

The Imperative of a Convention on Corporate Accountability

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We had hoped that the World Summit on Sustainable Development (WSSD) would provide an opportunity to significantly advance discussions of a convention on corporate accountability. However, the lowest common denominator consensus processes took a stranglehold on negotiations and resulted in only token references to promotion of corporate “responsibility and accountability.” Civil society is far ahead of governments in accepting the need for international regulation of corporate behavior. It is imperative that governments now take action.

Particularly troubling is that, through Type II outcomes, transnational corporations (TNCs) get to “greenwash” (or “bluewash” – as in the color of the UN flag) their reputations in exchange for unenforceable voluntary commitments. Voluntary measures can always be undertaken. The real need is for universal standards to be enunciated in an international convention on corporate accountability plus institutional arrangements for enforcement of such standards.

There are numerous instances of corporate practices gone awry, from disasters that resulted in physical harm and death (Union Carbide in Bhopal, Shell Oil in Nigeria, Unocal in Burma, to name a few) to revelations of corrupt accounting practices that send shock waves through global markets. With little international oversight, TNCs are left free to pursue their profits in developing countries without sufficient regulatory restrictions, resulting in human and environmental tragedies. Individuals and communities adversely affected rarely have an opportunity for redress. If the default of an individual multinational corporation can have such severe repercussions on the global economy, then the international community has a right and an obligation to regulate their behavior.

Although many industrialized nations establish stringent environmental regulations for corporations operating within their borders, these regulations do not apply extraterritorially to similar operations in foreign countries. In the absence of a universal code of conduct for transnational corporations (TNCs), a double standard exists where industrialized-based companies can operate without regard to the standards imposed by their home countries with often devastating consequences.

Unregulated TNCs have the ability to move their manufacturing from country to country in search of those who will work for the lowest wages and under the lowest standards.

Ironically, the onus is on host countries to regulate the behavior of TNCs operating within their borders, even though the wealth and global power of a TNC extends far beyond the host country. Should host countries bear the burden of regulation and oversight of TNCs when potential effects on its citizens and the environment violate international human rights norms? In the countries where the companies are headquartered, governments are caught in the middle of global corporate investment policies and professed expectations that investment will advance human rights. While there are enormous pressures to create greater investment opportunities for TNCs, there is little corresponding pressure to match these opportunities with responsibilities.

TNCs are outside the reach of existing international law because they are neither states nor international organizations and, therefore, no existing international court can exercise jurisdiction in cases involving corporations. A few states have laws that allow cases to be brought against corporations, such as the Alien Tort Claims Act in the United States, but most of these cases are either dismissed or fail to hold corporations accountable.

In recognition that international law needs to expand to include the private sector, dispute settlement mechanisms of human rights tribunals should be amended to allow for the inclusion of claims against multinational companies. In addition, global environmental standards should be required and adopted by TNCs. It is hypocritical that one standard should apply for citizens of industrialized countries, while lesser standards are applied to those in developing countries. An international convention on the conduct of TNCs should require that all corporations comply with the environmental regulations of their state of incorporation when operating on foreign soil, as well as standards that apply globally. We can no longer afford to do any less.

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The International NGO Task Group on Legal and Institutional Matters (INTGLIM) was formed as a legal and institutional issues caucus in 1991 at the end of the second Preparatory Committee session for the UN Conference on Environment and Development (UNCED). During the 1992 Earth Summit, the task group served as the primary NGO caucus that developed the proposal, and generated support for, the establishment of a UN Commission on Sustainable Development (CSD). Since 1992, INTGLIM has continued to operate as an informal network and convened meetings and briefings on legal and institutional issues, and on related topics in the CSD and general UN reform processes. For the Johannesburg Summit in 2002, INTGLIM focussed on governance for sustainable development and international environmental governance. INTGLIM also served as a legal and institutional issues caucus addressing NGO access and participation, Type 2 Partnerships, corporate accountability and other governance issues. INTGLIM is co-chaired by the International Secretariat of the World Federalist Movement (WFM) and the Center for Development of International Law (CDIL).