be acceptable to all the concerned actors of business and human rights. The SRSG brought forward the "Protect, Respect and Remedy" framework

in his 2008 Report. The framework asked for a stringent approach by the states to protect human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication.⁸⁵ As illustrated earlier by Ruggie in his 2009 report that the states have sole responsibility to protect the rights under the international law; the extraterritorial obligation to protect human rights though is unsettled under international law.⁸⁶ The framework required the corporations respect for human rights and to avoid the infringement of the rights of others and address the adverse affects.⁸⁷ Due diligence is required by the corporations to show that they are trying to safeguard the basic and relevant human rights. Finally the framework asked for the access to an effective remedy for the victims of the human rights violations, both judicial and non-judicial.⁸⁸ The framework was formulated into guiding principles which were set forth in March 2011 report, *Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework* to the human rights council.⁸⁹ Shortly thereafter the report was endorsed by the HRC and a working group was established dedicated to, *inter alia*, “effective and comprehensive dissemination and implementation” of its guiding principles.⁹⁰

The *Guiding Principles* are an addition to the bundle of non-binding international law principles on business and human rights. However, the principles brought forward an acceptable framework of “Protect, Respect and Remedy”. The purpose of the guiding principles according to Ruggie is to “clearly differentiate the respective roles of business and governments and make sure they both play their roles”.⁹¹ The principles successfully differentiate between the roles of states and business entities in protecting and respecting human rights but it fails to make sure they both play their roles as there is no enforcement mechanism for the principles nor are these principles binding on states or non-state entities. It was accepted by the SRSG in his previous reports that developing states have a tendency to enact weaker regulations in order to encourage foreign investments by TNC’s.⁹² However the principles only contemplate that the states should make their corporate regulations tighter so that the TNC’s might not get away with human rights violations.⁹³ Thus it is an ambiguous statement in the context where it is a known fact that states already having weak regulatory norms will tighten them; it will only be an achievable task if uniform regulations are unanimously accepted by the states through an international law treaty

with an enforcement mechanism. Furthermore, as contemplated by the SRS in his previous report, the principles failed to give a “legal” platform for a future international instrument that would hold the corporations accountable for human rights violations.⁹⁴ Instead, the remedy is based upon the individual-oriented grievance process within state and corporations.⁹⁵ National human rights institutions (NHRI’s) at national level have been bestowed with the responsibility to identify violations and work in this respect.⁹⁶ Business and Society Exploring Solutions- A Dispute Resolution Community (BASESwiki) was established by the SRS to serve as an online non-judicial mechanism that addresses disputes between companies and its external shareholders.⁹⁷ So the grievance mechanism is related to both state’s responsibility to protect and corporate social responsibility to respect.⁹⁸ As highlighted within the principles itself, it is just an end to the beginning of achieving parity in business and human rights matters. Furthermore, the principles do not claim to end the challenges faced by business regarding the human rights regulation.⁹⁹

Conclusion

It is an agreed statement that CSRs are a set of obligations towards society from which corporations derive their profits. Similarly, there are obligations of TNC’s towards the stakeholders wherever the TNC is involved in business. Some of the CSR obligations are mandatory and the violation of such obligations shall be punishable by law. Corporations, especially TNC’s, are involved in acts and have developed methods to avoid obligatory norms of CSR. Thus, the law must develop to counter TNC’s methods of avoiding CSR. Moreover, it is an understood fact that the developing states have little interest in tackling this issue; they are only interested in maximising foreign investment through friendly regulatory policies for corporations. Therefore, international law must develop to ensure that the states protect the rights of the people; to ensure that the corporations respect the relative human rights norms and that there is an accessible remedy available.

The current rage against corporations all over the globe establishes the fact that the people as stakeholders want more stringent laws and corporate regulations. Thus, the time is ripe for establishing unanimous efforts to get a stringent and uniform set of criminal liability for corporate mishaps. Moreover, the international regulation of TNC’s has evolved progressively but it is the time for a positive approach towards a

treaty or a convention to replace the bunch of soft laws. The Human Rights Commission reports accepted TNC regulation internationally. It went as far as diminishing the shareholders' supremacy in TNC's to stakeholders abroad. Moreover, they advocated for criminal prosecution in corporations. The Norms were a step forward in the same direction but thwarted by international politics dominated by big Business entities. Thereby the guidelines took a few steps backwards through its protect, respect and remedy framework. The protect and respect framework is a reiteration of already established international human rights law norms. The important framework of remedy is friable in nature; no real grievance mechanism is established nor suggested through the guidelines. Thus, the direct involvement of international actors to protect the rights of stakeholders in corporations is far from becoming reality. No single actor is willing to take the responsibility because of high amount of fiscal benefits involved on a high scale.

Notes

¹ Not Quite Together, "Protests are Proliferating around the world....." The Economist, available at <<http://www.economist.com/node/21533377>> Last visited on October 22, 2016.

² Heslin P. A. and Ochoa J. D., *Understanding and Developing Strategic Corporate Social Responsibility*, Vol 7, No. 2 (2008), *Organisational Dynamics*, at 126.

³ Cragg W, *Ethics, globalisation and the phenomenon of self regulation: an introduction*, in W. Cragg(ed.), *Ethics Code, Corporations and the challenge of Globalisation*, (2005) Cheltenham. UK and Northampton. MA, USA: Edward Elgar, pp. 1-19.

⁴ Ruggie J, *Promote Respect and Remedy: A Framework for Business and Human Rights(A/HRC/8/5)*, Office of the United Nations High Commissioner for Human Rights (2008), at 15.

⁵ *Supra* n.2, at 127.

⁶ *Ibid*, at 128.

⁷ See for example Robert J Liubicic, *Corporate Codes of Conduct and Product Labelling Scheme: The limit and Possibilities of Promoting International Labor Rights Standards Through Private Initiatives*, vol 111 No 30 (1998), *Law and Policy International Business*. The article mentions the consumer boycott of footballs made by children.

⁸ Deborah Doane, *Taking Flight: The Rapid Growth Of Ethical Consumerism* (2001), available at <http://www.neweconomics.org/gen/z_sys_publicationdetail.aspx?pid=88> Last visited 10th September 2016.

⁹ For more details see supra n.1, at 128.

¹⁰ Ibid, at 127

¹¹ See Sullivan D P & Conlon D E, *Crisis and Transition in Corporate Governance Paradigms: The Role of the Chancery Court of Delaware*, 31,713 (1997) *Law and Society Review*.

¹² See Blair M M& Stout L A, *A Team Production theory of Corporate Law*, 85 271 (1999) *Va. Law Review*.

¹³ Dine J, *Human Rights and Company Law*, in Addo M K (ed.), *Human Rights Standards and the Responsibility of the Transnational Corporations* (London, Kluwer Law International, 1999).

¹⁴ See Crusto M F, *Green Business: Should We Revoke Corporate Charters for Environmental Violations?*, 63 175 (2003) *La. Law Review*.

¹⁵ See Shields R W, *Community Development Financial Institutions and the Community Development Financial Institution Act of 1994: Good Ideas in Need of Some Attention*, 17,637 (1998) *Ann. Review Banking Law*.

¹⁶ Meeran R, *The Unveiling of Transnational Corporations: A Direct Approach*, in Michael K. Addo ed. (1999), fn 13, at 171 and 177.

¹⁷ Sub commission 1996 report, at 74 - 76

¹⁸ Ibid. P. 72

¹⁹ Ibid. P. 75, 82

²⁰ Ibid. P. 76 - 81

²¹ Ibid. P. 83 - 85

²² M T Kamminga, *Holding Multinational Corporations Responsible Accountable for Human Rights Abuses: A Challenge for the EU*, (1999); *The EU and Human Rights* (Philip Alston ed.), at 553. "The simplest definition of a multinational corporation is 'an enterprise which owns or controls production or service facilities outside the country in which it is based'". For a more detailed analysis of the definition of TNCs and MNEs and the difference between Domestic and International Business see, David Weissbrodt & Muria Kruger, *Norms on the Responsibilities of Transnational Corporations and Other*

Business Enterprises with Regard to Human Rights, 97, 901 (2003) American Journal of International Law, at 907-912.

²³ See Robe J P, *Multinational Enterprises: The Constitution of a Pluralistic Legal Order*, in Teubner G (ed.), *Global Law without a State*, (Michigan, Ashgate Publishing, 1997), at 52-56.

²⁴ See for example, Grossman R L & Adams F T, *Taking Care of Business: Citizenship and the Charter of Incorporations* 6 (1993); Thompson G, *Multinational Corporations and Democratic Governance*, in McGrew A (ed.), *The Transformation of Democracy? Globalisation and Territorial Democracy* (London, Wiley, 1997), at 153 – 154.

²⁵ Wells C & Elias J, *Catching the Conscience of the King: Corporate Players on the International Stage*, in Alston P (ed.), *Non-State Actors and Human Rights* (Oxford, Oxford Uni. Press, 2005), at 142.; see also Grossman C. & Bradlow D.D., *Are we being Propelled Towards a People-Centered Transnational Legal Order?* 9, 1 (1993) American University Journal of International Law and Policy.

²⁶ See for example, Lukes S, *Five Fables about Human Rights*, in Shute S & Harley S (eds.), *On Human Rights* (London, Basic Books, 1993).

²⁷ See Scherer A G & Palazzo G, *Globalisation and Corporate Social Responsibility*, Crane A. and McWilliams A. et al (eds.), *The Oxford Handbook of Corporate Social Responsibility*, (Oxford, Oxford Uni. Press, 2008), at 418-423.

²⁸ See Ratner S R, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 (2001) *Yale Law Journal*, at 448 – 449.

²⁹ Ghemawat P, *The Forgotten Strategy*, 81 (2003) *Harvard Business Review*, at 76-84.

³⁰ See Mokhiber R. & Weissman R., *Corporate Predators: The Hunt for Mega-Profits and the Attack on Democracy*, (New York, Common Courage Press, 1999); See also Kortan D.C., *When Corporations Rule the World*, (San Francisco, CA: Berret-Koelher, 2001).

³¹ See Roberts J, *Glitter and Greed, The Secret World of the Diamond Cartel*, (New York, Penguin, 2003), See also Dunfee T.W. & Fort T.L., *Corporate Hypergoals, Sustainable Peace and the Adapted Firm*, *Vanderbilt Journal of Transnational Law*, 36 (2003), at 563-617.

³² Taylor K.M., *Thicker the Blood: Holding Exxon Mobil Liable for Human Rights Violations Committed Abroad*, 31, 2 (2004) *Syracuse Journal of International Law and Commerce*, at 274-297.

³³ See Beaver W, *Battling Wal Mart: How Communities can Respond*, 110, 2(2005) *Business and Society Review*, at 159-169.

³⁴ *Supra* n.16, at 161.

³⁵ See Oloka-Onyango J, *Reinforcing marginalised rights in an age of Globalisation: International Mechanisms, Non State Actors and the Struggle for Peoples Rights in Africa*, 18 (2003) *Am. U. Int'l. Law Review* 851 – 895.

³⁶ See for example, Baade H.W., *The Legal Effects of Codes of Conduct for MNE's*, in Norbert Horn (ed.), *Legal Problems of Codes of Conduct for Multinational Enterprises* (California, Aspen Pubs., 1980).

³⁷ See Shamir R., *Between Self Regulation and the Alien Tort Claim Act: On the Contested Concept of Corporate Social Responsibility*, 38 (2004) *Law and Society Review*, at 635, 636.

³⁸ See Backer L.C., *Multinational Corporations, Transnational Law: The United Nations Norms on the Responsibilities of Transnational Corporations as a Harbinger of Corporate Social Responsibility in International Law*, XX (2006) *Columbia Human Rights Law Review*, at 118.

³⁹ Greenfield K, *There's a Forest in those Trees: Teaching about the Role of Corporations in Society*, 34 (2000) *Ga. Law Review*, at 1011.

⁴⁰ *Supra* n.38, at 119

⁴¹ *Ibid*, at 120.

⁴² *Ibid*.

⁴³ *Ibid*.

⁴⁴ See, e.g., Redmond P., *Transnational Enterprise and Human Rights: Options for Standard Setting and Compliance*, 37, 73 (2003) *Int'l Law*.

⁴⁵ *Supra* n.38, at 121.

⁴⁶ See Korten D.C., *When Corporations Rule the World*, 124-126 (1995), Sunkel O., *Big Business and "Dependencia": A Latin American View*, 50 517 (1972) *Foreign Affairs*.

⁴⁷ See Galanter M., *Law's Elusive Problem: Learning From Bhopal*, in Likosky M.B. (ed.), *Transnational Legal Processes: Globalization and Power Disparities* (Edinburgh, Butterworth, 2002), at 172.

⁴⁸ For detailed discussion on maintaining supremacy of the corporate governance in corporate sector see for example Romano R., *The State Competition Debate in Corporate Law*, 8(1987) *Cardozo Law Review*, at 709; see also Loewenstein M.J., *Delaware as Demon: Twenty-Five Years After Professor Cary's Polemic*,

71 497 (2000) University of Colorado Law Review. For discussion on the Human Rights Law aspects see documents of the former human rights commission and now human rights council.

⁴⁹For an excellent summary, see Muchlinski P.T., *Multinational Enterprises and the Law* (Oxford, Oxford Uni. Press, 2007), at 1–11, 90–115, 573–604.

⁵⁰ECOSOC, Sub-Comm'n on Prevention of Discrimination & Protection of Minorities, *Working Document: The Realization of Economic, Social and Cultural Rights: The Question of Transnational Corporations*, para 16, U.N. Doc. E/CN.4/Sub.2/1998/6 (June 10, 1998) (prepared by Mr. El Hadji Guissé), available at [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.1998.6.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.Sub.2.1998.6.En?Opendocument); see also Menno T. Kamminga, *Holding Multinational Corporations Accountable for Human Rights Abuses: A Challenge for the EC*, in *The EU and Human Rights* 553 (Philip Alston ed., 1999) (describing TNC complicity in human rights abuses in Africa). For more details about TNC's involvement in human rights abuses see Rodman K.A., "Think Globally Punish Locally": *Nonstate Actors, Multinational Corporations, and Human Rights Sanctions*, *Ethics and International Affairs*, Volume 12(1998).

⁵¹ *Supra* n.2, at 130

⁵²ECOSOC, Sub-Commission on Prevention of Discrimination & Protection of Minorities, *The Realization of Economic, Social and Cultural Rights: The Relationship Between the Enjoyment of Human Rights, in Particular, International Labour and Trade Union Rights, and the Working Methods and Activities of Transnational Corporations*, U.N. Doc. E/CN.4/Sub.2/1995/11 (July 24, 1995), at p. 57 & 89.

⁵³ Human Rights Watch annual report 2006.

⁵⁴ *Supra* n. 38, at 127.

⁵⁵ Development and International Economic Cooperation: Transnational Corporations, UN Doc. E/1990/94; see also Draft United Nations Code of Conduct on Transnational Corporations, May 1983, 23 ILM 626 (1984).

⁵⁶ Organisation for Economic Co-operation and Development, *Guidelines for Multinational Enterprises*, June 21, 1976, 15 ILM 969 (1976). The guidelines were updated in 2000, for updated version see OECD Guidelines for Multinational Enterprises (Oct. 31, 2001), available at <<http://www.oecd.org/>> Last visited 10th Sept. 2016.

⁵⁷ International Labour Organisation, *Tripartite Declaration of Principles Concerning Multinational enterprises and Social Policy*, Nov. 16, 1977, 17, ILM 422, para 6 (1978), available at

<<http://www.ilo.org/public/english/employment/multi/tridecl/index.htm>> Last visited 10th September, 2016.

⁵⁸ Secretary-General Kofi Anan, Address at the world economic forum in Davos, Switzerland (31 Jan. 1999), UNDoc.SG/SM/6448 (1999).

⁵⁹ See Global Compact at < <http://www.unglobalcompact.org/>> Last visited 10th Sept. 2016.

⁶⁰Price Waterhouse Coopers, *The UN Global Compact: Moving to the Business Mainstream, An Interview with George Kell, Executive Head, 2* (2005), The Corporate Responsibility Report, at13.

⁶¹ Quoting Sethi S.P. in Williams O.F., *The UN Global Compact: The Challenge and the Promise* 14 (2004) Business Ethics Quarterly, at p. 762. For more detailed description, function and critical analysis of the “Global Compact” see Hummel H., *The United Nations and Transnational Corporations*, Paper for the Conference: Global Governance and the Power of Business, Dec. 8-10 2005, Wittenberg. See also Justine Nolan, *The United Nations Compact with Business: Hindering or Helping the Protection of Human Rights*, University of New South Wales Faculty of Law Research Series 2010, Paper 10.

⁶²Accessed at <http://www.fairlabor.org>.

⁶³Accessed at <http://www.sa-intl.org>.

⁶⁴⁶⁴Accessed at <http://www.ethicaltrade.org>.

⁶⁵Accessed at <http://www.globalreporting.org>.

⁶⁶Accessed at <http://www.state.gov/g/drl/rls/2931.htm>.

⁶⁷Accessed at http://www.transparency.org/building_coalitions/private_sector/business_principles/dnld/business_principles2.pdf (last visited October 6, 2016).

⁶⁸ ECOSOC 1995 report, at 89 – 97.

⁶⁹ ECOSOC 1995 report, at 142.

⁷⁰ECOSOC, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The Impact of the Activities and Working Methods of Transnational Corporations on the Full Employment of all Human Rights, in Particular Economic, Social, and Cultural Rights and the Right to Development, Bearing in Mind Existing International Guidelines, Rules and Standards Relating to the Subject Matter*, U.N. Doc. E/CN.4/Sub.2/1996/12 (July 2, 1996). The report explains that “even though each TNC subsidiary is, in principle, subject to its host country’s regulations, the TNC as a whole is not fully accountable to any

single country. The same is true for responsibilities they fail to assume for activities of their subsidiaries and affiliates”, at 72.

⁷¹ECOSOC, Sub-Commission on Prevention of Discrimination & Protection of Minorities, *Working Document: The Realization of Economic, Social and Cultural Rights: The Question of Transnational Corporations*, para 16, U.N. Doc. E/CN.4/Sub.2/1998/6 (June 10, 1998), at 7

⁷² Ibid at 13

⁷³ Ibidat 19 - 20

⁷⁴ Ibid at 25 - 26

⁷⁵Sub-Commission on the Promotion and Protection of Human Rights Res. 2003/16, at 53, U.N. Doc. E/CN.4/Sub.2/2003/L.11 (August 13, 2003). For more details about the adoption of the norms see, Weissbrodt D & Kruger M, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regard to Human Rights*, 97 (2003) American Journal of International Law.

⁷⁶Supra n.38, at 102.

⁷⁷ Ibid, at 102

⁷⁸Special Representative of the Secretary General on the issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect Respect and Remedy” Framework*, UN Doc. A/HRC/17/31 (March 21, 2011) by John Ruggie, Article 1.

⁷⁹Supra Note 22, at 913.

⁸⁰ Supra Note 38, para 15.

⁸¹ See Koenig-Archibugi, Mathias; *Transnational Corporations and Public Accountability*, 39, 2 (2004) Government and Opposition, at 258-259.

⁸²Justine Nolan, *The United Nations Compact with Business: Hindering or Helping the Protection of Human Rights*, University of New South Wales Faculty of Law Research Series 2010, Paper 10, at 19.

⁸³Ibid.

⁸⁴ United Nations doc. SGA/A/934.

⁸⁵2008 report.

⁸⁶ Ibid, at 7.

⁸⁷Ibid.

⁸⁸ Ibid.

⁸⁹ Supra n. 78.

⁹⁰ United Nations, *Human Rights Council, Human Rights and Transnational Corporations and Other Business Enterprises*, UN Doc. A/HRC/17/L.17/Rev.1/ (October 15, 2016).

⁹¹ OECD, Prof. John Ruggie on Business and Human Rights , Dec. 10, 2010. Also available on Youtube at <<http://www.youtube.com/watch?v=dVDupBFJiqE>> Last Visited on September 11, 2016.

⁹² 2009 report.

⁹³ See Article 3 of the Guiding Principles and its commentary.

⁹⁴ Supra n.78.

⁹⁵ T.J.Melish & E.Meidinger, *Protect, Respect Remedy and Participate: New Governance Lessons for Ruggie Framework*, Buffalo Legal Studies Research Paper No. 2012-019, at 13.

⁹⁶ 2009 report, at 24.

⁹⁷ See <<http://www.baseswiki.org> >

⁹⁸ 2009 report, at 26.

⁹⁹ Supra n. 78, introductory article 13.