International Labour Organization

Topic A: Human Rights in Regards to Multinational Corporations and other Business Entities

“There can be no peace without development, no development without peace, and no lasting peace or sustainable development without respect for human rights and the rule of law.”

- Jan Eliasson, United Nations Deputy Secretary-General

Multinational Corporations (MNCs) are business enterprises which operate in several States, but are managed from one home State in order to expand their influence, acquire cost advantage by operating wherever cheaper resources are available, or to expand on a parent corporation’s technology and research and development in international markets. MNCs play a critical role in international economic relations and in the economies of most Member States. This is due largely through their contributions to both home and host countries; utilizing international direct investment, trade, and other such means, these enterprises bring about a more efficient use of capital, technology, and labor. They also have the power to promote economic and social welfare, and improve living standards, the satisfaction of basic needs, and the enjoyment of human rights in numerous Member States. In the 1990s, the worldwide expansion of the private sector and the corresponding rise in transnational economic activity led to a heightened social awareness of the impact MNCs and other business enterprises had on the promotion and maintenance of human rights. Because of their size, degree of employment, and scope of their supply chains, MNCs have the potential to impact a wide array of human rights as defined by various international legal instruments, such as the rights of life, liberty, security of person; assembly and association; freedom of movement; freedom from torture, cruel, and inhuman punishment; freedom from unjust labor practices, and slavery. As a result, the United Nations began to address the impact of MNCs on human rights and discussing whether the burden of responsibility to maintain human rights fell upon the Member States within which business was conducted, or upon the MNCs themselves. While many attempts have been made to codify corporate social responsibility (CSR) and institutionalize fair business practices, most of the work done to address human rights in regards to MNCs and other business entities does not address businesses themselves, but rather, relies on the creation and implementation of national policies to ensure the human rights of laborers within individual Member States.

3 Ibid.
Background:

Defining Human Rights within the Context of MNCs

Since 1948, the UN framework regarding human rights has been shaped around its milestone *Universal Declaration of Human Rights* (UDHR). The UDHR set out a series of fundamental human rights which are to be universally protected, including several rights that can be impacted by MNCs and other business entities, such as the freedom from torture, cruel, inhuman, or degrading treatment; the right to freedom of assembly and association; the right to work, to free choice of employment, to just and favorable working conditions; and the right to equal pay for equal work.⁶ The International Labour Organization (ILO) was created as the first specialized UN agency in 1946, formally encompassing the *Constitution of the International Labour Organisation* (Constitution) as part of the UN system. The Constitution acknowledges that the failure of any Member State to adopt “humane conditions of labor,” places an obstacle in the way of other Member States attempting to improve the conditions within their own countries, and thereby places a responsibility on the ILO Member States to work towards universal protections of the human rights enumerated within the Constitution and its annexes. The *Declaration Concerning the Aims and Purposes of the International Labour Organisation* (Declaration of Philadelphia) was added as an annex to the Constitution in 1944. It presents the aims and purposes of the ILO, including describing several of the human rights that are impacted by labor conditions.⁷ The ILO also maintains a series of *International Labour Standards* (ILS) which are legal instruments enshrined within the ILO conventions and recommendations.⁸ The ILS contain all the labor rights and human rights the ILO believes should be maintained in regards to labor standards and practices. The ILO provides technical assistance to the Member State to assist with the implementation of the ILS.⁹

As the world entered a period of rapid political change and economic growth in the 1990s, it became clear that the newly globalizing society and surge of MNCs presented a unique set of challenges regarding human rights in the labor sector.¹⁰ National labor laws and related human rights protections vary from Member State to Member State, and MNCs operating in several Member States were able to utilize the labor and supplies that came at the lowest economic cost, which were predominately found in the market in which human rights standards were the least strictly enforced. Labor rights are more widely recognized by MNCs and other business entities than human rights. In 1998, the ILO addressed the protection of the human rights of laborers in

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⁹ Ibid.

the Declaration on the Fundamental Principles and Rights at Work. The Declaration committed all Member States to respect and promote: freedom of association and the effective recognition of the right to collective bargaining; the elimination of forced or compulsory labor; the abolition of child labor; and the elimination of discrimination in respect of employment and occupation. These rights are considered to be universal and apply to all people in all Member States, regardless of the level of economic development. The Declaration further acknowledges that the maintenance of human rights are of paramount importance to groups with special needs, such as indigenous and local communities and migrant workers.

UN Framework Regarding MNCs and Other Business Entities

The first major initiative to hold business entities accountable for the maintenance of human rights was the 1976 passage of the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (OECD Guidelines). They have been updated five times, most recently in 2011 in order to address the changes in MNCs and other business enterprises and how they interact with the labor sector in numerous Member States, including through the management of their supply chains. In the case of human rights, the OECD Guidelines expressly state that MNCs and other business enterprises are expected to respect human rights, regardless of whether the Member State in which they operate has implemented or enforced domestic laws that comply with international human rights obligations. The Human Rights Council (UNHRC) similarly expressed that obligation, stating in a 1990 report that MNCs “shall respect human rights and fundamental freedoms in the countries in which they operate.”

According to the OECD Guidelines, MNCs can express their commitment to respect human rights through the implementation of policies, informed by internal and/or external expertise, that stipulate the human rights expectations of personnel, business partners, and other parties directly linked to its operations, products, or services. They must also exercise due diligence to ensure they are regularly assessing actual and potential human rights impacts, addressing these situations, and communicating how they are addressing such impacts. Human rights situations may change over time, so MNCs must consider this an ongoing process.

Another early United Nation initiative to regulate the impact of MNCs on human rights was entitled the Norms of Transnational Corporations and Other Business Enterprises, which was drafted by the Commission on Human Rights. The goal of this initiative was to hold MNCs and

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12 Ibid.
13 “ILO Declaration on Fundamental Principles and Rights at Work-Background.”
15 Ibid.
16 Ibid.
19 Ibid.
20 Ibid.
other business entities accountable for the same range of human rights duties that Member States have accepted under the treaties to which they are party.\(^{21}\) This debate was divisive and inconclusive; the Commission did not act on the proposal and instead, requested the appointment of a Special Representative of the Secretary-General on the issue. The Special Representative conducted numerous studies, which culminated in the creation of the ‘Protect, Respect, and Remedy’ Framework. This Framework holds States accountable to protect against human rights abuses by third parties, suggests that there is also a corporate responsibility to respect human rights, and expresses the need for greater access by victims to effective remedies, both judicial and non-judicial.\(^{22}\) The Framework was endorsed by the UNHRC as the Guiding Principles on Business and Human Rights (UNGP) in Human Rights Council Resolution 21/5, which also created the Working Group on Business and Human Rights. While not legally binding, the UNGP provides a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, as well as education on their interpretation and application.\(^{23}\)

The ILO, concerned with potential negative impact of the work of MNCs, developed The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) in 1977, and passed substantial revisions in March of 2017.\(^{24}\) The revisions responded to the new economic realities of the globalized economy, including increased international investment and trade, and the rapid expansion of global supply chains.\(^{25}\) The MNE Declaration encourages the positive contributions MNCs can make to economic and social progress and the realization for decent work for all; and aims to reduce or resolve the difficulties caused by their various operations.\(^{26}\) Its principles are intended to guide governments, employers’ and workers’ organizations of home and host countries and MNCs in taking appropriate actions and measures and adopting policies based on the principles presented in other relevant ILO documents.\(^{27}\)

Former Secretary-General Kofi Annan recognized the importance of directly encouraging businesses to commit to socially responsible policies and report on their implementation. In 2000, the UN launched the UN Global Compact, a voluntary initiative which invites participants from a broad range of MNCs and other business enterprises to commit to operating in accordance with ten principles regarding corporate sustainability and requires participating businesses to annually report to their stakeholders and the UN Global Compact’s website about their progress.\(^{28}\) The Ten Principles include supporting and respecting the protection of internationally proclaimed human

\(^{22}\) Ibid.
\(^{25}\) Ibid.
\(^{26}\) “Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.”
\(^{27}\) Ibid.
rights, and ensuring that their business is not complicit in human rights abuses.\(^{29}\) The *UN Global Compact* also invites governments, civil society, and other non-business organizations to participate in engagement mechanisms, including policy dialogues, learning, Local Networks, and partnership projects.\(^{30}\)

**Current Issues:**

**Reviewing the MNE Declaration**

In 2016, the ILO Governing Body established an ad hoc working group to review the text of the *MNE Declaration*, including its annex, agenda, and interpretation procedure. The report of the ad hoc working group was presented and approved at the 329th session of the ILO Governing Body in March of 2017. As a result of the work of the ad hoc working group, the *MNE Declaration* was revised to address substantial shortcomings in the existing framework regarding MNCs. The revised *Declaration* expanded on the role of host countries in the promotion of good social practices among MNCs operating within their territories, in addition to home countries promoting good social practice among their MNCs operating abroad.\(^{31}\) It also contains new conclusions regarding the promotion of sustainable enterprises and the Sustainable Development Goals, and further protects rights by emphasizing the role of governments in the protection and promotion of human rights.\(^{32}\) The new revisions strengthen the recommendations on a preventative culture for occupational safety and health, combating workplace violence, and compensation and effective remedy for possible human rights violations. While these steps have provided Member States with a stronger background on human rights as they relate to MNCs, they are broad suggestions for the type of legislative and judicial systems that must be in place to ensure the protection of human rights. Many of the original concerns about the efficacy of the promotion of the *MNE Declaration* and the challenges facing its implementation given its reliance on Member States’ policing role have not been resolved. Without effective national laws and the enforcement of such laws, any initiatives or activities setting out to promote the principles of the *MNE Declaration* will be unsuccessful.\(^{33}\) Seeing as there is no current legally-binding agreement on MNCs or their impact on human rights, the revised language of the *MNE Declaration* alone is not enough to protect workers in home and host countries.


\(^{30}\) “About the UN Global Compact—Frequently Asked Questions,” United Nations Global Compact.


\(^{32}\) Ibid.

Engagement, Training, and the Promotion of Sustainable Enterprises

The ILO’s Multinational Enterprises and Enterprise Engagement Unit (ENT/MULTI) leads the Organization’s work on promoting the principles of the MNE Declaration among government, social partners, and enterprises by providing State-level assistance to support Member States engagement with MNCs on decent work priorities. The Unit is responsible for coordinating ILO activities related to CSR and contributing to policy coherence on initiatives and frameworks addressing business behavior through collaboration with the Global Compact, the OECD, and the UNHRC. ENT/MULTI operates the ILO Helpdesk for Business on International Labour Standards in order to provide company managers and workers with the tools necessary to align business operations with the ILS.

The ILO also engages with Member States through the ILO International Training Centre (ITC), which offers a number of courses relevant to MNCs, decent work, and sustainable development. Courses provide ideas and stimulate exchanges on methods governments, enterprises, and social partners can adopt and monitor to maximize the benefits of MNCs on economic development and decent work, and delve into topics such as the ILS, due diligence related to labor rights, and how CSR principles can be implemented in MNC operations. Interactive learning modules on MNCs and decent work are also available for free online to encourage a widespread engagement with ILO resources and suggestions.

Case Study: Job Creation in Cote d’Ivoire

Young Ivorian people face major challenges in the labor market as a result of precarious conditions such as: under-employment, informal employment, gender-based discrimination, and a persistent lack of access to education. As most jobs in Cote d’Ivoire were agricultural, urban young people, especially highly educated urban young people, were not in education, employment, or training at higher rates than rural young people. The rampant skills mismatch demonstrates how the education system failed to provide young people with the skills needed in the labor markets, and creates a difficult school-to-work transition that leaves young people discouraged and potentially losing valuable skills.

The ILO has provided technical assistance to Cote d’Ivoire to engage the private sector on addressing the issue of youth employment since 2010. Guided by the recommendations of the MNE Declaration, 30 MNCs from the agriculture and agri-business, banking, mining, and telecommunications sectors identified ways their business activities, including their operations

35 Ibid.
36 Ibid.
37 Ibid.
39 Ibid.
and supply chain, could be structured to generate more and better jobs for local youth. The ILO conducted studies on the suggestions of the MNCs, who established a multi-stakeholder Task Force on Youth Employment Promotion and Responsible Investment, which is overseen by Confédération Générale des Entreprises de Côte d’Ivoire (CGE-CI). The Taskforce is composed of representatives from MNCs, training and research institutions, universities, and government institutions. The member companies on the Task Force participated in several CGE-CI initiatives, including a partnership with the Agency for Employment Research and Promotion to offer internship opportunities to hundreds of young men and women. Current technical support from the ILO is provided in the framework of the “Business and Decent Work” project, and seeks to build Member States’ capacity to engage with MNCs and other business enterprises on decent work priorities, as well as to engage with new investors to maximize their contribution to sustainable development and inclusive growth.

**Future Outlook:**

In November of 2017, the United Nations Forum on Business and Human Rights will convene to discuss issues surrounding the theme “Realizing Access to Effective Remedy.” The Forum is a platform where governments, businesses, civil society, affected individuals and communities, and international organizations can have a constructive dialogue featuring new ideas and practice-based perspectives to address current gaps in the human rights issues in the global economy, as well as their root causes.

In the developed world, Member States are beginning to take concrete steps to ensure MNCs and other business enterprises are disclosing how they respect human rights. Mandatory human rights due diligence, or requiring companies to ensure their operations and supply chains are free from human rights abuses, is becoming mainstream. As public disclosure requirements spread, they become a competitive incentive; the field is leveled by making such practices standard, and ethical companies can draw business with their robust statements. In developing countries and least developed countries, human rights concerns, particularly regarding child labor, persist, leaving MNCs with a major responsibility to continue to pursue due diligence strategies.

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40 “SDG Note: Engaging the Private Sector on Decent Work-Business Operations and Investments,” International Labour Organization.
41 Ibid.
42 Ibid.
45 Ibid.
Focus Questions:

1. In what ways can the global community promote CSR in MNCs?
2. Should there be a legally binding instrument to ensure MNCs promote human rights?
3. Are Member States or business entities primarily responsible for the maintenance of human rights?
4. Has your Member State implemented national legislation or judicial practices to ensure the human rights of workers?
5. Does your Member State participate in any ILO initiatives, committees, or forums on the issue of human rights in the economic sector?
Bibliography


