



## Multinational corporations and human rights

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What is the responsibility of a multinational corporation for its breaches of human rights in the host state in which it is operating? What role can international law play in holding corporations to account? There are serious difficulties in asking states to control multinational corporations: the reluctance of host states to cut off the hand that feeds them, problems of jurisdiction in home state litigation, and more generally the difficulty in pinning down the legal personality of a multinational corporation. And while international law can effect change through demands on states to regulate corporations, there are limitations too. States are unwilling to cede a potentially valuable status to non-state organisations in international law.

This debate raises a number of questions: to what extent are multinational corporations like states? Is there more danger in the potential for collusion between those multinationals and states? What are the limitations of law in controlling the political and economic force of globalized business?

It is hard enough to conceptualize the 'corporation' for the purposes of developing legal and moral accountability at the best of times. The fate of some of the world's largest corporations underlines that difficulty in a stark way. In what senses did Enron and WorldCom exist? One day (year) Enron was the subject of the biggest investigation undertaken by Human Rights Watch, the next it had 'disappeared' in a cloud of debts, almost taking its auditors Arthur Andersen with it. Corporate scandals highlight two important distinctions: that between corporate and white collar offending and that between corporate and directorial responsibility. Enron and other scandals disclose some white collar (acting against the company itself) as well as corporate (affecting consumers, employees and others) crime. The second distinction subdivides the field of corporate crime into the accountability of the *corporate entity* and the accountability of individual directors and officers for that crime.

Similar lessons emerge when we turn to human rights violations rather than fraud by multinational corporations. Many corporations, like states, have the resources and power both to perpetrate and to escape responsibility for abuse. The subject is one that benefits from a huge and expanding literature, including scholarly legal writing, governmental and intergovernmental outputs, as well as the work of campaigning groups such as Amnesty International and Human Rights Watch. From this three core questions emerge in relation to

multinational corporations: what legal avenues are possible? what principles of accountability can be used? and what models of complicity can be applied? Beneath these core issues lurk many undercurrents. While most of us would like to sign up to reduce human rights violations, the means of achieving that reduction remain elusive.

Multinational corporations are accused both of direct human rights abuses and of colluding in various ways with repressive states. Because of the normative implications of this task many writers have drawn on complicity, a notion widely recognized in systems of criminal law. It is not so much the marriage of criminal law principles and international law but the adoption of the corporation as a fully accepted member of the 'legally responsible' family that presents the greatest obstacle here. National jurisdictions are either reluctant to or encounter difficulty in applying criminal sanctions to corporations. For most, criminal law applied to individual human agents is altogether a more attractive enterprise. The reasons for this are both conceptual and (broadly) political.

While many national laws have only recently begun to address the corporation as the potential subject of criminal law, so too international law attracts its own sceptics, those who believe it to have a limited role in sanctioning or preventing human rights abuses. Many of the arguments run parallel in these two fields and are rooted in (often submerged) assumptions about the functions and purposes of law.

In their magisterial study of global business regulation Braithwaite and Drahos point to the complex plurality of actors involved in business regulation, the power of the nation state, in particular the US, the growth of international organizations and the importance of epistemic communities. It is worth re-stating the obvious point that corporations owe their status in law *to law*. From this it follows that they should be challengeable in law, through revocation of their status, through claims for false advertising or actions against individual directors. Before an effective regime can be developed it will be necessary to drive through new legal principles of attributing actions to the corporate entity. This would then need to be supplemented by complicity rules that reflected the reality of state and corporate structures of decision-making. But is also necessary to adhere to another sense of 'reality': the capacity of corporations to reinvent themselves. Not only are corporations adept at protecting their own interests through entrenched human rights codes, they are good at being one step ahead of the game. Law does not easily provide answers to complex and uncertain political and economic challenges.

[These arguments are considered at greater length in Celia Wells and Juanita Elias 'Catching the Conscience of the King: Corporate Players on the International Stage' in Alston ed Non State Actors in International Law. Collected Courses of the Academy of European Law, OUP, forthcoming ]

## References

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