KHAYDARALI M. YUNUSOV,
VALERIYA OK & HUSNIDDIN OCHILDIYEV
(University of World Economy and Diplomacy, Tashkent, Uzbekistan)

# The Roles and Responsibilities of Transnational Corporations with Regard to Human Rights

## 1. INTRODUCTION

Throughout the past half-century, states and international organizations have continued to expand the codification of International Human Rights Law protecting the rights of individuals against governmental violations. However, at the dawn of the 21st century one of the most important changes in the human rights debate is the increased recognition of the link between business and human rights. Several decades after the adoption of the Universal Declaration of Human Rights, the Cold War was the central political framework for viewing the world. Over the ten years since the Cold War effectively ended, however, the world has begun to look very different.

Transnational corporations (hereinafter referred as TNCs) –also called Multinational Enterprises (MNEs) or Multinational Corporations (MNCs)– [1] evoke particular concern in relation to recent global trends because they are active in some of the most dynamic sectors of national economies, such as extractive industries, telecommunications, information technology, electronic consumer goods, footwear and apparel, transport, banking and finance, insurance, and securities trading.

Some transnational corporations, however, do not respect minimum international human rights standards and can thus be implicated in abuses such as employing child labourers, discriminating against certain groups of employees, failing to provide safe and healthy working conditions, attempting to repress

[1] A transnational corporation can be defined as an economic entity 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 (*Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, UN Economic and Social Council of 26 August 2003, available online at *www.unhchr.ch/Huridocda/Huridoca.nsf*).

independent trade unions, discouraging the right to bargain collectively, limiting the broad dissemination of appropriate technology and intellectual property, and dumping toxic wastes. Some of these abuses disproportionately affect developing countries, children, minorities, and women who work in unsafe and poorly paid production jobs, as well as indigenous communities and other vulnerable groups.

Negative impacts of the activities of TNCs in host countries, particularly in developing countries, have led to recognition of the need to strengthen the international legal norms, especially within the framework of UN. Thus, in 1974 UN General Assembly adopted the Charter of Economic Rights and Duties of States, which lays down that the State has the right

> «to regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies.» [2]

Furthermore, the activities of TNCs with regard to supporting and respecting the protection of human rights could be positive in nature, affecting the state through encouraging them to improve domestic legislation and policies in this field. Moreover, TNCs can assist to promote public understanding of human rights.

Thus, the question of clarification of roles played by TNCs with regard to human rights is of ultimate significance and it requires a theoretical examination.

In addition, the view of existing initiatives and standards on TNCs and human rights indicates that there is a gap in understanding the nature and scope of responsibilities of TNCs with regard to human rights. This fact also determines the relevance of this research study. In doing so, the authors do not in any way impinge upon the challenge to the classical theory of international human rights law which establishes that the primary responsibility for implementing the legislation on human rights is vested in the State.

The purpose of this research is to define clearly the nature of the multifaceted roles played by TNCs in international human rights law; to examine main international instruments governing the responsibilities of TNCs with regard to human rights, as well as to provide possible leads on how to improve the theoretical and practical aspects in order to reduce the number of cases of TNCs' involvement in human rights abuses.

To achieve abovementioned purpose our research tasks will try to:

- Recognize the close link between TNCs and human rights in the contemporary conditions of development of society;
- Identify and define the role, significance and legal status of TNCs in international human rights law;
- Establish the scope of responsibilities of TNCs with regard to the promotion and support the protection of human rights, while not exposing

---

2 *Charter of Economic Rights and Duties of States* of 1974. Art.2, p.2 (b).

the spread of primary liability of States for implementation of human rights legislation;

• To review, summarize and systematize the international legal instruments governing the responsibilities of TNCs with regard to the promotion and support the protection of human rights;

• To develop and examine main international mechanisms for the implementation of the principles of responsibilities of TNCs with regard to human rights:

• To formulate conclusions and proposals concerning the proper definition of roles and responsibilities of TNCs with regard to human rights on the basis of the study.

## 2. THE ROLES AND SIGNIFICANCE OF TRANSNATIONAL CORPORATIONS IN INTERNATIONAL HUMAN RIGHTS LAW

The classical theory on Human Rights does not accept any link other than that between people and State. In other words, from the very emergence of a State being as a main actor in the international society, the protection of fundamental human rights has been traditionally applicable to its scope of responsibility. Therefore, in modern society, States carry out both the protection and the violation of human rights. [3]

However, since International Human Rights Law appeared in the twentieth century, more and more attention has been paid to the question of the legal personality of transnational corporations. Although TNCs themselves do not possess legal personality in order to participate in international relations as well as in the creation of norms of international law, we subscribe to the opinion of Professor Y. M. Kolosov who considers that

> «Transnational corporations correspond to a drastically new level of international differentiation of labour which gives the right to talk about the foundation of so-called Transnational Law as a branch of International Economic Law within the framework of which TNCs could hold not only rights but also obligations.» [4]

While speaking about the legal personality of transnational corporation in International Human Rights Law, one should not neglect the fact that the whole structure of sustainable development including human rights is necessarily dependent on transnational corporations' direct participation.

It is evident in Principles 5 and 27 of the Rio Declaration on Environment and Development of 1992, where the obligations arising from sustainable

---

3 Kurtis F. J. Dobbler: *Izuchenie mejdunarodnogo prava prav cheloveka [Studying International Human Rights Law],* Tashkentskiy Gosudarstvenniy Yuridicheskiy Istitut, Tashkent, 2004, p. 6

4 Y. M. Kolosov & E. S. Krivchikova: *Mejdunarodnoe pravo [International Law],* Uchebnik. Mejdunarodnie otnosheniya, Moscow, 2000, p. 86

development are addressed to «all States and people». At the same conference Agenda 21 of the Rio Declaration was adopted. Chapter 30 of this Agenda spells out the role of transnational corporations in sustainable development, particularly by increasing the efficiency of resource utilization, promotion of cleaner production, reduction of waste, environmental reporting, and other concerns.

Likewise, The United Nations Millennium Declaration, adopted in 2000 by the General Assembly, recognizes the role of industry and transnational corporations expressly in making essential drugs available and affordable in less developed countries and engaging in programs in pursuit of poverty eradication (Principle 20) and implicitly in most other principles.

The corollary of these instruments is the 2002 World Summit on Sustainable Development Johannesburg Declaration on Sustainable Development which expressly stated, «in pursuit of its legitimate activities the private sector […] has a duty to contribute to the evolution of equitable and sustainable communities and societies». [5] Similarly, Principle 29 is adamant that: «there is a need for private sector corporations to enforce corporate accountability, which should take place within a transparent and stable regulatory environment». [6]

On a regional level, the European Union Parliament in its response to the Commission's Communication concerning Corporate Social Responsibility and business contribution to sustainable development noted the «widespread and increasing recognition that undertakings have obligations other than just making profits». [7]

More significantly, the Preamble to the Universal Declaration of Human Rights, which is no longer a mere standard-setting instrument but an expression of customary international law, 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.»

Let us now analyze the role that transnational corporations play in International Human Rights Law as well as their capacity to influence government policy and practice.

On one hand, the financial strength of most transnational corporations and the desire of less developed countries to attract foreign investment make TNCs be able to promote the economy of receiving countries. Transnational corporations organize modern, high-technological production, provide with new

---

5 See: *Johannesburg Declaration on Sustainable Development of 2002*, World Summit on Sustainable Development, Agenda Item No. 13, para. 27, revised UN. Doc. A/ CONF.199/L.6/Rev.2/Corr.1 (available online at *papers.ssrn.com/sol3/Delivery.cfm/SSRN_ ID976543_code512185.pdf?abstractid=976543&mirid=1*).

6 *Ibidem*, Agenda Item No. 13, para. 29

7 See: Commission of the European Communities: *Report on the Communication from the Commission Concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development*, Brussels 2 July 2002.

work places, promote export and import, and train local staff in the use of up-to-date technology and manufacturing methods.

In doing so, many TNCs have also taken steps to help promote public understanding of human rights. For example, it is widely known that a decade ago the Italian clothing retailer Benetton launched a successful public advertising campaign to mark the 50th anniversary of the Universal Declaration of Human Rights. Likewise, there is the annual award to young human rights activists given by Reebok International Ltd. Other TNCs have chosen to help raise awareness of human rights by creating sections on their web sites devoted to human rights, many of which offer links to human rights organizations. [8]

On the other hand, the larger the investment of transnational corporation in a given country is, the greater the economic dependence of the host State becomes. In this respect, powerful TNCs may demand from weaker States favorable concessions regarding minimum wages, security measures, limitations in technology transfers, taxation, and others. Similarly, the larger the democratic deficit of less developed countries public governance, the more likely it is that corruption will be rife and pressure to sustain the particular investment status will be maintained. The transnational corporation will likewise apply significant pressure to the home State in order to achieve the same results at an inter-governmental level, [9] to win contracts, and/or to promote a political regime that will safeguard the interests of the subsidiary in the host State. On a more global level, it has been transnational corporations that have persistently lobbied industrialized States toward trade liberalization through the lifting of tariffs and domestic subsidies. [10]

The framework for determining what human rights issues are linked to transnational corporations is addressed through the UN Secretary-General's Global Compact launched in Davos in 1999. Some authors call these scopes as the core Corporate Social Responsibility Principles. [11] The Global Compact has identified responsibilities of transnational corporations related to human rights in broad aspect in connection with two principles:

- Principle One: transnational corporations should support and respect the protection of internationally proclaimed human rights;
- Principle Two: transnational corporations should make sure that they are not complicit in human rights abuses.

---

8 See: UN High Commissioner for Human Rights: *Business and Human Rights: A Progress Report*, January 2000, p. 15.

9 Arvind Ganesan: «Human Rights, the Energy Industry, and the Relationship with Home Governments», in Asbjørn Eide, Helge Ole Bergesen & Pia Rudolfson Goyer (eds.): *Human Rights and the Oil Industry*, Intersentia, 2000, p. 15.

10 Vivien A. Schmidt: «The New World Order, Incorporated: The Rise of Business and the Decline of the Nation State», *Daedalus*, Vol. 124, No. 2 (1995).

11 Ilias Bantekas: «Corporate Social Responsibility in International Law», *Boston University International Law Journal,* Vol. 309 (2004), p. 25.

What do they mean? The first two responsibilities –to «respect» and to «support» human rights– relate to the acts and omissions of transnational corporation itself, while the third responsibility –to «make sure they are not complicit» in human rights abuses– concerns the relationship between transnational corporations and third parties.

Going into details, the responsibility to «respect» human rights requires transnational corporations to refrain from acts that could interfere with the enjoyment of human rights. As for the responsibility to «support» human rights, more complex issues arise. For example, the responsibility «to support» human rights suggests that transnational corporations carry positive responsibilities to promote human rights. On the one hand, transnational corporations have a great and sometimes untapped potential to promote human rights through investment, and promotion of economic growth and the underlying conditions required for the enjoyment of human rights. The responsibility to «support» human rights could help channel this. On the other hand, accepting that transnational corporations have positive responsibilities to use its influence to promote human rights could sit uneasily with the traditional discretion of States to make appropriate choices and exercise balance in designing policies to fulfill human rights. [12]

Anthony Ewing, suggests the following five examples of responsibilities to «support» human rights:

- Not to interfere with or oppose government efforts to protect human rights.
- To initiate stakeholder dialogues and to communicate openly with human rights organizations.
- To become human nights advocates.
- To educate employees and other stakeholders in human rights.
- And to build capacity of governments and others effectively to respect, ensure and promote human rights. [13]

In this context, it is relevant to note that transnational corporations already carry positive responsibilities in other areas of national law, for example in the law of negligence when discharging a duty to care to employees or local communities. This could provide guidance when clarifying the positive responsibilities on transnational corporations to support human rights.

The responsibility on transnational corporations to «make sure they are not complicit in human rights abuses» similarly raises complex issues. Corporations

---

12 See: *Report of the Sub-Commission on the Promotion and Protection of Human Rights*, ECOSOC. E/CN.4/2005/91 of 15 February 2005, pp. 31-32 (available online at *www.realizingrights.org/pdf_May09.pdf*).

13 Anthony Ewing: *Understanding the Global Compact Human Rights Principles in Embedding Human Rights Business Practice*, United Nations Global Compact / Office of the United Nations High Commissioner for Human Rights, New York, 2004, p. 38.

often act with other partners in joint ventures or with national and local governments, which could lead to allegations of complicity if the partner itself has abused human rights. One definition of «complicity» states that a company is complicit in human rights abuses or it authorizes, tolerates, or knowingly ignores human rights abuses committed by an entity associated with it, or if the company knowingly provides practical assistance or encouragement that has a substantial effect on the perpetration of human rights abuse.

There are four situations where an allegation of complicity might arise against a company.

- First, when the company actively assists, directly or indirectly, in human rights violations committed by others.
- Second, when the company is in a partnership with a government and could reasonably foresee, or subsequently obtains knowledge, that this government is likely to commit abuses in carrying out the agreement.
- Third, when the company benefits from human rights violations even if it does not positively assist or cause them.
- Finally, fourth, when the company is silent or inactive in the face of human rights violations. [14]

From our point of view, the duty of transnational corporations to act or not act in each of these situations might not always be clear. Questions arise as to the extent of knowledge that the transnational corporations had or should have in relation to the human rights abuse and the extent to which they assisted through its acts or omissions in the abuse.

Unlike the limits on States' human rights obligations, the boundaries of the human rights responsibilities of transnational corporations are not easily defined by reference to territorial limits. However, on the whole, defining the boundaries of transnational corporation responsibility for human rights therefore requires the consideration of other factors such as the size of the company, the relationship with its partners, the nature of its operations, and the proximity of people to its operations.

A helpful means to understand the scope and boundaries of the responsibilities of transnational corporations is the non-legal concept of «sphere of influence». The concept has not been defined authoritatively. However, the «sphere of influence» of a business entity tends to include the individuals to whom it has a certain political, contractual, economic or geographical proximity. Every business entity, whatever its size, will have a sphere of influence: the larger the company is, the larger its sphere of influence is likely to be. [15] From that perspective, we can say for sure that the sphere of influence of a transnational corporation is enormous. Furthermore, it is relevant to note that the Global

---

14 *Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies*, International Council on Human Rights Policy, Geneva, 2002, pp. 125-136

15 *Beyond Voluntarism…,* cit., p. 136.

Compact asks participating business entities «to embrace, support and enact, within their sphere of influence» its ten principles.

The concept of «sphere of influence» could be helpful in clarifying the extent to which transnational corporations should «support» human rights and «make sure they are not complicit in human rights abuses» by setting limits on responsibilities according to a corporation's power to act. Besides, it is important to acknowledge that «sphere of influence» could help clarify the boundaries of responsibilities of a transnational corporation in relation to other entities in the supply chain such as subsidiaries, agents, suppliers and buyers by guiding the assessment of the degree of influence that one company exerts over a partner in its contractual relationship –and therefore the extent to which it is responsible for the acts or omissions or subsidiary or a partner down the supply chain–. [16] For instance, a claim against a parent company for acts allegedly committed by a subsidiary or agent raises complex legal questions of the extent to which a parent company can be held liable for the action of its subsidiaries, particularly where the subsidiary is not subject to the laws of the home country. Legal companies generally protect parent companies from liability resulting from the acts or omissions of subsidiaries. The establishment of liability of the parent company requires «piercing the corporate veil» by demonstrating a sufficiently substantial connection between the parent company and its subsidiary. This generally requires some degree of regular control by the parent company and knowledge of events and decisions of the subsidiary. [17]

At the same time, the concept of «sphere of influence» should help draw the boundaries between the responsibilities of transnational corporations and the obligations on States so that the formers do not take on the policing role which governments ought to exercise.

## 3. LEGAL ASPECTS OF THE RESPONSIBILITIES OF TRANSNATIONAL CORPORATIONS WITH REGARD TO HUMAN RIGHTS IN THE SYSTEM OF INTERNATIONAL LEGAL ACTS

Initiatives and standards relevant to the responsibility of transnational corporations with regard to human rights have increased rapidly over the last fifteen years. Both governmental bodies and non-governmental organizations have done a great deal of work in this respect, the former group mainly during the 1970s and 1980s. In this context, it is a challenge for transnational corporations to implement these standards in practice, and to establish credible systems of public accountability.

---

16 See: *Report of the Sub-Commission on the Promotion and Protection of Human Rights*, cit.

17 David Kinley & Junko Tadaki: «From Talk to Walk: The Emergence of Human rights responsibilities for Corporations at International Law», *Virginia Journal of International Law* Vol. 44, No. 4 (2004), pp. 931-1023, in p. 962.

### 3.1 The Universal Declaration of Human Rights of 1948

The starting point is the keystone human rights document: the Universal Declaration of Human Rights (UDHR) of 1948. The aim of this Declaration was to set basic minimum international standards for the protection of the rights and freedoms of the individual. The fundamental nature of these provisions means that they are now widely regarded as forming a foundation of International law. In particular, the principles of the UDHR are considered to be international customary law and do not require signature or ratification by the states to be recognized as a legal standard. However, while not all principles in the Declaration are directly relevant to business, practices that are inconsistent with the Universal Declaration will be viewed as violating human rights. A small but growing number of corporations have explicitly recognized this in recent years as they have publicly stated their commitment to support the Universal Declaration, either in their global business principles, codes of conduct, or by endorsing the Global Compact with business. A statement of commitment is one step in developing a long-term sustainable process that leads to greater transparency and accountability of corporate actions.

Let us now examine various most important instruments, which are relevant to the roles and responsibilities of transnational corporations with regard to human rights.

As for the understanding the legal status of initiatives, one should acknowledge that international legal instruments addressing transnational corporation issues are channeled in two ways:

- Through binding treaties in which State entities are the direct addressees of rights and obligations, but which directly affect and have a domestic impact upon transnational corporation operations,
- By means of «soft law» that is directly addressed to transnational corporations. Examples of the former include the vast majority of International Labour Organization (ILO) conventions, industrial pollution-related treaties, and others, while examples of «soft law» include the OECD Guidelines, the UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights, the Preamble to the 1948 Universal Declaration on Human Rights, the 1992 Rio Declaration on Environment and Development, and others.

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

On August 13 2003, the United Nations Sub-Commission on the Promotion and Protection of Human Rights approved the «Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights» (hereinafter referred to as «the Norms») in its Resolution 2003/16. The Norms represent a landmark step in holding businesses accountable for their human rights abuses and constitute a succinct, but comprehensive, restatement of the international legal principles applicable to transnational corporations with regard to human rights, humanitarian law, international labour law, environmental law, consumer law, anticorruption law, and so forth. In fact, the Norms are the first non-voluntary initiative accepted at the international level. The Norms attempt to impose direct responsibilities on transnational corporations as a means of reaching comprehensive protection of all human rights –civil, cultural, economic, political and social–. Thus these Norms constitute an attempt in filling the gap in understanding the expectations on transnational corporations in relation to human rights. [18]

The Norms not only reflect and restate a wide range of human rights, labour, humanitarian, environmental, consumer protection, and anticorruption legal principles, but also incorporate best practices for corporate social responsibility. Besides, the Norms do not endeavor to freeze standards by drawing on past drafting efforts and present practices; they incorporate and encourage further evolution.

The Norms appear to be more comprehensive and more focused on human rights than any of the international legal or voluntary codes of conduct drawn up by the ILO, the OECD, the European Parliament, the UN Global Compact, trade groups, individual companies, unions, NGOs, and others. The Norms and Commentary provide for the right to equality of opportunity and treatment; the right to security of persons; the rights of workers, including a safe and healthy work environment and the right to collective bargaining; respect for international, national, and local laws and the rule of law; a balanced approach to intellectual property rights and responsibilities; transparency and avoidance of corruption; respect for the right to health, as well as other economic, social, and cultural rights; other civil and political rights, such as freedom of movement; consumer protection; and environmental protection. With respect to each of those subjects, the Norms largely reflect, restate, and refer to existing international norms, in addition to specifying some basic methods for implementation.

---

18 See: *Report of the Sub-Commission on the Promotion and Protection of Human Rights*, cit.

### 3.3 The OECD Guidelines for Multinational Enterprises

One of the most influential public international legal instruments that regulate the responsibilities of transnational corporations with regard to human rights is the OECD «Guidelines for Multinational Enterprises». Unlike other «soft law» that is addressed by particular bodies of international organizations to their member States, the OECD Guidelines are recommendations addressed by governments to TNCs. The list of Governments includes those of thirty OECD member States and eight adhering non-member States. [19]

The Guidelines were first published in 1976 and most recently updated in 2000. The revised document covers a rather broad spectrum of issues ranging from compliance with local laws and regulations, refraining from anti-competitive practices, safeguarding of consumer interests and meeting host country tax liabilities. Among the major improvements that were resulted from the revised document are that the Guidelines have become globally applicable. Moreover, the language on human rights is far stronger. New chapters on bribery and consumer interests have been added. Likewise, the chapter on Environment is reinforced. Finally, the implementation procedures of the Guidelines have been enhanced.

However, we are most interested in a separate recommendation of the Guidelines which relates to human rights generally, asking transnational corporations to «respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments». [20]

### 3.4 The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

Adopted in 1977, the International Labor Organization Tripartite Declaration contains a set of recommendations concerning basic labour practices, based on ILO principles. It is a universally applicable and comprehensive document, which is proved by the fact that it was worked out by governments, employer associations and employee associations. The interdependent aims of the Tripartite Declaration are, on one hand, to encourage the positive contribution that investment by transnational corporations can make to economic and social progress, and on the other hand, to minimize and resolve the difficulties to which such investment may give rise.

The importance of the ILO Tripartite Declaration is that it identified a long list of conventions and recommendations that contain principles that are

---

19 These eight countries are: Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania and Slovenia.

20 OECD: Guidelines for Multinational Enterprises, Revision 2000. P. 2 PII (available online at *www.oecd.org/dataoecd/56/36/1922428.pdf*).

appropriate to apply to transnational corporations as well. In that sense, it is a significant and historic document.

Although the ILO Tripartite Declaration is voluntary for transnational corporations, the ILO conventions it refers to are binding on States parties. It, therefore, emphasizes the international authority of its source.

It is remarkable that the ILO Declarations and the OECD Guidelines are not mutually exclusive; indeed, they are complementary, stressing further the cohesion and consistency of responsibilities of transnational corporations in International law.

## 4. INTERNATIONAL LEGAL INSTRUMENTS AND MECHANISMS OF IMPLEMENTING THE FUNDAMENTAL PRINCIPLES OF RESPONSIBILITY OF TRANSNATIONAL CORPORATIONS WITH REGARD TO HUMAN RIGHTS

Although international efforts continue to elaborate agreed standards to guide TNC social responsibility actions, there is also growing recognition of the importance of designing implementation steps that will give life to the standards' application. Much attention is put to implementation or monitoring mechanisms of existing instruments as enforcement of corporate social responsibility principles with regard to human rights, is poor. It is remarkable that one difficulty with implementation measures is the large variation among standards in their degree of specificity and applicability to particular industries and business operations. [21] However, we aim at discussing available as well as feasible ways of realizing accountability of transnational corporations with regard to human rights.

Ensuring that TNCs respect human rights is first a matter of state action at the domestic level. States have undertaken international obligations to respect the rights of individuals and groups of individuals and to protect those rights against the actions of third parties. Many countries have introduced human rights implementing legislation that regulates TNCs in areas such as discrimination and workers' human rights.

However, it should be noted that besides the few instances of domestic legislation demanding that certain corporations submit social and environmental reports or submit the information as part of their financial reports, all other reporting initiatives are voluntary. For instance in 2002, 45% of Global Fortune Top [22] companies produce social, environmental or sustainability reports in addition to their financial reports.

---

21 UNCTAD: *The Social Responsibility of Transnational Corporations*, United Nations, New York-Geneva, 1999, p. 7.

22 The *Fortune Global 500* is a ranking of the top 500 corporations worldwide as measured by revenue. The list is compiled and published annually by *Fortune* magazine (see *http://en.wikipedia.org/wiki/Fortune_Global_500*).

It should be noted that several companies have begun to conduct systematic measure of their performance on human rights issues. For instance, Novo Nordisk, the Danish biotechnology company, has made human rights one of the key elements of its social commitment. In its first social report, the company committed itself to developing and reporting on the human rights policy it develops. British Telecom, in its 1999 Social Report, also references human rights in its reporting on sustainable development. Several companies working on labour standards have made extensive human rights information available. These range from the disclosure of garment factories producing for multinational brands, to independent verification reports made broadly available, to the convening of a panel of outside experts commissioned to establish independent monitoring programs, to the development of new independent entities that oversee monitoring and who will report publicly to consumers. [23] Great collaborative efforts are also made by non-governmental initiatives, the most respected of which are the Global Reporting Initiative, the Fair Labour Association and the Global Sullivan Principles.

The two major public international guidelines, the UN Global Compact and the OECD Guidelines, do not themselves contain a particular reporting mechanism to which TNCs are invited to subscribe. However, it does not mean that signing of Global Compact, for instance, does not oblige signers to take for anything. To a larger extent the UN Global Compact appeals to real voluntary interest of TNCs, trade unions and civil organizations to apply its core principles and share their experience with each other. Consequently, a TNC which adheres to Global Compact should report publicly how it operates applying these principles particularly stressing on reports on sustainable development.

The OECD Guidelines for Multinational Enterprises, in its turn, foresees the institutional set-up for promoting implementation. It consists of two main elements: the National Contact Points, and the Committee on International Investment and Multinational Enterprises

The National Contact Point (hereinafter referred to as NCP) is a government office responsible for encouraging observance of the Guidelines in a national context and for ensuring that the Guidelines are well known and understood by the national business community and by other interested parties. The NCP gathers information on national experiences with the Guidelines, handles enquiries, discusses matters related to the Guidelines and assists in solving problems that may arise in this connection. When issues arise concerning implementation of the Guidelines in relation to specific instances of business conduct, the NCP is expected to help resolve them.

There are four types of NPC structure presently in use: single government office, multi-departmental government office, tripartite body, quadripartite office.

---

23 See: UN High Commissioner for Human Rights: *Business and Human Rights: A Progress Report*, cit., p. 6.

A number of NPCs involve NGOs and other stakeholder in their work, for example, through their structure, or via an advisory committee. [24]

While it is recognised that governments should be accorded flexibility in the way they organise NCPs, it is nevertheless expected that all NCPs should function in a visible, accessible, transparent and accountable manner. These four criteria are core criteria to promote the concept of «functional equivalence» in the activities of NPCs. They also assist the Committee on International Investment and Multinational Enterprises in discussing the conduct of NCPs. NCPs are therefore accountable not only to their national constituencies, but to their peers and the Committee as well.

The Committee on International Investment and Multinational Enterprises (hereinafter referred to as CIME) is the OECD body responsible for supervising the functioning of the Guidelines, and it is expected to take steps to enhance their effectiveness. Likewise CIME can issue clarifications on the application of the guidelines in specific circumstances.

As it is stated in the OECD Guidelines, «the CIME shall periodically or at the request of an adhering country hold exchanges of views on matters covered by the Guidelines and the experience in their application». [25]

The non-binding nature of the Guidelines precludes the CIME from acting as a judicial or quasi-judicial body. Nor should the findings and statements made by the NCP (other than interpretations of the Guidelines) be questioned by a referral to CIME. [26]

Furthermore, in their work the CIME often consults with the OECD's business and labour advisory committees –the Business and Industry Advisory Committee (BIAS) and the Trade Union Advisory Committee (TUAC)–, [27] as well as with other NGOs on matters relating to the Guidelines and other issues concerning transnational corporations.

If to provide with the examples of some cases raised under the Guidelines, we can refer to those concerning human rights issue in Myanmar and child labour issue in India presented in the Annual Report on the Guidelines for Multinational Enterprises of 2003. As for the first case, following enquires by labour unions on companies' operations in Myanmar, the French NCP issued recommendations of eight practices that companies can use to contribute to the fight against forced labour. It also noted that such practices should not be a substitute for the enforcement of the government measures necessary to quell forced labour.

In the second abovementioned case the Netherlands NCP looked into NGO allegations of child labour in a leading sporting goods company's outsourcing operations in India. The NCP found that, even though the issues brought to the

---

24 David Kinley & Junko Tadaki: «From Talk to Walk…», cit., p. 18.

25 See: *OECD Guidelines for Multinational Enterprises, Revision 2000*, Par. II, note 1 (available online at *www.oecd.org/dataoecd/56/36/1922428.pdf).*

26 See: *The OECD Guidelines for Multinational Enterprises: Text, Commentary and Clarifications*, of 31 October, 2001, Para. 23

27 See: *www.biac.org*

NCP's attention probably still exist in the Indian sporting goods industry at large, the company encourages its suppliers to operate in a socially responsible manner.

## 5. CONCLUSIONS

The growing independence of the world community, to which the liberalization of international investment and trade regimes has contributed significantly, has great potential for enhancing the living standards of people throughout the world.

As the core responsibility for human rights violations is taken upon states, insufficient attention is paid to some of the most powerful non-state actors in the world, that is, transnational corporations. However, with power should come responsibility, and International Human Rights Law needs to focus adequately on these extremely potent international non-state actors. In other terms, one cannot simply deny the responsibility of TNCs under human rights legislation because it does not directly codified in international law and has traditionally not taken into account. As Secretary-General of the United Nations Ban Ki-moon noted, «We need business to give practical meaning and reach to the values and principles that connect cultures and people everywhere».

From the research completed on the examination of the controversial issues on the roles and responsibilities of TNCs with regard to human rights, we may summarize our conclusions in the following nine:

1. While governments have the primary responsibility to promote, protect and fulfill human rights, the Universal Declaration of Human Rights calls on «every individual and every organ of society» to strive to promote and respect the rights and freedoms it contains and to secure their effective recognition and observance. The concept of «every organ of society» covers private entitles such as transnational corporations.

2. Transnational corporations are essential participants in the structure of International Law, but that current *soft law* does not by itself amount to a sufficient platform by which to recognize their international legal personality.

3. Transnational corporations considerably outstrip less developed countries in financial and technological terms, and as a result they are able to influence the policy and practice of less developed countries. On one hand, TNCs have an enormous potential to provide an enabling for the enjoyment of human rights through investment, employment creation and simulation of economic growth. On the other hand, the activities of TNCs have also threatened human rights in some situations and individual companies have been complicit in human rights violations. Hence the roles

of TNCs with regard to human rights are of twofold character: positive and negative.

4. Negative role played by TNCs, is the impetus for the development of International Law in the field of human rights, calling the activities of TNCs under some control.

5. The scope of the commitment to support and respect human rights and to avoid complicity in human rights abuses is limited to the company's own sphere of influence.

6. TNCs are supporting and respecting human rights in their spheres of influence in a wide variety of ways, including by adhering to national laws that have been adopted as a result of a State's international human rights obligations and commitments.

7. Internationally, many companies participate in the United Nations Global Compact, which stipulates that those companies support and respect internationally proclaimed human rights. Similarly, many TNCs have already adopted voluntarily guidelines and codes of conduct and are seeking greater clarity on how they can avoid problems and positively affect the enjoyment of human rights in their activities. However, the problem is that the nature of the documents directly regulating the activities of TNCs with regard to human rights quite clearly shows that unfortunately, there is no relevant and comprehensive international regulation on this issue. Because of inconsistencies between the countries, the draft Code of Conduct, developed by UNCTAD, has not been accepted even at the level of recommendation in the form of UN General Assembly Resolution.

8. There is also growing recognition of the importance of designing implementation steps that will give life to the standards' application. Hence, more discussion is occurring related to monitoring mechanisms that might provide for review, evaluation, revision, and performance improvements. Human rights organizations pressing TNCs to influence political developments in other countries sometimes confront a particularly complicated challenge to demonstrate that their advocated path towards agreed goals is in line with the preferences and priorities of the most affected foreign population. It arises hot disputes over whether TNCs should withdraw from a country with significant human rights abuses, or stay and work for change. Existing monitoring mechanisms are also insufficient due to the absence of an internationally respected single controlling organ.

9. Many TNCs are reluctant to conduct voluntary monitoring due to the expensiveness of such activities, thus, the companies are afraid that their competitors will not take similar steps.

In this respect, we have the following proposals to formulate:

1. The nature and scope of responsibilities of TNCs with regard to human rights should be clearly defined.

2. It is necessary to adopt a single international document within the framework of the United Nations that would give a clear definition of TNCs and provide a common set of standards for all TNCs with regard to human rights as well as monitoring and implementation provisions. However, the document should be binding on states, not on TNCs, remaining within the competence of governments the primary responsibility to promote, protect and fulfill human rights. Hence, such a document would help states regulate TNCs entities more effectively as it could be used by human rights treaty bodies in the creation of additional reporting requirements for states. Furthermore, the document could also be used by most of the human rights treaty bodies as the basis for their efforts to draft general comments and recommendations relevant to the activities of TNCs. Eventually, the document may also find its application as being the human rights standards on a region-by-region basis while addressing specific issues.

3. TNC social responsibility activities have to be effectively addressed within a framework that provides for the broadest possible involvement of all relevant parties. Their reinforcement could take place within the framework of a more structured dialogue between all parties concerned that might include international organizations, such as the International Labour Organization, the United National Environment Programme and the United National High Commissioner for Human rights, which have already made serious efforts with respect to issues of social responsibility. In this regard, the framework for action of TNCs themselves should be established.

To sum up, we retain the ultimate belief that the further global development and liberalization of world society requires an active participation of transnational corporations for the sake of persons to secure their rights and interests.

**Annex** **Comparison of the scope and legal status of main existing standards and instruments regulating the responsibilities of TNCs with regard to human rights**

| | *OECD Guidelines for Multinational Enterprises* | *Draft Norms on the Responsibilities of TNCs and Other Business Enterprises with Regard to Human Rights,* | *UN Global Compact* | *ILO Tripartite Declaration of Principles Concerning Multinational Enterprises ad Social Policy* |
|---|---|---|---|---|
| *Description* | International instrument directed at States and TNCs | Draft international instrument directed at States and TNCs | Voluntary initiative | International instrument directed at States and TNCs |
| *Objectives* | Promotion and Protection | Promotion and Protection | Promotion | Promotion and Protection |
| *Source* | OECD member States and adhering States | Sub-Commision on the Promotion and Protection of Human Rights | United Nations Secretary-General | ILO member States and associated employer and employee associations |
| *Human Rights Coverage* | General references plus specific workers' rights | General and specific references to a wide range of rights | General reference to human rights | Workers' human rights recognized in ILO instruments |
| *Territorial coverage or Ratione territoriae* | OECD member States and adhering States | International coverage envisaged | Not defined | International |
| *Legal status* | Non-biding but commitment by adhering States to promote | As a draft proposal, they have no legal standing | Non-binding | Non-biding (Conventions included are binding on States parties) |

**Source** *Report of the Sub-Commission on the Promotion and Protection of Human Rights*. ECOSOC. E/CN.4/2005/91 of 15 February 2005 (available online at *www.realizingrights.org/pdf_May09.pdf*).