

PROVISIONAL EDITION

Regulating Corporations

A Resource Guide

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Acronyms and Abbreviations

ATCA	Alien Tort Claims Act
BCSD	Business Council for Sustainable Development
BDI	Bundesverband der Deutschen Industrie e. V.
CEDAW	Convention on the Elimination of all Forms of Discrimination
CERES	Coalition for Environmentally Responsible Economies
CCC	Clean Clothes Campaign
CSR	corporate social responsibility
ETI	Ethical Trading Initiative
FAO	Food and Agricultural Organization
FIFA	Fédération Internationale de Football Association
FLA	Fair Labor Association
FSC	Forest Stewardship Council
GEMI	Global Environment Manufacturing Initiative
GMO	genetically modified organism
GRI	Global Reporting Initiative
GSP	Global Sullivan Principles
ICC	International Chamber of Commerce
ICMM	International Council on Mining and Metals
IFBWW	International Federation of Building and Wood Workers
IHEI	International Hotel Environment Initiative
IISI	International Iron and Steel Institute
ILO	International Labour Office
IRU	International Road Transport Union
ISO	International Organization for Standardization
MNE	multinational enterprise
MSC	Marine Stewardship Council
NCP	National Contact Point
NIEO	New International Economic Order
NGO	non-governmental organization
OECD	Organization for Economic Co-operation and Development
OED	Oxford English Dictionary
PIC	Prior Informed Consent
POP	Persistent Organic Pollutant
SAI	Social Accountability International
SFI	Sustainable Forestry Initiative
TNC	transnational corporation
UDHR	Universal Declaration of Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNCTC	United Nations Centre on Transnational Corporations
UNICEF	United Nations Children's Fund
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
WBCSD	World Business Council for Sustainable Development
WDC	World Diamond Council
WHO	World Health Organization
WRC	Worker Rights Consortium
WRAP	Worldwide Responsible Apparel Production
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization

Introduction

The Oxford English Dictionary (OED) defines regulation as “a rule prescribed for the management of some matter, or for the regulating of conduct; a governing precept or direction; a standing rule” (OED 2001). In accordance with this definition it would seem that business needs regulation in order to conduct its activities. The definition suggests that rules are required in order to facilitate management and determine the course of action. It also indicates that such a code of discipline should be observed. Using this definition, this report seeks to disentangle the multifarious regulatory world that relates to transnational corporations (TNCs).

It focuses on regulations related to the working activities of TNCs that affect social, environmental and human rights. It does not address issues traditionally associated with corporate governance or financial aspects. Following a brief historical introduction, the report identifies and describes relevant regulatory initiatives, classifying them into four categories that reflect different regulatory approaches, and listing them alphabetically.¹ The following categories have been adopted: corporate self-regulation, multilateral regulation, civil regulation and multistakeholder initiatives, and national laws that have cross-border implications for TNCs. A final section identifies a number of regulatory proposals that have recently been put forward by various organizations and actors.

The area of regulation related to the social, environmental and human rights responsibilities and obligations of TNCs is immense and continually growing. This report does not claim to be exhaustive. Rather it aims to document some of the main regulations that are international in scope. Given the concentration of both TNCs and international regulatory initiatives in the global North, there is only limited reference to regulatory initiatives that have evolved in Southern countries. Evidently, Southern inspired regulations that affect TNCs are an area of research that requires further attention.

A Brief History of TNC Regulation

In the run up to the World Summit on Sustainable Development, held in Johannesburg, in 2002, many voices from international NGOs petitioned for binding international regulation to monitor the activities of TNCs. The preceding months had witnessed several exposés of corporate wrong-doings that suggested the international regulatory system was failing to deter harmful behaviour. Several Northern and Southern NGOs joined forces and campaigned for an international convention that aimed to ensure future TNC activities would not undermine social, environmental and human rights. Some called for the establishment of a new global organization that would focus solely on this area, while others proposed the revival of the United Nations Centre on Transnational Corporations (UNCTC) or another United Nations (UN) agency with a similar mandate. While there was mounting pressure for international regulation of TNCs, on the ground, national law was being utilized to hold corporations to account. At the height of the Summit over twenty cases were going through the US courts under the Alien Tort Claims Act, an old American law that allows courts to hear claims by foreign nationals for civil wrongs that violate US law. Three cases were also being pushed through the British legal system concerning past transgressions of British TNCs.

¹ An attempt has been made to provide Web sites that relate directly to the relevant initiative. In cases where these do not exist, another source has been provided.

Many believe that the existence of these and other corporate social responsibility (CSR) initiatives suggests there is a void within the existing global regulatory armoury concerning the working activities of TNCs. Others point to the multifarious United Nations' conventions, claiming that regulations safeguarding human rights and the environment already exist and that the problem is not a lack of regulation but a lack of enforcement. There is concern that the "soft" legal status of many UN conventions, which derives from their non-binding character, renders such international law a weak form of regulation lacking "teeth". As a result, some members of civil society are pushing for binding forms of international regulation. Yet it would be false to think civil society and others have only recently taken up this cause.

Throughout history, the regulation of TNCs has been an important issue for civil society and governments across all societies. Although interest in the activities of corporate expansion was prominent in colonial times, renewed interest in the impacts of TNCs emerged in the 1970s. In addition, the onset of British decolonization that began in India and Pakistan in 1947 and proceeded apace in subsequent decades also focused attention on foreign corporations, owing to their close relationship with colonial governments. At the time, the struggle of many developing countries for political independence was also intertwined with the struggle for control over their natural resources. Ideas of self-determination became infused with nationalization and overnight there were concerted efforts towards controlling and ridding themselves of all things colonial, including the associated TNCs. Attempts to establish developing country unity took shape after the Bandung Conference in 1955 that led to the creation of the Non-Aligned Movement in 1961, and subsequently, the Declaration for the Establishment of a New International Economic Order (NIEO) that was adopted in 1974. The NIEO sought to change the international economic system in the interest of developing countries. But despite this newly acquired independence, developing countries found it hard to break free of the imperial grip, and the burgeoning industries that developed started to resemble the colonial plantation economy, in particular, strong foreign control over key sectors of the economy. The main difference was that now, TNCs did not work under the mandate of the colonial master. This phenomenon was well documented and within certain circles obtained the title of "neo-colonialism". The concerns of developing countries intensified and before long, they were taken up at the United Nations General Assembly. The birth of the United Nations Centre on Transnational Corporations in 1977, and its work on drafting a code of conduct, raised expectations that a more appropriate international regulatory environment would emerge. However, discontent over the Centre's work from TNCs and some governments increased. Such concerns eventually led to the demise of the Centre in the early 1990s.

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